

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

NICHOLAS VELLA,
Appellant

v.

G1-15-146

CITY OF CAMBRIDGE,
Respondent

Appearance for Appellant:

Pro Se
Nicholas Vella

Appearance for Respondent:

Joshua R. Coleman, Esq.
Collins, Loughran & Peloquin, PC
320 Norwood Park South
Norwood, MA 02062

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On July 24, 2015, the Appellant, Nicholas Vella (Mr. Vella), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Cambridge (City) to not select him for 1 of 2 positions for Traffic Maintenance Worker, a labor service position.

On August 25, 2015, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Vella and counsel for the City. At the pre-hearing conference, it was established that Mr. Vella first began working for the City as a provisional Parking Control Officer, an official service position, in September 2010.

According to the City, and consistent with the posting, the positions of Traffic Maintenance Worker were posted as *promotional* appointments.

In regard to labor service promotions, the Appointing Authority is required to place the names of eligible individuals in rank order based on their seniority and select a qualified individual from among the first “2N + 1” candidates.

As long as the Appointing Authority promotes an individual from within this 2N+1 pool, there is no requirement, in regard to labor service promotions, to provide the non-selected candidate with sound and sufficient reasons for the non-selection, nor is the non-selection considered a bypass which can be appealed to the Commission. (See Brienzo v. Acushnet, 20 MCSR 530 (1997))

Based on the information submitted at the pre-hearing conference, the individuals promoted here were within the 2N+1 formula based on their seniority.

An additional issue raised at the pre-hearing conference was whether, as an official service, provisional employee, Mr. Vella was even eligible for promotion, as he is not a permanent civil service employee. I advised the parties, that, based on the information provided at the pre-hearing conference, that issue does not need to be addressed here, as, even assuming that Mr. Vella was eligible for promotion, the City did not promote individuals outside the 2N+1 formula.

The City was given three (3) weeks from the date of the pre-hearing to submit a Motion to Dismiss and Mr. Vella had three (3) weeks thereafter to file a reply to the Motion to Dismiss.

The City subsequently submitted a Motion to Dismiss and Mr. Vella submitted a reply.

Even assuming that Mr. Vella is eligible for this labor service promotion, the City decided to promote individuals within the statutory 2N+1 formula. Thus, this does not constitute a bypass; the City was not required to provide Mr. Vella with non-selection reasons; and the Commission does not have jurisdiction to hear this bypass appeal.

For these reasons, Mr. Vella's appeal under Docket No. G1-15-146 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on October 1, 2015.

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:

Nicholas Vella (Appellant)

Joshua Coleman, Esq. (for Respondent)