COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

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

JOHN SPILLANE,
Appellant

v.

CASE NO: D1-14-173

DEPARTMENT OF DEVELOPMENTAL SERVICES,
Respondent

Appearance for Appellant:	John Spillane, Pro Se
Appearance for Respondent:	Michelle M. Heffernan, Esq. Deputy General Counsel Human Resources Division One Ashburton Place Boston, MA 02108
Commissioner:	Paul M. Stein

DECISION ON MOTIONS FOR SUMMARY DECISION

The Appellant, John Spillane, brought this appeal to the Civil Service Commission (Commission), asserting that his employer, the Massachusetts Department of Developmental Services (DDS) violated his civil service rights in connection with a reduction in force at the Fernald Development Center in Waltham, MA (Fernald), where he had been employed and which resulted in his unlawful demotion. Each party submitted a Motion for Summary Decision and appeared at a motion hearing before the Commission on October 30, 2014, which was digitally recorded and copies were provided to the parties. [1]

[1] The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

Findings of Fact

Based on the submissions of the parties, and after hearing the parties at the motion hearing, I find the following facts to be undisputed:

1. The Appellant, John Spillane, held the tenured civil service position of Developmental Services Worker IV (DSW-IV), with a seniority date of August 10, 1982. As of July 2014, Mr. Spillane worked at Fernald, located in the DDS Metro Region. (*DDS Motion, Exh. "C"; Appellant's Motion, Exh.5*)

2. Fernald once housed hundreds of developmentally disabled individuals. As part of a decades-long strategy to eliminate large institutional settings, by July 2014, most Fernald residents had been moved to smaller "community houses". (*DDS Motion; Uncontested Representations of DDS at Motion Hearing*) [2]

3. Ten (10) DSWs remained at Fernald in July 2014. Mr. Spillane was one of three DSW-IVs (one with more seniority and one with less seniority) whose positions were then eliminated. (*DDS Motion; Appellant's Motion; DDS Representation at Hearing*)

4. No other DSW-IV positions then existed in the Metro Region. Elsewhere, ten DSW-IV vacancies and positions existed as follows::

- Northeast Region – Two vacancies & one position held by a provisional employee appointed 11/25/2012
- Southeast Region – Four positions held by provisional employees as follows:
  Position 7994 – Wrentham – appointed 10/6/2013
  Position 28359 – Brockton – appointed 10/21/2012
  Position 34196 – Brockton – appointed 11/5/2000
  Position 1009 – Wrentham – appointed 5/1/1988
- Central Region – Two positions, one held by a tenured employee less senior than Mr. Spillane and one held by a provisional employee appointed 5/8/1979
- West Region – One position held by a provisional employee appointed 8/30/1981

(*DDS Motion, Exh."C";* (*Stipulation of the Parties*)

[2] Fernald finally ceased operations in December 2014 and the facility was sold to the City of Waltham. (*http://www.mass.gov/anf/property-mgmt-and-construction/sale-and-lease-of-state-assets/comprehensive-real-estate-serv/real-estate-projects/waltham-former-walter-e-fernald-development-center.html]*)

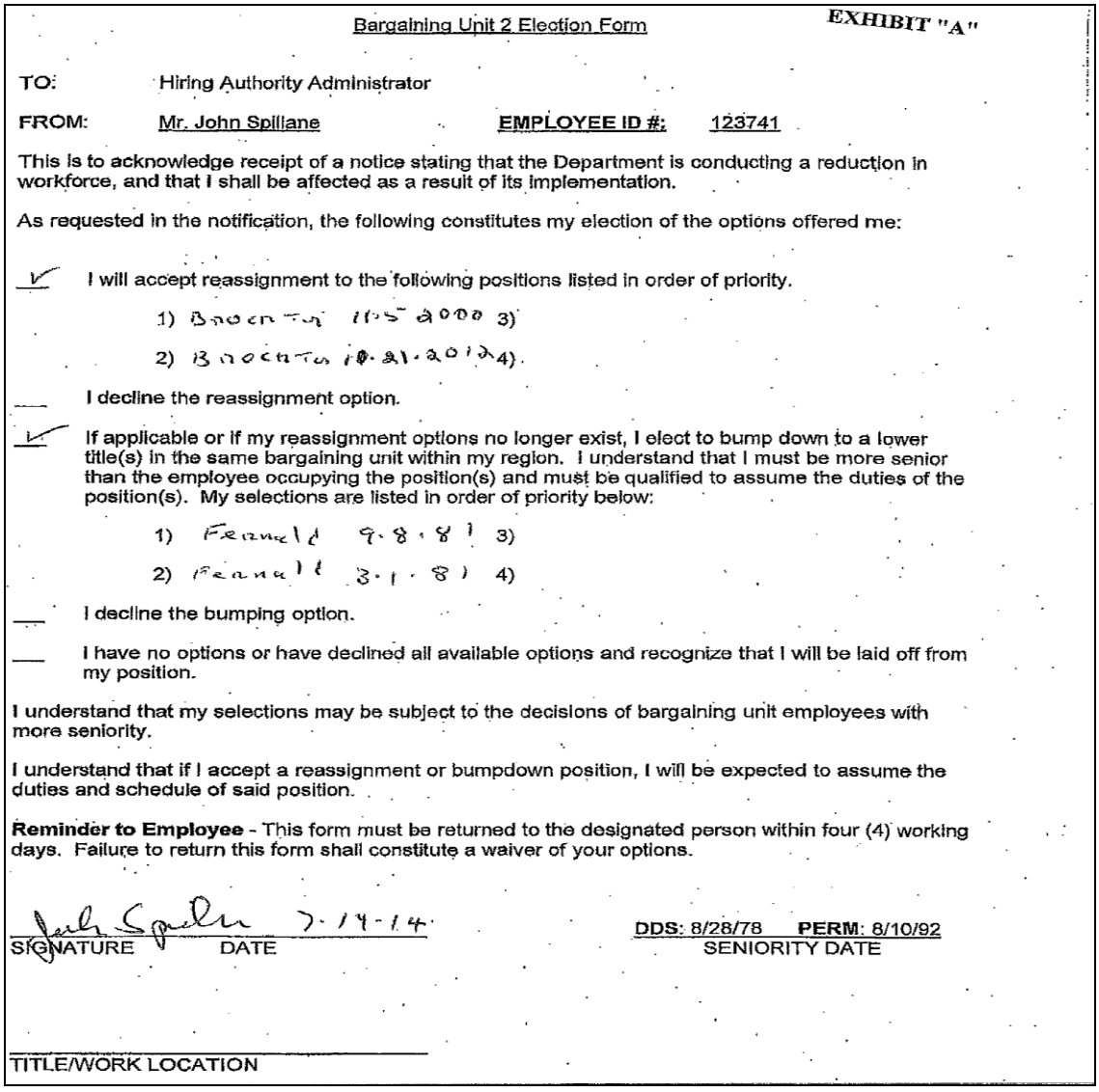
5. The DSWs at Fernald are members of Local 402, AFSCME Council 93 (the "Union"), in Bargaining Unit 2, and subject to the terms of a Collective Bargaining Agreement (CBA) duly executed by the Union and the Commonwealth under the provisions of G.L.c.150E. (*DDS Motion; Appellant's Motion & Exh. 7*)

6. Article 18 of the CBA, entitled "Layoff – Recall Procedure" provides, in part:

> **Section 1. Applicability**
> The provisions of this Article shall apply only to non-civil service employees and shall not apply to the separation from a position by reason of the certification of a civil service list by the Personnel Administrator.
> . .
> **Section 3. Layoff Notice to Union/Notice to Employee**
> In the event that Management becomes aware of an impending reduction in workforce, it will make every effort to notify the Union at least ten (10) calendar days prior to the layoff. Management will notify the affected employees in writing not less than five (5) working days in advance of the layoff date. The notice to employees shall contain a restatement of Section 4 below. Whenever practicable, affected employees will have four (4) working days to exercise their bumping rights, but in no event less than two (2) working days to exercise their rights. Management will provide the Union with updated seniority lists, which may impact specific titles due to the layoff, as soon as possible but not later than ten days prior to the layoff.
>
> **Section 4. Displacement-Bumping Procedure**
> . . .
> B. *Employees whose position(s) are being eliminated shall have the right to exercise their bumping rights by accepting a transfer to a position in the same title for which the employee is determined qualified by the Appointing authority. Employees choosing to transfer in accordance with this provision may transfer*:
> 1. Into the position of the least senior employee in their facility; or
> 2. Into the position of the least senior employee in their region/area if such least senior employee is less senior than the least senior employee in the facility; or
> 3. *Into the position of the least senior employee in any region/area* if such employee is less senior than the least senior employee in the region/area in which the reduction occurred
>
> C. 1. Employees whose positions are being eliminated may elect to bump to a lower title in his/her bumping corridor in the bargaining unit for which the employee is qualified in the "facility" in which the employee presently works to the position of the least senior employee in the title, provided that there are persons(s) with less seniority who are in the lower title.
> . . .

(*DDS Motion, Exh. "B")(emphasis added)*

7. Mr. Spillane received a "Bargaining Unit 2 Election Form", which he completed after discussions with Donald Stevens, the DDS Metro Region Human Resources manager about the most likely DSW IV positions that would be open to him as the number two most senior DW IV, i.e., a Northeast Region vacancy and the least senior provisional position in Wrentham, but Mr. Spillane submitted his election form stating he would only accept reassignment to a DSW IV position in Brockton, otherwise he preferred to stay at Fernald and be demoted to DSW III. [3]



Bargaining Unit 2 Election Form

EXHIBIT "A"

TO: Hiring Authority Administrator

FROM: Mr. John Spillane **EMPLOYEE ID #:** 123741

This is to acknowledge receipt of a notice stating that the Department is conducting a reduction in workforce, and that I shall be affected as a result of its implementation.

As requested in the notification, the following constitutes my election of the options offered me:

✓ I will accept reassignment to the following positions listed in order of priority.

1) Brockton 10-5-2000 3)

2) Brockton 10-21-2012 4)

___ I decline the reassignment option.

✓ If applicable or if my reassignment options no longer exist, I elect to bump down to a lower title(s) in the same bargaining unit within my region. I understand that I must be more senior than the employee occupying the position(s) and must be qualified to assume the duties of the position(s). My selections are listed in order of priority below:

1) Fernald 9-8-81 3)

2) Fernald 3-1-81 4)

___ I decline the bumping option.

___ I have no options or have declined all available options and recognize that I will be laid off from my position.

I understand that my selections may be subject to the decisions of bargaining unit employees with more seniority.

I understand that if I accept a reassignment or bumpdown position, I will be expected to assume the duties and schedule of said position.

Reminder to Employee - This form must be returned to the designated person within four (4) working days. Failure to return this form shall constitute a waiver of your options.

John Spillane 7-14-14

SIGNATURE DATE

DDS: 8/28/78 **PERM**: 8/10/92

SENIORITY DATE

TITLE/WORK LOCATION

(*DDS Motion, Exh. "A"; Affidavit of Donald Stevens; Appellant's Motion*)

[3] The substance of the communications between Mr. Spillane and Mr. Stevens are disputed, but these disputed facts are not material to the Commission's decision on the pending motions.

8. The Election Form refers to a "receipt of notice" concerning the reduction in force which was not attached and was not provided to the Commission. I infer, however, as the form is a collective bargaining unit form, the referenced notice was required by the CBA. Article 18, Section 2. (*DDS Motion, Exhs. "A" & "B"; Affidavit of Donald Stevens*)

9. By letter dated July 22, 2014, Mr. Stevens informed Mr. Spillane: "based on your seniority and choices", he would be demoted to DSW-III on the second shift at Fernald, one of the two positions he had listed in completing the form. (*DDS Motion, Exh. "D"*)

10. Both of the other Fernald DSW-IVs picked the vacancies in the Northeast Region. If Mr. Spillane had indicated his willingness to be reassigned to the Wrentham DSW IV, he would have been offered that job. (*Stipulation of the Parties at the Motion Hearing*)

11. On July 24, 2014, Mr. Spillane filed this appeal. (*Claim of Appeal*)

Applicable Legal Standard

A motion for summary decision of an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "viewing the evidence in the light most favorable to the non-moving party", the undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". To survive a motion for summary decision, the non-moving party must offer "specific facts" which establish "a reasonable hope" to prevail after an evidentiary hearing. Conclusory statements, general denials, and factual allegations not based on personal knowledge are insufficient to establish a triable issues. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

Applicable Civil Service Law

> [*P]ermanent employees* . . . *having the same title in a departmental unit are to be separated* . . . *because of lack of work* or lack of money *or abolition of positions* . . . *according to their seniority* . . . so that *employees senior in length of service, computed in accordance with section thirty-three, shall be retained the longest*. . . .
>
> *Any action by an appointing authority to separate a tenured employee from employment for the reasons of lack of work of lack of money or abolition of positions shall be taken in accordance with the provisions of section forty-one*. Any employee who has received written notice of an intent to separate him from employment for such reasons may, as an alternative to such separation, file with his appointing authority, within seven days of receipt of such notice, a written consent to his being demoted to a position in the next lower title or titles in succession in the official service . . . (*emphasis added*)

G.Lc.31, §41 governs the termination of a civil service employee and states:

> "*Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be* . . . *laid off* . . . *nor shall his position be abolished*. *Before such action is taken*, such employee *shall be given a written notice* by the appointing authority . . . and *shall be given a full hearing*. . . before the appointing authority . . . The appointing authority shall *provide such employee a written notice* . . . at least three days prior to the holding thereof, except that *if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty*." (*emphasis added*)

A tenured civil service employee terminated by an appointing authority which has failed to follow the requirements of Section 41 may appeal to the Commission. G.L.c.31,§42. If the employee establishes that "the rights of such person have been prejudiced thereby", the Commission "shall order the appointing authority to restore such person to his employment immediately without loss of compensation or other rights." Id.

The Personnel Administration Rules promulgated by the Massachusetts Human Resources Division (HRD) provide, in relevant part:

> **PAR.15 LAYOFFS FROM CIVIL SERVICE POSITIONS**
> (1) All civil service rights of an employee rest in the position in which he holds tenure.
> (2) When one or more employees must be separated from positions in the same title and departmental unit due to lack of work, lack of money or abolition of position, all persons filling positions provisionally in the designated title must

be separated first, followed by all persons filling positions in temporary status in the designated title, before any civil service employees holding the designated positons in permanent status shall be separated from such positions.

(3) When one or more civil service employees holding permanent positions in the same title and departmental unit must be separated from their positions due to lack of work, lack of money, or abolition of position, the employee with the least civil service seniority computed pursuant to M.G.L.c.31, §33 shall be separated first; provided that all disabled veterans are accorded the preference provided by M.G.L.c.31, §26,

In the application of these rules, the DDS "departmental unit" for purposes of determining seniority and bumping rights is "any . . . facility with all of the department's regions." See Herlihy v. Civil Service Comm'n, 44 Mass.App.Ct. 835, 849 (1998)

Analysis

Waiver of Civil Service Rights

DDS contends that the Commission lacks jurisdiction to hear Mr. Spillane's appeal because he elected a demotion in lieu of layoff and, therefore, waived his right to contest the validity of any action DDS has taken with respect to his employment status. The law is clear that an employee who, having been duly notified in accordance with G.L.c.31,§39 of an intent to separate him from employment and who, elects, in lieu of contesting such termination, to accept a demotion, cannot thereafter protest the validity of the layoff decision by appeal to the Commission. See City of Worcester v. Civil Service Comm'n, 18 Mass.App.Ct. 278, rev.den., 392 Mass. 1104 (1984); Price v. Department of Empl. & Training, 10 MCSR 238 (1997); Higgins v. Dalton Police Dep't, 7 MCSR 16 (1994).

Cases in which an employee was deemed to have waived a right of appeal to the Commission involved "Section 39" elections made after specific notice of layoff and advice of available rights as prescribed by G.L.c.31, §§39 & 41. In contrast, here, DDS used a CBA election form designed for provisional (non-tenured) union members and did

not expressly follow civil service requirements to inform tenured employees of the precise panoply of their rights as spelled out in civil service law. Thus, the "Bargaining Unit 2 Election Form" is couched in terms of "reassignment' options to other positions in the same job title, or a demotion to a lower title, but does not address the employee's right to an appointing authority hearing and appeal to the Commission to contest the layoff decision. While DDS may have informally discussed these options with Mr. Spillane, and may have intended its actions to serve as compliance with civil service law, Mr. Spillane's completion of the "Bargaining Unit 2 Election Form" is insufficient notice under civil service law and cannot serve as a waiver of his civil service rights.

In sum, by completing the "Bargaining Unit 2 Election Form" prescribed by the CBA, which was the only form provided to him, Mr. Spillane did not waive his right to contest that, as a permanent tenured employee, he was being denied other appropriate rights to which he was entitled under civil service law, namely to be retained in his job title of DSW-IV over other less senior tenured employees and all provisional employees in that same title, before he was required to elect a demotion to a DSW-III. Thus, his appeal is ripe for consideration on the merits.

Just Cause for Demotion

Civil service law does not "preclude abolition of positions or reorganizations of departments". E.g., Herlihy v. Civil Service Comm'n, 44 Mass.App.Ct. 835, rev. den., 428 Mass. 1104 (1998). In such cases, as in the present situation, the process for ensuring an orderly restructuring can involve, as DDS aptly put it, many "moving parts." This is especially true when rights of tenured employees under civil service law have become necessarily intertwined with the rights of provisional employees, who have no civil service tenure, but are separately protected in a layoff by the terms of an applicable

collective bargaining agreement negotiated pursuant to G.L.c.150E. The difficult challenge presented here is to determine how best to reconcile these different statutory rights without offense to either set of rights.

Historically, the civil service system is a creature of the nineteenth century and public employee unions did not come along until the twentieth century. Public sector collective bargaining was meant to co-exist with a tenured employee's individual civil service rights. It is well-settled that, in the event of a ***material conflict*** between civil service law and a collective bargaining agreement, the civil service law takes precedence. See, e.g., G.L.c. 150E, §7; Local 1652, Int'l Ass'n of Firefighters v. Framingham, 442 Mass. 463, 477n.15 (2004); City of Fall River v. AFSCME Council 93, Local 3117, 61 Mass.App.Ct. 404, 411 (2004); Leominster v. Int'l Bhd of Police Officers, Local 338, 33 Mass.App.Ct. 121, 124-125, rev.den., 413 Mass. 1106 (1992)

In recent years, however, save for public safety positions, substantially all civil service jobs in the "official service" (such as the DSW positions involved here) have been filled provisionally by employees who do not hold civil service tenure.[4] As much as the Commission regrets this state of affairs, and has repeatedly exhorted parties in the public arena to end the current practice of relying on provisional promotions and appointments to fill most civil service positions, the Commission must honor the clear legislative intent that allows for such appointments and promotions to fill the vacuum created by the lack of competitive civil service examinations, so long as the statutory requirements are followed. If there is a flaw in the statutory procedure, it is a flaw for the General Court to

[4] Provisional appointments were supposed to be reserved for "exceptional instances." City of Somerville v. Somerville Municipal Employees Ass'n, 20 Mass.App.Ct. 594, 598, 481 N.E.2d 1176, 1180-81, rev.den., 396 Mass. 1102, 484 N.E.2d 103 (1985) citing McLaughlin v. Commissioner of Pub. Works, 204 Mass. 27, 29, 22 N.E.2d 613 (1939). However, with the abandonment of the administration of competitive examinations, and the professed lack of funding to administer them again any time soon, the exception has now swallowed the rule and "a promotion which is provisional in form may be permanent in fact." Kelleher v. Personnel Administrator, 421 Mass. 382, 399, 657 N.E.2d 229, 233-34 (1995).

address. See Kelleher v. Personnel Administrator, 421 Mass. at 389, 657 N.E.2d at 234. Meanwhile, public employees whose provisional status leaves them without protection under civil service law are left to enforcement of their rights as members of the collective bargaining units to which they may belong, a subject over which the Commission has no control.

In general, so long as the statutory civil service rights of tenured employees are not impaired by the procedures established for layoff and bumping of non-tenured (provisional) employees pursuant to an agreement between an appointing authority and the collective bargaining unit representing such provisional employees, the Commission has construed the civil service law to permit an appointing authority some discretion to structure a reduction in force in a manner that serves the need for an orderly and efficient result. See, e.g., Pamplona v. New Bedford School Dep't, 23 MCSR 775, 776 (2010) and cases cited. See also City of Boston v. Salaried Employees of North American, Local 9158, 77 Mass.App.Ct. 785 (2010). (reconciling CBA and G.L.c.31)

The complexities inherent in the process of dealing with so many "moving parts" in a reduction in force can be daunting for an appointing authority, as well as, if not more so, for the individual employees involved. Thus, when issues of interpretation arise in particular cases, the Commission endeavors to resolve the dispute and fashion relief, when appropriate, that is tailored to the specific facts of the case and respects, as much as possible, the interests of all parties concerned – which includes the appointing authority, the employees who have been laid off or "bumped" and the employees whose righte could be affected by the Commission's decisions. See Pamplona v. New Bedford School Dep't, 23 MCSR 775 (2010) (interplay between layoff/bumping and disabled veteran's status; ordered reconsideration of decision consistent with the Commission's

interpretation); Almeida v. New Bedford School Committee, 22 MCSR 269 (2009) (expanding bumping rights to include more positions than appointing authority had provided employee, but reinstatement was to be prospective)

Here, the starting point is the clear presumption under civil service law and rules that seniority and tenure must be respected in any reduction in force or restructuring of a departmental unit. In this case, there is little doubt that DDS had good cause to abolish the three DSW-IV positions at Fernald, which housed only a few residents and was about to be closed permanently. All three DSW-IVs then at Fernald were tenured employees. It is also undisputed that, at the time of the reduction in force, there were seven (7) provisional DSW-IVs and one (1) other tenured DSW-IV with less seniority, as well as (2) vacancies in the DSW IV position. Thus, there were viable options available to DDS and the duty was incumbent on DDS to make provision for the necessary adjustments that allowed each permanent Fernald DSW-IV a definitive option to remain in that title.

G.L.c.31, §39,¶1 requires that, when tenured employees having the same title within a departmental unit must be "separated from their positions", they shall be "separated from employment" according to seniority and "shall be reinstated . . . in the same position or positions similar to those formerly held by them" according to seniority so that employees with more seniority "shall be retained the longest and reinstated first." PAR.15(2) requires that "all persons filling positions provisionally in the designated title must be separated first . . ., before any civil service employees holding the designated positions in permanent status shall be separated from such positions."

G.L.c.31,§39,¶2 provides that the provisions for notice and hearing under G.L.c.31,§41 apply to "action by an appointing authority to separate a tenured employee from employment for reasons for lack of work . . . ." and that, upon receipt of a Section

41 notice of an intent to "separate him from employment", the employee may elect to be "demoted to a position in the next lower title" if there is such a positon held by an "employee junior to him in length of service." A tenured employee so demoted must be restored, according to seniority, to the "title in which he was formerly employed" when sufficient work or funds become available.

Under the applicable CBA, DDS agreed to a specific procedure that provided non-tenured employees affected in a reduction in force with three options: (1) to be "reassigned" to certain (but not any) DDS positions having the same title, designated by DDS in accordance with the CBA, (2) to accept a demotion to certain, but not all, other designated positions in a lower title, or (3) to be laid off. The CBA provided that affected employees would be offered an opportunity to express their preferences, which would be accommodated, if possible, in inverse order of employment date. There is clearly some logic to the CBA scheme, which gives provisional employees choices and simplifies bumping between provisional employees (which, as noted earlier, now constitute the bulk of the public employment workforce) to specific designated positions (generally allowing bumping only the least senior person), rather than inviting a complex and more inefficient series of "serial" bumping that would, in many cases, involve a protracted process of "musical chairs" by numerous non-tenured personnel, with, most likely, the same result. So long as the process for provisional bumping can be reconciled with the paramount obligation to keep permanent employees in their titles ahead of any provisional employees, an appointing authority is fully justified to follow that course of action.

Mr. Spillane claims that he should not be limited to the choices for reassignment and demotion as the CBA provides for non-tenured employees, but, rather, as a tenured employee he must be afforded the right to select <u>any</u> provisional position in his job title

of DSW-IV. Thus, he claims that he could not be precluded from bumping the provisional employee in the DSW IV position at Brockton which was his preference, but which did not meet the "least senior provisional" criteria (i.e., the two Northeast Region vacancies or the Wrentham position) that DDS had agreed to follow under the CBA.

While Mr. Spillane's contention would lead to an equally appropriate result in most cases – with the Brockton DSW IV provisional employee he selected to bump presumably (but perhaps not necessarily) then bumping the "least senior" proavisional employee (in Wrentham) – on balance, the Commission should not mandate that result as a one-size-fits-all solution. Civil service law does leave room for reasonable discretion by an appointing authority to fashion an orderly process for restructuring the work force when it can be accomplished while preserving the core rights of tenured employees to be "retained in employment" in a reasonably suitable job carrying the same civil service title. See, e.g., Almeida v. New Bedford School Committee, 22 MCSR 739 (2009) (appointing authority has discretion to select labor service positions into which employees may bump) It also bears notice that civil service law provides that a tenured employee may be "reassigned" (voluntarily or involuntarily) to another position in a departmental unit in the same title, so long as the reassignment did not pose a "significant hardship". See, e.g., Bedard v. Marlborough Public Schools, 26 MCSR 511 (2013); Breen v. Gardner School Dep't, 25 MCSR 154 (2012); Conway v. Office of Medicaid/EOHHS, 23 MCSR 677 (2010)[5]

[5] A question could be raised whether it would create a "material conflict" with the CBA if the "least senior provisional" occupied a position too remote that it would be a "significant hardship" on the tenured employee to relocate there and another provisional did occupy a nearby position, so that the appointing authority might be obliged to offer reassignment to the nearby position to be compliant with the tenured employee's civil service rights over the provisions of the CBA. That question is not posed here, however, as the least senior provisional here did occupy a nearby position.

In sum, Mr. Spillane's interpretation of civil service law is understandable; but the Commission must adopt a construction that hews to the core legislative intent to balance a permanent civil service employee's job security in a tenured position with the right of employers and employees to bargain over the terms and conditions of the vast majority of public employees who are not so-tenured, so long as the two systems are consistent. The DDS's action here meets this criterion. DDS provided Mr. Spillane a clear and objectively reasonable choice that would enable him to make a knowing and voluntary decision to keep his DSW IV job status intact by moving to another nearby location that DDS had identified – in advance – or remain at Fernald and elect a demotion to DSW-III. He was never slated for layoff. While the choices he was offered may not have been what he subjectively would have preferred, they did account for preserving the critical right of tenure in his civil service title without undue hardship and, therefore, DDS did not materially impair his civil service rights to remain employed in that position within the meaning of Section 39 or infringe upon any other rights provided by the civil service law.

Conclusion

Accordingly, for the reasons stated herein, the Respondent's Motion for Summary Decision is hereby allowed. The Appellant's Motion for Summary Decision is hereby denied and the appeal of the Appellant, John Spillane, is ***dismissed.***

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein, and Tivnan, Commissioners) on March 3, 2016.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:
John Spillane [Appellant]
Michelle M. Heffernan, Esq. [for Respondent]