

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

CLIFTON SULLIVAN,  
Appellant

v.

G2-06-48

CITY OF BOSTON,  
Respondent

Appellant's Attorney:

*Pro Se*  
Clifton Sullivan  
534 East Seventh Street  
South Boston, MA 02127

Respondent's Attorney:

Samantha Doepken, Esq.  
City of Boston  
Office of Labor Relations  
Boston City Hall  
Boston, MA 02201

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

*Procedural Background*

The Appellant, Clifton Sullivan (hereafter "Appellant" or Sullivan") is appealing his non-selection by the City of Boston (hereafter "City" or "Appointing Authority") for provisional promotion to the position of Street Lighting Construction Inspector, Posting Number BK-2357, a position for which no eligible civil service list exists.

After a pre-hearing conference held at the offices of the Commission on July 10, 2006, the City submitted a Motion to Dismiss the Appellant's appeal on August 15, 2006.

Noting several factual errors in the City's Motion to Dismiss (filed by prior counsel for

the City), the Commission held a status conference on November 17, 2006 to clarify various issues and provide the City with an opportunity to submit an amended Motion to Dismiss. Counsel for the City and HRD appeared at the status conference, but the Pro Se Appellant did not. After the City submitted its amended Motion to Dismiss (which was copied to the Appellant) with the Commission on November 29, 2006, the Commission forwarded a letter (with another copy of the revised Motion to Dismiss attached) to the Appellant informing him that he had until December 22, 2006 to file a written response. The Appellant did not file a written response.

#### *Factual Background*

In early 2006, the Department posted a vacancy for a provisional promotion to the position of Street Lighting Construction Inspector, a position for which no current civil service list exists. The Appellant, who is a tenured civil service employee in a lower title, applied for the position along with several other co-workers. On February 28, 2006, the Department selected applicant Edward Podgurski, another tenured civil service employee in the same department with more seniority than the Appellant. (The City did not provide the Commission with Podgurski's exact title in his former position.) According to the City, Podgurski, in addition to serving in the Street Lighting Division for a longer period of time than the Appellant, had achieved greater levels of training and experience during his period of service and had a larger base of knowledge than the Appellant.

#### *City's Grounds for Dismissal*

The City asks the Commission to dismiss the Appellant's appeal as, "Neither Section 15 nor Section 9 (of G.L. c. 31), which govern provisional promotions, provide tenured employees with appeal rights of any kind, including cases of bypass for provisional

promotions. As such, the Commission does not have jurisdiction to hear this Appeal and must dismiss this matter forthwith”.

### *Conclusion*

The first paragraph of G.L. c. 31, § 15, states in relevant part, “An appointing authority may...make a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit. Such provisional promotion may be made only if there is no suitable eligible list...”.

In this particular case, it appears that the City has made a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit for a position in which there is no current civil service list. As such, there is no basis for the Appellant’s instant appeal.

The Commission does, however, have jurisdiction to hear appeals regarding provisional promotions under certain conditions. Specifically, paragraph 2 of Section 15 addresses those situations when an Appointing Authority makes a provisional promotional without regard to an applicant’s current civil service title *when there is no such employee in the next lower title who is qualified for and willing to accept such a provisional promotion*. In those cases, the Appointing Authority must demonstrate “sound and sufficient reasons” for said promotion, not to mention being able to demonstrate that there is indeed no such employee in the next lower title who is qualified for and willing to accept the provisional promotion. Based on the information provided by the City, however, it does not appear that paragraph 2 is applicable in this case. Should the Appellant have information to show otherwise, he has the option of asking the Commission to reconsider its decision to dismiss this appeal absent a full hearing.

Finally, the Commission reiterates its longstanding admonishment to all appointing authorities and the state's Human Resource Division to end the unhealthy and improper reliance on provisional appointments and promotions. As the Commission has noted before, the solution, particularly regarding promotions, need not require the establishment of cost prohibitive and often outdated paper-and-pencil tests. Rather, the solution can include a selection process for permanent promotions which emphasizes past performance, managerial evaluations and candidate interviews. (See Holt v. Department of Revenue and DPA, CSC Case No. G-2463 (1994) & Porio, Shea and Trachtenberg, CSC Case Nos. D-02-759, D-02-763 and D-02-715 (2006)).

For the above reasons, the Appellant's appeal filed under Docket No. G2-06-48 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Bowman, Marquis and Taylor, Commissioners [Guerin – Absent]) on January 5, 2007.

A true record. Attest:

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Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:  
Samantha Doeppen, Esq.

Clifton Sullivan  
John Marra, Esq. (HRD)