

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108

JOSEPH P. POIRIER, Jr.,  
Appellant

v.

G1-15-233

CITY OF LEOMINSTER,  
Respondent

Appearance for Appellant:

*Pro Se*  
Joseph P. Poirier, Jr.

Appearance for Respondent:

Brian M. Maser, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

*Procedural History and Background*

On December 14, 2015, the Appellant, Joseph P. Poirier, Jr. (Mr. Poirier), filed a bypass appeal regarding the labor service position of Laborer, recently filled by the City of Leominster (City).

On January 5, 2016, I held a pre-hearing conference that was attended by Mr. Poirier and counsel for the City. At the pre-hearing conference, the City submitted a labor service roster showing that nobody ranked lower than Mr. Poirier had been appointed to the labor service position of Laborer. Mr. Poirier stated that he began working as a temporary “Summer Laborer” for the City’s Recreation Department in May 2012 and, at one point, worked for more than six months.

It appeared that Mr. Poirier’s appeal here was not a bypass appeal, but, rather, an appeal related to whether or not the City was required to “reinstate” him under G.L. c. 31, s. 39. Further, it appeared, however, that Mr. Poirier was never appointed from a labor service roster Certification and likely could not be considered a permanent employee.

The City agreed to review its records, including Mr. Poirier's employment history with the City, to confirm the accuracy of the above information. I subsequently received information from the City regarding Mr. Poirier's employment history, including a statement from the City that Mr. Poirier was never appointed from a labor service roster certification.

According to the City's records, Mr. Poirier was employed in a labor service position at various times:

- From June 2012 to August 2012;
- From June 2013 to November 2015; (full-time and part-time, including dates worked in October 2014 and October 2015)

### *Applicable Law and Rules*

G.L. c. 31, § 1 defines an original appointment as "an appointment pursuant to section six or section twenty-eight."

Section 1 also defines a permanent employees as "a person who is employed in a civil service position (1) following an original appointment, subject to the serving of a probationary period as required by law, but otherwise without restriction as to the duration of his employment; or (2) following a promotional appointment, without restriction as to the duration of his employment."

G.L. c. 31, § 28, which pertains to labor service appointments, states in relevant part:

"... the names of persons who apply for employment in the labor service... of the cities and towns shall be registered and placed, in the order of the dates on which they file their applications, on the registers for the titles for which they apply and qualify. The name of any such person shall remain on such register for not more than five years ... The names of veterans who apply for employment in the labor service shall be placed ... ahead of the names of all other persons."

G.L. c. 31, § 34 states:

"Following his original appointment to a civil service position as a permanent full-time employee, a person shall actually perform the duties of such position on a full-time basis for a probationary period of six months before he shall be considered a full-time tenured employee, except as otherwise provided by sections sixty-one and sixty-five, by other law, or by civil service rule.

G.L. c. 31, § 39 states:

"If permanent employees in positions having the same title in a departmental unit are to be separated from such positions because of lack of work or lack of money or abolition of positions, they shall, except as hereinafter provided, be separated from employment

according to their seniority in such unit and shall be reinstated in the same unit and in the same positions or positions similar to those formerly held by them according to such seniority, so that employees senior in length of service, computed in accordance with section thirty-three, shall be retained the longest and reinstated first. Employees separated from positions under this section shall be reinstated prior to the appointment of any other applicants to fill such positions or similar positions, provided that the right to such reinstatement shall lapse at the end of the ten-year period following the date of such separation.”

G.L. c. 31, § 48 states that “[t]he following shall be exempt from the civil service law and rules, unless expressly made thereto by statute:

....Seasonal positions.”

Section 2 of the Personnel Administration Rules (PAR.02) states, in relevant part that a “seasonal position” is:

“A position requiring the services of an incumbent, on either a full-time basis or less than full-time basis, beginning no earlier than May first and ending no later than September thirtieth or beginning no earlier than November first and ending no later than April first in any twelve-month period ...”

PAR.19(2), which pertains to labor service appointments, states in relevant part:

“When positions are to be filled on a permanent or temporary basis in the labor service, the appointing authority shall make requisition to the administrator<sup>1</sup> ... shall establish and maintain rosters for each departmental unit and by appropriate class containing the names, position titles and effective dates of employment of persons appointed to ... labor service positions ... in the service of a ... municipality after certification from labor service registers ...”

PAR.19(2) also states that:

“selection and original appointments shall be made as provided in PAR.09.” PAR.09 contains the so-called “ $2n + 1$ ” formula which states that appointing authorities may appoint only from among the first  $2n+1$  persons named in the “certification” willing to accept appointment, where the number of appointments is “ $n$ ”. Applied to appointments in the labor service, appointing authorities can only appoint from among the first  $2n+1$  [qualified] persons on the labor service register.

---

<sup>1</sup> The City of Leominster, along with all other civil service cities and town in Massachusetts, with the exception of Boston, has been delegated to perform the duties and responsibilities of the Administrator (HRD) in regard to labor service appointment. PAR.20 requires each of these cities and towns to designate a Labor Service Director to perform these functions.

## *Analysis*

The undisputed facts here show that Mr. Poirier was first hired by the City as a seasonal laborer in June 2012. He then worked for approximately two to three months, until August 2012. As this falls under the definition of a seasonal position, the City was not required to make an appointment from the labor service roster.

In June 2013, the City again hired Mr. Poirier as a seasonal laborer. Pursuant to Section 48 of Chapter 31 and PAR.02, Mr. Poirier could have worked through September 2013 and still have been deemed a seasonal employee, and the City would not have been required to fill this position through the labor service roster.

However, as shown by the payroll records submitted by the City, Mr. Poirier continued to work as a laborer into October 2013 and beyond. In fact, he worked full-time and part-time for the City until November 2015. In short, the City kept an exempt “seasonal employee” on the payroll beyond the time period allowed by the civil service law and rules.

This does not, however, make Mr. Poirier a permanent civil service employee who is entitled to reinstatement rights. A permanent employee, as it relates to the facts here, is defined as “a person who is employed in a civil service position (1) following *an original appointment*, subject to the serving of a probationary period as required by law, but otherwise without restriction as to the duration of his employment.”

Since Mr. Poirier was not appointed from a labor service roster, he never received an “original appointment.” Had the City chosen to make an original appointment, as it most recently did for a laborer position, Mr. Poirier’s name would not have been within the statutory “2n + 1” formula, thus making him ineligible for appointment.

## *Conclusion*

Mr. Poirier is not entitled to any reinstatement rights as he was never a permanent employee with the City. Further, he was not bypassed for appointment regarding the recent appointment to laborer, as no person ranked below him on the labor service roster certification was appointed.

For these reasons, Mr. Poirier’s appeal under Docket No. G1-15-233 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners on February 18, 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:

Joseph P. Poirier, Jr. (Appellant)

Brian M. Maser, Esq. (for Respondent)