

Decision mailed: 11/18/11
Civil Service Commission *03*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

WAYNE SIMMONS,
Appellant

v.

Docket No.: C-11-177

DEPARTMENT OF CONSERVATION
AND RECREATION,
Respondent

Appellant's Representative:

Patricia Couhig
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Respondent's Attorney:

Francis Hartig, Atty.
Assistant General Counsel
251 Causeway Street
Boston, MA 02114

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 30, §. 49, the Appellant, Wayne Simmons (hereafter "Appellant" or "Simmons"), is appealing the April 21, 2011, decision of the Human Resources Division ("HRD") denying his request for reclassification from the position of Forest & Park Supervisor I to the position of Park Foreman I, ("Foreman") at the appointing authority Department of Conservation & Recreation, (hereafter "appointing authority" or "DCR").

The appeal was timely filed at the Civil Service Commission (hereafter "Commission") and a hearing was held on July 18, 2011 at the Commission offices. The hearing was digitally recorded, copies of which were provided to the parties. The parties filed post-hearing proposed decisions

FINDINGS OF FACT:

Seven (8) exhibits and a Stipulation of facts were entered into evidence at the hearing. On October 3, 2011, the parties were requested to file additional exhibits and a stipulation of facts. On or about October 24, 2011 the parties filed additional exhibits, (9-12) and a supplemental stipulation of facts. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Karen Valerie, Personnel Analyst; Department of Conservation and Recreation

For the Appellant:

- Appellant, Wayne Simmons

I make the following findings of fact:

1. The Appellant has been employed by the Massachusetts Department of Conservation and Recreation ("DCR"), Division of State Parks Southeast Region at the Borderland State Park in Easton as a forest and Parks Supervisor I. (Testimony of the Appellant).
2. For approximately 12 years, he has been employed as a Forest & Park Supervisor I, (Testimony of the Appellant).
3. Prior to his transfer to Borderland State Park in 1992 he was a Recreation Facilities Repairer at the Brockton Skating Rink. (Testimony of the Appellant).

4. The Petitioner by agreement with the appointing authority (then DEM), was re-classified to his current position of Forest and Park Supervisor I in August of 1999. (Testimony of the Appellant).
5. The Appellant currently works as a Forest & Park Supervisor I. This is a Job group (code E14115) and Grade 14. (Testimony of the Appellant, Supp. Stip.)
6. The Borderland State Park is a 1,700 acre State Park within the Division of State Parks Southeast Region and has four (4) regular full time positions: two (2) Forest and Parks Supervisor I's (Mark Brown and Petitioner); One (1) Forest and Parks Supervisor II, Dave Green; and One (1) Forest and Parks Supervisor III, Ellenor Yahrmarkt. (Testimony of Appellant and Karen Valeri, Exhibits 7 and 8)
7. The Appellant's Forest and Park Supervisor I "Position Description – Form 30" lists his duties and responsibilities states:
 - Make repairs to all buildings including carpentry, plumbing and electrical. Repair windows including glazing. Repair doors and locks.
 - Performs regular maintenance and make repairs to the park's vehicles, mowers, tractor, chain saws and all other mechanical equipment.
 - Monitor and make repairs to roads, trails, bridges, boardwalks, trail signs, parking lots, storm drains, culverts, etc.
 - Maintain maintenance repair records and reports on vehicles and equipment.
 - Operate chain saws and perform tree work. Cut and burn brush. Mow lawns and fields and perform other grounds keeping work.
 - Perform small engine repair on mowers, chain saws, generators, pumps, etc.
 - Welding work including repairs to equipment and metal fabrication of gates, flag poles, windows, etc.
 - Operation of the portable saw mill including calculations on amounts and size of lumber.
 - Carpentry work including regular repairs to buildings and the construction of new items such as book cases, windows, doors, signs, bulletin boards, benches, modifications to interior walls, doorways, etc.
 - Electrical work including replacing outlets, old wiring, repairs to lamps and lights.
 - Interior building repairs including plastering, drywall installation, and painting and varnishing.
 - Repair "anything" that has been vandalized
 - Operate, maintain and repair snow removal equipment including hydraulics.

- Maintenance and repairs to the national register Ames Mansion that requires special care of historic furnishings such as furniture, painting frames, windows and doors, lighting, etc.
- Operate hydraulic and lifting equipment such as tractors. Maintain a current hydraulic license.
- Provide training to new seasonal park workers.
- Enforce park rules and regulations.
- Assist with large park sponsored programs and public events.
- Assist with the set-up of the parks 30' X 60' tent. (Exhibit 4)

8. The Department of Personnel Administration (now HRD) Classification Specifications for the Forest and Parks Supervisor Series, as approved on December 31, 1987, provide in pertinent part:

III ORGANIZATIONAL LEVELS

- Forest and Park Supervisor I is the first-level supervisory job in this Series.
- Forest and Park Supervisor II is the second-level supervisory job in this Series.
- Forest and Park Supervisor III is the third-level supervisory job in this Series.

IV EXAMPLES OF DUTIES COMMON TO ALL LEVELS IN SERIES

1. Supervises the maintenance of assigned recreational areas, including such activities as grounds maintenance, building and equipment maintenance and repair and removal of hazardous trees or limbs.
2. Inspects the condition of state-operated forest and park recreational areas and facilities to determine their suitability for public use, ensure compliance with safety standards and determine maintenance needs.
3. Patrols recreational areas and facilities to maintain security and ensure compliance with applicable rules, regulations and policies.
4. Issues permits or gives permission for the use of recreational facilities, park areas, etc. and collects related fees.
5. Maintains records and prepares reports concerning assigned work to provide information and make appropriate recommendations.
6. Organizes and implements recreational and cultural programs, including sports competitions, nature walks, shows, etc. for the enjoyment of visitors to the parks.
7. Coordinates the activities and work of volunteers, court referred individuals, etc.
8. Performs related duties such as determining supply needs; operating and performing routine maintenance on various types of equipment and vehicles; providing information to the general public; interviewing candidates for employment; providing on-the-job training; and using small hand tools. (Exhibit 5)

9. The Petitioner and Mark Brown, as Forest and Park Supervisor I's, report to the Assistant Park Supervisor Dave Green, Forest and Parks Supervisor II, who reports to the Park Supervisor, Ellenor Yahrmarkt, Forest and Parks Supervisor III. (Testimony of Appellant and Karen Valeri, Exhibits 7 and 8)
10. As a Forest and Park Supervisor I, the Petitioner does not supervise any recreational or clerical regular employees. (Testimony of Appellant and Karen Valeri, Exhibits 7 and 8)
11. The Petitioner does not supervise the other Forest and Parks Supervisor I, Mark Brown at Borderland State Park. (Testimony of Appellant and Karen Valeri, Exhibits 7 and 8)
12. The Appellant does not supervise any recreational or clerical employees yet may at times have seasonal or volunteers to work with him. He does not perform payroll, attendance, performance reviews or other administrative duties for any employees. He does not even sign time sheets for seasonal workers. (Exhibit 4, testimony of Appellant)
13. On April 10, 2007, the Appellant filed a request with DCR to be reclassified from his position as a Forest & Park Supervisor I to a Park Foreman I. Park Foreman I is a Job group (code E15164) and Grade 15. (Exhibit 3, Supp. Stip.)
14. According to HRD's classification specifications the Park Foreman I position is the "first-level supervisory job in this series". The incumbents of this level **exercise direct supervision over, assign work to and review the performance of 6 or more personnel.** (Exhibit 6)
15. **According to HRD's classification specifications, the Appellant does not perform some of the other supervisory and distinguishing duties of all levels the Park Forman series, for example:** 1.) he does not determine work priorities and assign workers to specific tasks; 2.) he does not determine manpower and equipment resources

necessary to accomplish assigned projects; 3.) he does not compile and review data concerning effectiveness of park maintenance activities to prepare reports for supervisor; 4.) he does not provide on-the-job training for new employees; 5.) he does not perform related duties such as required maintaining records and logs on such matters as time and attendance of assigned personnel... (Testimony of Appellant, Karen Valeri, Exhibit 6)

16. On January 27, 2011, DCR issued a letter informing the Appellant that he was properly classified as a Forest & Park Supervisor I. (Exhibit 3).

17. The Appellant appealed DCR's decision to HRD on February 22, 2011. HRD denied the Appellant's appeal on April 2, 2011. (Exhibit 2).

18. On May 19, 2011, the Appellant filed an appeal of HRD's decision with the Commission. (Exhibit 1)

19. The position or title of Park Foreman does not exist within the current organizational structure of the DCR Division of State Parks.(Testimony of Karen Valeri)

20. The DCR was created by the legislature in 2003 and merged the Metropolitan District Commission (MDC) with the Department of Environmental Management (DEM) to form one state parks agency. (Testimony of Karen Valeri)

21. Within the DCR there is a Division of State Parks which contain the parklands of the former DEM and the Division of Urban Parks which contain the parklands and parkways of the former MDC. (Testimony of Karen Valeri)

22. The former MDC controlled and maintained major parkways and bridges throughout the Metropolitan Boston area such as Storow Drive, VFW Parkway, Morrissey Boulevard, Lynn Fells Parkway, Quincy Shore Drive and Lynnway. (Testimony of Karen Valeri)

23. The former MDC used the Park Foreman title for employees that worked maintaining the MDC parkways as did the former Massachusetts Highway Department (now merged in the Department of Transportation (Mass DOT) (Testimony of Karen Valeri)
24. Park Foreman duties focused on parkway maintenance; roadway work, culverts, catch basins, responding to accidents and maintaining guard rails. (Testimony of Karen Valeri)
25. The Forest and Parks Supervisor Series is focuses on state parks, forests and reservations with duties dealing with maintenance and repair of park facilities and grounds. (Testimony of Karen Valeri)
26. In 2008-2009 the DCR transferred the control and maintenance responsibilities for a majority of its roadways and bridges to the Mass DOT. (Testimony of Karen Valeri)
27. With the reduction of roadways the DCR is phasing out the Park Foreman title and using the DEM model of organizational structure of Forest and Parks Supervisor series for state parks, forests and reservations. (Testimony of Karen Valeri)
28. There are currently only 3 remaining active Park Foreman positions in the entire DCR which are left over title positions in the former MDC Urban Parks region. Two (2) of the three (3) Park Foreman positions were appointed by the MDC prior to the merger with DEM and “grandfathered”. The other Park Foreman position was posted in late 2007 early 2008 for a vacant position in the DCR Urban Park North Division assigned to the Storow Drive. (Testimony of Karen Valeri)
29. The Forest and Park Supervisor Series duties in part overlap with the Park Foreman duties which are common with HRD Classification Specifications. (Testimony of Karen Valeri)

30. The Forest and Parks Supervisor Series is the classification that is organizationally better suited to the now unified state forests and parks system and is the model the DCR intends to continue in the future. (Testimony of Karen Valeri)
31. The DCR has been phasing out the use of the Park Foreman classification and limiting current positions to parkways. (Testimony of Karen Valeri)
32. Re-classification of the Petitioner to a Park Foreman I would create a permanent organizational disruption to the current and future staffing structure of the DCR Division of State Parks. (Testimony of Karen Valeri)
33. The position and the level of Forest and Parks Supervisor I more comprehensively and accurately describe the nature of assigned duties and responsibilities of the Appellant and is consistent with His Form 30 job details of duties and responsibilities at the Borderland State Park. (Testimony of Karen Valeri, Exhibits 4 & 5))
34. The Appellant's Form 30, signed by the Appellant on July 2, 2006 was changed according to the Appellant in 2006 requiring him to obtain a "hoisting engineer license". However, the Appellant admitted that he did not have a CDL or Class II license a special requirement of the Park Foreman series, depending on assignment. (Exhibits 4& 5, testimony of the Appellant).
35. The HRD classification specification for the position of Forest & Parks Supervisor I only requires a Massachusetts Class 3 Motor Vehicle Operator's License for certain assignments. (Exhibit 5)
36. The Appellant testified that he "does it all" or whatever is asked of him. However he admitted that he is directed by his supervisor, Dave Green on everything. He claimed to perform a wide variety of tasks, yet most of his activities continue to operate, perform

mechanical and building repair and maintenance for the most part. (Testimony of Appellant, Exhibit 4)

CONCLUSION

As a requirement under G.L. c. 30, § 49, an appeal must be made first to HRD following a denial of a request for reclassification by the employee's Appointing Authority. In pertinent part, §49 reads: "Any...employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator [HRD] and shall be entitled to a hearing upon such appeal. If the administrator finds that the office or position of the person appealing shall warrant a different position allocation...he shall report such recommendation to the budget director and the house and senate committees on ways and means ... Any ... employee ... further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it."

In the present case, the Appellant's appeal was denied at HRD after DCR had also denied his request for reclassification to the position of Park Foreman I.

After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of HRD should be upheld, and the Appellant is properly classified in his present position as a Forest and Park Supervisor I. The Appellant failed to meet the burden of proof necessary to demonstrate that he was improperly classified as a Park Foreman I: he has not shown he has performed the duties of a Park Foreman I more than fifty (50) percent of the time. It is also noted that the Appellant is seeking reallocation to a position

outside of the series of classification titles in which he currently holds a position, that of the Forest and Park Supervisor I position. (series I-III)

The Appellant argues in part that he should be reclassified to Park Foreman I because of a new requirement to have a "hoisting engineer license". However, this license is not a requirement of the new position he is seeking reclassification to.

The Appellant testified that he does not supervise any personnel and that all of his activities are under the supervision of his supervisor Dave Greene, a Forest and Parks Supervisor II. Although, he does work occasionally with some seasonal and volunteer workers such as Boy Scouts, He does not perform payroll, attendance, performance reviews or other administrative duties for any employees. He does not even sign time sheets for seasonal workers.

According to HRD's classification specifications, the Appellant does not perform some of the other supervisory and distinguishing duties of all levels the Park Forman series, for example: 1.) he does not determine work priorities and assign workers to specific tasks; 2.) he does not determine manpower and equipment resources necessary to accomplish assigned projects; 3.) he does not compile and review data concerning effectiveness of park maintenance activities to prepare reports for supervisor; 4.) he does not provide on-the-job training for new employees; 5.) he does not perform related duties such as required maintaining records and logs on such matters as time and attendance of assigned personnel. The Appellant confirmed that he does not perform any of these important supervisory duties and responsibilities in his testimony and on his Form 30.

The Appellant's specialized skill and experience in general equipment, grounds and building maintenance and repair shows that he is a valued and capable employee but does not substitute for the required and distinguishing supervisory duties and responsibilities of the

position he seeks, Park Foreman I. Park Foreman I is the first-level supervisory position in this series. The duties and responsibilities that the Appellant actually performs on a regular basis fit more closely, the specifications of his presently held position of Forest and Park Supervisor I

Additionally, reclassifying the Appellant to the position he is seeking, Park Foreman I would be disruptive to the organizational structure and future plans of the DCR generally and the Division of Parks and Recreation Southeast Region in particular. There are no personnel for the Appellant to supervise at the Borderland State Park and no suitable supervisory position open elsewhere in the Region. There are no Park Foreman positions in the DCR Southeast Region. The DCR has been phasing out the use of the Park Foreman classification and limiting current grandfathered positions to parkways. Re-classification of the Petitioner to a Park Foreman I would create a permanent organizational disruption to the current and future staffing structure of the DCR Division of State Parks.

However, as suitable opening become available and posted in the DCR, it is assumed that the Appellant would apply for or bid for those openings for which he is qualified. The Appellant might pursue a transfer or a promotion to one of those positions, as soon as a suitable opening becomes available. The Appellant is a seasoned and capable employee who has served the Commonwealth for many years to the apparent satisfaction of the DCR. However, he has no justifiable expectation that the DCR would create a position to meet his desired move.

The Appellant has utterly failed to meet his evidentiary burden for reclassification to the position of Park Foreman I since he admittedly has no supervisory duties and the distinguishing requirements of the Park Foreman series are supervisory related duties, including **direct supervision over 6 or more personnel**. Despite the organizational disruption it would cause in

The Appellant has provided examples of duties he has performed which are similar to those required of a Forest & Park Supervisor I, his current position. The Appellant is appropriately classified in his present position.

Additionally it would be disruptive to the organizational structure and plans of the DCR generally, the Division of Parks and Recreation, Southeast Region and Borderland State Park in particular. The DCR would have to create a Park Foreman position since there are none in this Division or Region or Park.

The duties and responsibilities that he has regularly performed did not fulfill the requirements of performing the duties of Park Foreman I over fifty (50) percent of the time. The Appellant does not perform any of the mandated classification distinguishing direct supervisory duties for a Park Foreman I position. For all of these reasons, the Appellant's Appeal filed under Docket No. C-01-177 is hereby *dismissed*.

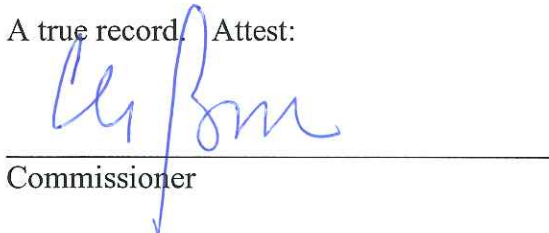
Civil Service Commission,



Daniel Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, and, Stein, Commissioners) [Marquis absent], on November 17, 2011.

A true record. Attest:


Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

Patricia Couhig, (for Appellant)

Frank E. Hartig, Atty. (for Appointing Authority)

John Marra, Atty. HRD