

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RICCARDO BEDINOTTI,
Appellant

v.

G1-08-285

CITY OF SPRINGFIELD,
Respondent

Appellant's Attorney:

John J. Ferriter, Esq.
Ferriter & Ferriter LLC
1669 Northampton Street
Holyoke, MA 01040

Respondent's Attorney:

Maurice Cahillane, Esq.
Associate City Solicitor
City of Springfield Law Department
36 Court Street: Room 210
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

**DECISION ON APPELLANT'S MOTION FOR SUMMARY DECISION AND
RESPONDENT'S CROSS MOTION FOR SUMMARY DECISION**

The Appellant, Riccardo Bedinotti (hereinafter "Bedinotti" or "Appellant") filed an appeal with the Civil Service Commission (hereinafter "Commission") on November 24, 2008, claiming that the City of Springfield (hereinafter "City" or "Appointing Authority") violated his reinstatement rights under G.L. c. 31, § 39.

A pre-hearing conference was held on January 14, 2009 and a status conference was held on June 24, 2009. The Appellant submitted a Motion for Summary Decision on August 25, 2009 and the City filed an opposition and cross Motion for Summary

Decision on December 9, 2009. A motion hearing was held on January 13, 2010 at the Springfield State Building in Springfield, MA at which time I heard oral argument from both parties. The hearing was digitally recorded. Both parties were provided with additional time to discuss a possible settlement agreement, but were unable to settle the matter.

This is an appeal relative to the Appellant's claim that he was not afforded his statutory reinstatement rights after layoff from his position as wiring inspector with the City.

The Appellant received a permanent civil service appointment to the "official service" title of wiring inspector after taking a civil service examination in 1986. On March 21, 2003, the Appellant accepted a voluntary layoff as a result of the City's lack of funds.

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." (emphasis added)

According to the foregoing statutory provisions, the Appellant's right to be reinstated, prior to the appointment of other candidates, to the same or a similar position extended until March 21, 2013, ten years from the date of his layoff.

The City appointed the following individuals to the position of wiring inspector subsequent to the Appellant's layoff:

1. John Curley on June 1, 2004;
2. Robert Williams on November 2, 2005; and
3. Joseph Desmond on March 17, 2008

In addition, Mr. Williams was promoted to senior wiring inspector on August 1, 2007.

At the motion hearing, the City was unsure if the three individuals referenced above received their appointments via “provisional appointments” since there have been no traditional written civil service examination for the position of wiring inspector for many years.

It appears that these three individuals were likely appointed through the Continuous Testing Program (Con Test) by which appointing authorities were authorized since 1998 to make appointments to certain “unassembled” civil service positions based on a procedure for qualifying applicants who meet certain minimum entrance requirements. The position of wiring inspector in Springfield was such a position until the ConTest program was discontinued as of July 1, 2009 by the state’s Human Resources Division (hereinafter “HRD”) due to budget constraints.

The Appellant was eventually reinstated to the position of wiring inspector on October 20, 2009 and asks that the Commission deem him reinstated retroactive to June 1, 2004 (the date of John Curley’s appointment) so that he may file an action in Superior Court seeking back wages. During the years that the Appellant was laid off, he was employed as a supervisor in the same field at a technical school and received similar pay.

The City does not contest that they hired the three individuals in question, but argues that the Appellant’s appeal is not timely as he was aware of these open positions in 2005 and 2007 and did not file an appeal with the Commission at that time. Further, the City

argues that, upon being laid off, the Appellant withdrew his retirement contributions and indicated in documentation filed with the local retirement board that it was not his "... intention to accept a position in the service of the Commonwealth or any political subdivision thereof which would entitle me to become a member of any similar contributory retirement system or seek to be restored to the position from which I was terminated." (Exhibit 1) Also, according to the affidavit of Steven Desilets, a senior inspector and a colleague of the Appellant at the time, the Appellant informed him at the time of his layoff that he did not intend to return to work with the City.

In 2005, the Appellant applied for the wiring inspector position that was eventually filled by Mr. Williams. The Appellant testified that he then contacted Peter Krupczak, the Code Enforcement department head, and informed him that he was laid off due to a lack of funds and that he was "still on the layoff list". According to the Appellant, Mr. Krupczak never called him back. Asked by this Commissioner why he didn't file an appeal with the Commission in 2005, the Appellant stated that he wasn't aware of his reinstatement rights and never confirmed that the position was actually filled. The Appellant testified that he did not become aware that any of the positions had been filled or that the three individuals were new civil service employees until October or November 2008, shortly after he was reinstated.

I do not believe that the Appellant was unaware of his reinstatement rights in 2005. By his own testimony, he states an awareness of his name being on a "layoff list" in 2005 and sought to remind the City of this. Although the Appellant was aware of his reinstatement rights, the City's failure to comport with the civil service law regarding his reinstatement rights was ongoing until the Appellant was eventually reinstated in October

2008. The Appellant then filed an appeal with the Commission within sixty (60) days. Thus, I deem his appeal as timely.

In regard to the forms completed by the Appellant to withdraw his retirement contributions, nothing in those forms absolved the City from complying with the Appellant's right of reinstatement under G.L. c. 31, § 39.

As referenced above, the Appellant was eventually reinstated to his position on October 20, 2009. He is now seeking an order from the Commission stating that he should have been reinstated on June 1, 2004 when the City first hired a new wiring inspector after the Appellant's layoff. As the Appellant's reinstatement already results in a retroactive civil service seniority date back to the date of his layoff, the Appellant acknowledges that he seeks such an order as a precursor to filing an action in Superior Court regarding back wages. Based on the testimony at the motion hearing, it appears that there was only a modest differential between the pay the Appellant would have received as a wiring inspector and the comparable position he held at a technical school.

What appears to be of more importance to the Appellant is that one of the wiring inspectors hired after his layoff was eventually promoted to senior wiring inspector. The Appellant believes he would have received this promotion had he been reinstated as a wiring inspector back in 2004. As I have concluded that the Appellant was aware of his reinstatement rights upon his layoff and chose not to file an appeal with the Commission until 2008, it would be unfair and inequitable to disturb that promotional appointment.

For all of the above reasons, I make the following findings, conclusions and orders:

- The Appellant was aware of his reinstatement rights to the position of wiring inspector or a similar position upon being laid off in 2003.

- The City failed to comply with the civil service law regarding the Appellant's reinstatement rights from June 1, 2004 to October 19, 2008.
- The Appellant chose to file a timely appeal regarding his reinstatement rights with the Commission on November 24, 2008.
- The Appellant, pursuant to the civil service law, has already received a retroactive civil service seniority date back to the date of his layoff.
- Pursuant to Chapter 310 of the Acts of 1993, the Commission orders the City to consider the Appellant for the next senior wiring inspector vacancy. In the event that he is selected for promotion, he will receive a retroactive civil service seniority date in the position of senior wiring inspector of July 31, 2007, one day prior to the promotional appointment of Robert Williams.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners), on April 22, 2010.

A true Copy. Attest:

Commissioner
Civil Service Commission

A motion for reconsideration may be filed by either Party within ten days of the receipt of this 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 to:
John J. Ferriter, Esq. (for Appellant)
Maurice Cahillane, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)