

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293



JON SCHROEDER,  
Appellant

v.

G2-05-176

CITY OF NEWTON,  
Respondent

Appellant's Attorney:

*Pro Se*  
Jon W. Schroeder  
  


Respondent's Attorney:

Donnalyn B. Lynch Kahn, Esq.  
Assistant City Solicitor  
City of Newton Law Department  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Commissioner:

Christopher C. Bowman

DECISION ON APPOINTING AUTHORITY'S MOTION TO DISMISS

The Appointing Authority, on July 18, 2007, moved to dismiss the Appellant's bypass appeal to the Commission on the grounds that the subject of the instant promotional bypass appeal is currently being adjudicated under the provisions of the collective bargaining agreement between the City of Newton and Local 863 IAFF. (June 29, 2007 American Arbitration Association Notice of Hearing) The Appellant was given until August 3, 2007 to respond to the Motion to Dismiss. The Commission did not receive any response from the Appellant.

Chapter 150E, section 8 provides in part that:

"Where binding arbitration is provided under the terms of a collective bargaining agreement as a means of resolving grievances concerning job abolition, demotion, promotion, layoff, recall or appointment and where an employee elects such binding arbitration as the method of resolution under said collective bargaining agreement, such binding arbitration shall be the exclusive procedure for resolving any such grievance, notwithstanding any contrary provision of chapter thirty-one."

In the current case, the Appellant, via Local 863 IAFF, has elected binding arbitration as the method of resolving his claim. Consequently, he is precluded by statute from pursuing an appeal under the civil service law.

Civil service employees have two avenues of appeal when disciplined or bypassed -- either to the Civil Service Commission or, as the final step in a contractual grievance procedure, to arbitration. Such employees are free, if the applicable collective bargaining agreement permits it, to file an appeal with the Commission and also to appeal through the grievance procedure up to -- but not including -- arbitration. At that point, such employees must make a binding election between one route or the other.

The Commission has regularly held that the filing of a Demand for Arbitration with the American Arbitration Association constitutes such an election. See Campbell et al. v. City of North Adams, D-5046, D-5071, September 28, 1994; Finneran v. Hull Municipal Lighting Plant, D-4092, July 17, 1991; and Hawkes et al. v. Boston Housing Authority, D-4565, January 12, 1992 (appeals dismissed where a Demand or Petition for Arbitration had been submitted.)

For all of the above reasons, the Appellant's appeal under Docket Nos. G2-05-176 is hereby *dismissed* and the full hearing previously scheduled for August 13, 2007 is cancelled.

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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on July 26, 2007.

A true Copy. Attest:

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Commissioner  
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Jon Schroeder (Appellant)  
Donnalyn B. Lynch Kahn, Esq. (for Appointing Authority)  
John Marra, Esq. (HRD)