

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place Room 503  
Boston, MA 02108  
(617) 727-2293

GARY SNEAD,  
*Appellant*

G2-08-211

v.

CITY OF SPRINGFIELD,  
*Respondent*

Appellant's Attorney:

John Connor, Esq.  
Moriarty & Connor, LLC  
101 State Street: Suite 501  
Springfield, MA 01103

Respondent's Attorney:

Kathleen Sheehan, Esq.  
City of Springfield  
36 Court Street  
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

**DECISION ON APPELLANT'S MOTION FOR RELIEF UNDER  
CHAPTER 310 OF THE ACTS OF 1993**

*Procedural Background*

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Gary Snead (hereinafter "Snead" or "Appellant"), filed an appeal with the Civil Service Commission (hereinafter "Commission") claiming that he was harmed through no fault of his own when the City of Springfield's School Department (hereinafter "City" or "Appointing Authority" or "Department" ) appointed him as a *provisional* senior building custodian in February 2000, despite the fact that his name appeared on an active eligible list for the position of

*permanent* senior building custodian at the time. He seeks to be deemed a permanent senior custodian with a retroactive seniority date of February 2000.

On November 13, 2008, a pre-hearing conference was conducted at the Springfield State Building in Springfield, MA and the matter was scheduled for a full hearing to be conducted on April 8, 2009. The April 8, 2009 hearing was converted to a status conference. Given that many of the factual issues were not in dispute, the parties mutually agreed to submit written briefs and have the Commission enter an order based on those briefs. The Appellant subsequently submitted a brief on June 12, 2009 and the City submitted a brief on August 11, 2009. Additional information was requested from the parties and it was submitted to the Commission on January 25, 2010, at which time the record was closed.

#### **FINDINGS OF FACT:**

I make the following findings of fact:

1. On October 13, 1987, the Appellant was appointed as a temporary junior building custodian for the Springfield School Department (hereinafter “Department”).  
(Attachment 1 to Appellant’s brief)
2. On February 11, 1998, the Appellant was appointed as a provisional junior building custodian by the Department. (Attachment 2 to Appellant’s brief)
3. On January 7, 1991, the Appellant was appointed as a permanent junior building custodian by the Department. (Attachment 3 to Appellant’s brief)
4. On September 21, 1991, the Appellant took and passed an open competitive examination for the position of permanent senior building custodian. He received a score of 93. The eligible list for this position was established on April 1, 1992.

(Attachments 12 and 15 to Appellant's brief) According to HRD, this open competitive eligible list was active until it was revoked on September 26, 1995.

5. The Department made seven (7) permanent appointments to senior building custodian between April 1, 1992 and September 26, 1995. (Department's January 15, 2010 correspondence to Commission)
6. On May 31, 1994, the Appellant was provisionally promoted to the position of senior building custodian. (Attachment 4 to Appellant's brief)
7. Of the seven (7) permanent appointments to senior building custodian referenced in Finding #5, two (2) were made between May 31, 1994 (the date of the Appellant's provisional promotion) and September 26, 1995 (the date the open competitive eligible list upon which the Appellant's name appeared expired). (Department's January 15, 2010 correspondence to Commission)
8. At least one (1) of the two (2) above-referenced individuals (Anthony Divenuto) was appointed as a senior building custodian from a promotional eligible list and not an open competitive eligible list (upon which the Appellant's name appeared.) (Department's January 25, 2010 email correspondence to Commission)
9. No evidence was presented to the Commission to show that the Department appointed any senior building custodians from an open competitive eligible list between April 1, 1992 and September 26, 1995. Rather, the evidence presented appears to show that appointments to the position of senior building custodian during this time period were made exclusively from the promotional eligible list, upon which the Appellant's name did not appear.

10. Section 7(3) of the Personnel Administration Rules states: “When eligible lists for the same position are established as the result of open competitive and promotional examinations, names shall be certified first from the promotional examination, second from the reemployment list if the administrator has established such a list pursuant to M.G.L. c. 31, §40, third from the list established from the open competitive examination. (PAR.07(3))
11. As the Appellant’s name only appeared on an open competitive eligible list between April 1, 1992 and September 26, 1995, and the evidence appears to show that all appointments to senior building custodian during this time period were from a promotional list, he is unable to show that the Department violated the civil service law or rules by failing to permanently appoint him to the position of senior building custodian during this time period. At most, the only violation that the Appellant would be able to show with further evidence is that the Department may have erroneously granted him a provisional promotion to senior custodian while there was an active promotional list in place for that position. This, however, would not warrant an order from the Commission granting the Appellant permanency in the position of senior building custodian.
12. It is undisputed that the Appellant later returned to the position of permanent junior building custodian.
13. On April 22, 1995, the Appellant took and passed a departmental promotional examination and was placed on the eligible list for promotion to senior building custodian. This promotional eligible list was established on September 26, 1995 and was active until it was revoked on May 2, 2000. (Attachment 12 to Appellant’s brief)

14. On March 27, 1999, HRD administered an open competitive examination for the position of senior building custodian. The Appellant did not take this examination. The eligible list for this open competitive examination was established on December 29, 1999 and revoked on November 18, 2002. (Attachment 12 to Appellant's brief)
15. On February 11, 2000, the Appellant was again provisionally promoted to the position of senior building custodian. (Attachment 8 to Appellant's brief)
16. As referenced above, the Appellant's name appeared on a promotional eligible list for senior custodian from September 26, 1995 until May 2, 2000.
17. The Department provided copies of all certifications from which they planned on appointing permanent senior building custodians on February 4, 1997, July 28, 1998 and February 10, 2000. The five (5) individuals appointed from the February 4, 1997 certification were ranked among the first 11 candidates and the Appellant was ranked 32<sup>nd</sup>. The three (3) individuals appointed from the July 28, 1998 certification were ranked among the first seven (7) candidates. The Appellant was ranked 15<sup>th</sup>. No appointments were made from the February 10, 2000 certification in which the City originally sought to hire three (3) senior building custodians. However, even if the City had chosen to appoint three (3) senior building custodians from this Certification, they would have been limited to the first seven (7) candidates willing to accept employment, consistent with the statutory "2N + 1" formula, where N is equal to the number of appointments to be made. The Appellant was ranked 14<sup>th</sup> on this certification and thus would have been ineligible for consideration for a promotional appointment to the position of senior building custodian. (Department's January 15, 2010 correspondence to Commission)

18. As the Appellant's name was never ranked high enough on a certification between September 26, 1995 and May 2, 2000 to be eligible for a promotional appointment to the position of senior building custodian, he can not show that the City violated the civil service law or rules by failing to do so. At most, similar to the prior eligibility period, the Appellant would only be able to show (with further evidence) that the Department may have erroneously granted him a provisional promotion to senior custodian while there was an active promotional list in place for that position. This, however, similar to the prior occurrence, would not warrant an order from the Commission granting the Appellant permanency in the position of senior building custodian.
19. On May 17, 2003, the Appellant took, but failed, a departmental promotional examination for the position of senior custodian. Thus, his name did not appear on the promotional eligible list which was established on November 1, 2003 and revoked on November 15, 2007. (Attachment 12 to Appellant's brief)
20. The Appellant continued to serve as a provisional senior custodian until November 15, 2004. (Testimony of Appellant and Attachment 8 to Appellant's brief)
21. On November 1, 2004, the Department sent a letter to the Appellant stating in part, "We thank you for your service as a non-permanently appointed Senior Custodian. As you are aware, the Senior Custodian Exam has taken place and appointments are being made. Therefore, you will be returning to a junior position effective November 15, 2004." (Attachment 9 to Appellant's brief)
22. Most recently, on July 2, 2007, the Appellant, who was serving as a provisional senior building custodian at the time, was returned to his permanent junior building

custodian title. (Attachment 11 to Appellant's brief) It is undisputed that the Appellant's name did not appear on an eligible list at the time of this provisional promotion.

## CONCLUSION

G.L. c. 31, § 2(b) states that the Commission shall:

"...hear and decide appeals by a person aggrieved by any decision, action, or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations; provided that no decision or action of the administrator shall be reversed or modified nor shall any action be ordered in the case of a failure of the administrator to act, except by an affirmative vote of at least three members of the commission, and in each such case the commission shall state in the minutes of its proceedings the specific reasons for its decision.

No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status." (emphasis added)

Chapter 310 of the Acts of 1993 states:

"If the rights of any person acquired under the provisions of chapter thirty-one of the civil service law or under any rule made thereunder have been prejudiced through no fault of his own, the Civil Service Commission may take such action as will restore or protect his rights..."

It is undisputed that the Department, in its delegated capacity, served as the Administrator regarding the "actions or inactions" alleged by the Appellant. For all the reasons cited in the findings, the Appellant has been unable to show that he is an aggrieved person. The failure of the Appellant not to be appointed as a senior building custodian was not the result of a violation of the civil service law or rules and his rights were not abridged, denied or prejudiced.

The Appellant was not appointed as a senior building custodian between April 1, 1992 and September 26, 1995 because his name did not appear on the promotional eligible list from which all promotional appointments were made. His name appeared only on the open competitive eligible list during this time period and the Department was required by civil service rules to first consider all individuals whose name appeared on the promotional list.

The Appellant was not appointed as a senior building custodian between September 26, 1995 and May 2, 2000 because his name did not appear high enough on the promotional eligible list (and the certifications created from this list) to be considered for a promotional appointment.

The Appellant has not shown that the City violated the civil service law or rules by failing to appoint or promote him to the position of senior building custodian. Thus, he is not an aggrieved person and the relief he is requesting under Chapter 310 of the Acts of 1993 is not warranted.

For these reasons, the Appellant's appeal under Docket No. G2-08-211 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and Taylor, Commissioners [Marquis – Absent]) on March 4, 2010

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A true record. Attest:

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Commissioner



Either party may file a motion for reconsideration within ten days of the receipt of this Commission 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:

John Connor, Esq. (for Appellant)

Kathleen Sheehan, Esq. (for Appointing Authority)

Martha O'Connor, Esq. (HRD)