

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SEAN MAHER & TWO OTHERS¹,
Appellants

v.

G2-12-118 (MAHER)
G2-12-119 (LEMERISE)
G2-12-120 (WELCH)

CITY OF WORCESTER,

Appellants' Representative:

Pro Se
Sean Maher

Respondent's Representative:

William R. Bagley, Jr., Esq.
City of Worcester
455 Main Street: Room 108
Worcester, MA 01608

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On March 21, 2012, the Appellants filed an appeal against the City of Worcester (City), contesting their non-selection for promotional appointment to the position of Working Foreman, Public Works Maintenance Man, a labor service position. A pre-hearing conference was held at the offices of the Civil Service Commission (Commission) on June 19, 2012, which was attended by Mr. Maher and counsel for the City. For the reasons cited below, the Appellants have no standing to contest this promotional appointment and their appeals are dismissed.

Background

On September 30, 2011, the City posted a vacancy for the position of Working Foreman, Public Works Maintenance Man. Seventeen (17) incumbent City employees applied for the position, including the three (3) Appellants. None of the Appellants were selected and the instant appeal followed.

¹ Joseph Lemerise and Mark Welch

Discussion

So called “labor service” positions are those jobs for which applicants do not have to take a competitive examination, and appointments are made on the basis of priority of registration.

G.L. c. 31, § 29, which pertains to labor service *promotions*, states in relevant part:

“An appointing authority shall, prior to any request to [HRD] for approval of a promotional appointment of a permanent employee in the labor service to a higher title in such service; or for approval of a change in employment of a permanent employee within such service from one position to a temporary or permanent position which is not higher but which has requirements for appointment which are substantially dissimilar to those of the position from which the change is being made, post a promotional bulletin. Such bulletin shall be posted for a period of at least five working days where it can be seen by all employees eligible for such promotional appointment or change in employment. Any such request shall contain a statement that the posting requirements have been satisfied, indicating the date and location of the posting.”

PAR.19(5) pertains to labor service promotions and states in relevant part that”

“promotional appointments and changes of position under the provisions of M.G.L. c. 31, § 29 shall be made from among the same number of persons with the greatest length of service as the number specified in making appointment under PAR.09 [the so-called “2N + 1” formula], provided that such persons possess the required qualifications and serve in eligible titles, as determined by the Personnel Administrator.” (emphasis added)

Applied here, the City was limited to selecting from the three most senior employees (of the seventeen who applied) who possessed the required qualifications for promotion.

The Appellants, based on their seniority, were ranked 10th, 11th and 17th among those who applied for the promotion. Thus, they have no standing to contest this promotion.

Conclusion

For the reasons cited above, the appeals under Docket Nos. G2-12-118, G2-12-119 and G2-12-120 are hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on July 26, 2012.

A true record. Attest:

Commissioner

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.

Notice to:

Sean Maher (Appellant)

Joseph Lemerise (Appellant)

Mark Welch (Appellant)

William Bagley, Jr., Esq. (for Respondent)