

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

MICHAEL KNOX,
Appellant

v.

D-05-440

CITY OF CAMBRIDGE,
Respondent

Appellant's Representative:

John A. Murphy
Recording Secretary /Business Agent
Teamsters Local 25
544 Main Street
Boston, MA 02129-1113
(617) 241-8825

Respondent's Attorney:

Laurie W. Engdahl, Esq.
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320 Norwood Park South
Norwood, MA 02062
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Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Michael Knox (hereafter "Knox" or Appellant") appealed the decision of the Respondent, the City of Cambridge (hereafter "Appointing Authority", or "City"), bypassing him for promotional appointment to the position of Working Supervisor, Highway Maintenance Craftsworker, MEO I. The Appointing Authority took exception to the fact, and included it as one argument in favor of dismissal, that the Appellant filled out the wrong Civil Service

Commission appeal form, a *disciplinary* appeal form, rather than a *bypass* appeal form. This specious argument can be disposed of in short order. The appeal form filed with the Commission by the Appellant, albeit the wrong form, explicitly references the issue of the appointment and attaches a decision referencing the promotional appointment he is contesting. The Appointing Authority's argument in this regard fails and the appeal is deemed a timely bypass appeal. Three separate pre-hearings were scheduled on this matter for which the Appellant requested and received three continuances. In lieu of a pre-hearing, the Appointing Authority filed a Motion to Dismiss with the Commission on July 6, 2006 and the Appellant's union filed an answer with the Commission on July 12, 2006.

Background Regarding Bypass

In or about January 2005, the City's Department of Public Works posted an opening in the position of Working Supervisor, Highway Maintenance Craftswoman, MEO I. This position is in the Labor Service of the Civil Service classification system. The job description and the posting for this position requires that the successful candidate possess a Commercial Drivers' License (CDL). (See Affidavit of Lisa Peterson, Commissioner, Department of Public Works)

According to the city, the CDL requirement for Working Supervisor / Highway Maintenance has been in place since 2001 and has been uniformly applied and enforced with respect to all successful applicants for such vacancies since that time. Again according to the City, Working Supervisors in the Buildings Division, do not need to operate vehicles requiring CDLs and hence, the City does not require CDLs for positions in that department. The Appellant was not selected for the position of Working

Supervisor / Highway Maintenance as he was deemed not to be qualified for the position because he does not possess a CDL.

There is no dispute that the Appellant does not possess a Commercial Drivers License. Rather, the Appellant, apparently referencing promotions in the Buildings Division, argues that the City has indeed appointed individuals to the position of Working Supervisor. Further, the Appellant argues that, with the exception of the CDL, he was the most senior and most qualified person for the position. According to the Appellant his CDL lapsed years earlier as he was unable to perform in a capacity that required the use of CDL following an injury.

In regard to promotional appointments in the labor service, G.L. c. 31, § 29 requires the Appointing Authority to post a promotional bulletin which, “shall contain the following information about the position which is to be filled: the salary and location, any special qualifications or licenses which are required for performing the duties of the position, whether the position is permanent or temporary, if the position is temporary, the probable duration of the employment therein, and the last date to apply for the position.” (emphasis added)

The State’s Human Resources Division (HRD) has promulgated rules relating to promotional appointments as set forth in PAR.19 which states in part, “promotional appointments...shall be made from among the same number of persons with the greatest length of service as the number specified in making appointments under PAR.09, provided that such persons possess the required qualifications and serve in eligible titles, as determined by the administrator.” (emphasis added)

Since 2001, a required qualification for the position of Working Supervisor / Highway Maintenance in the City of Cambridge has been the possession of a Commercial Drivers' License (CDL). The Appellant in this case does not have this required qualification. Hence, he was not selected for the position.

Conclusion

A full hearing on this matter will not change the fact that the Appellant lacks a required qualification of the position – as that issue is not in dispute. Hence, the Appellant will not be able to show that he was improperly bypassed.

For this reason, the Appellant's appeal under Civil Service Commission Docket No. D-05-440 is hereby ***dismissed***.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Marquis and Taylor, Commissioners) on November 9, 2006.

A true record. Attest:

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:

Laurie W. Engdahl, Esq.

John A. Murphy, Teamsters Local 25

Michael Knox