

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

STEVEN SPINALE,
Appellant

v.

G2-18-190

REVERE PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

Pro Se
Steven Spinale

Appearance for Respondent:

Dianne K. Kelly
Revere Public Schools
101 School Street
Revere, MA 02151

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On October 5, 2018, the Appellant, Steven Spinale (Mr. Spinale), filed a bypass appeal with the Civil Service Commission (Commission), contesting the decision of the Revere Public Schools (RPS) to: a) not fill a vacancy for a “night custodian” position which offers a pay differential; and b) not choose him for this “night custodian” position.
2. On October 30, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Spinale and a representative from the RPS.
3. At the pre-hearing conference, it was agreed that Mr. Spinale was appointed to the position of junior custodian in 1985 and was promoted to senior custodian in 1996. He holds permanency as a senior custodian.
4. The parties agreed that, for many years, the RPS filled “night custodian” positions that offered a 10% pay differential.
5. “Night custodian” is not a civil service position. The selection of a “night custodian” has been governed by the provisions of the applicable collective bargaining agreement (CBA).

6. In 2017, the RPS and the local union signed an agreement effectively agreeing to phase-out the night custodian position as the existing incumbents vacated the position(s).
7. A vacancy recently occurred in the night custodian position. Consistent with the agreement with the union, the RPS is not posting and/or filling the position.
8. Mr. Spinale, via this appeal, is asking the Commission to order the RPS to fill the vacancy in the night custodian position and to appoint him to the position.

Analysis

As discussed at the pre-hearing conference, there are multiple reasons that the Commission has no jurisdiction to hear this appeal, including but not limited to the following:

First, “night custodian” is not a civil service position and non-selection to a non-civil service position does not constitute a bypass that can be appealed to the Commission. Rather, it is similar to a police officer being designated as a detective, which is not a civil service position and, therefore, outside the jurisdiction of the Commission.

Second, even if “night custodian” was a civil service position, the Commission does not have the authority to order an appointing authority to fill a vacancy. The determination of whether a vacancy should be filled is a "level of services" decision that is up to cities and towns to make. See, e.g., Fall River v. Teamsters Union, Local 526, 27 Mass. App. Ct. 649, 654 (1989) (labeling the decision of "whether a civil service vacancy ought to be filled at all" as "a staffing level decision.")

Conclusion

For these reasons, the Appellant’s appeal under Docket No. G2-18-190 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 6, 2018.

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:

Steven Spinale (Appellant)

Dianne Kelly (for Respondent)