

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

PAUL A. ALMEIDA,
Appellant

v.

CASE NO: G1-12-59

NEW BEDFORD SCHOOL DEPT,
Respondent

Appellant, Pro Se:

Paul A. Almeida

Appointing Authority's Attorney:

Jane Medeiros Friedman, Esq.
City of New Bedford
Solicitors Office
133 William Street
New Bedford, MA 02740

Commissioner:

Paul M. Stein

DECISION

The Appellant, Paul A. Almeida, brought this appeal against his employer, the City of New Bedford School Department (NBSD), seeking to enforce his rights under prior Decisions of the Civil Service Commission (Commission) concerning his bumping and reinstatement rights following a layoff from his full-time labor service position as Bus Driver, due to lack of funds pursuant to G.L.c.31, §39. The issues presented relate to three appeals that the Commission has previously decided (CSC Case No. G1-08-234; 22 MCSR 269, 22 MCSR 348 [Almeida I], Case No. G1-09-327; 22 MCSR 739 [Almeida II]; Case No. E-11-10; 23 MCSR 608 [Almeida III]) and two pending appeals that the Commission is simultaneously deciding with this appeal. (CSC Case Nos. G1-11-227 and CSC Case No. G1-11-336 [Almeida IV])

In this latest appeal, Mr. Almeida contends that he was entitled to be offered reinstatement to the unskilled labor service position of Laborer, which became available upon the departure of the incumbent employee. Rather than offering him the position,

NBSD offered to “reinstate” another former labor service employee, with less tenure than Mr. Almeida, but who had been laid off from the position as a Laborer in the 2008 layoff (the same layoff which resulted the elimination of Mr. Almeida’s job as Bus Driver).

The issue presented here is precisely one of the issues that Mr. Almeida raised in Almeida IV and which the Commission has decided in favor of NBSD, namely, his alleged right to be reinstated to a “similar” labor service position under G.L.c.31,§39 over any other junior employees. As the Commission stated in Almeida IV:

“[A]n employee, such as Mr. Almeida, whose position of Bus Driver was eliminated, and who was permitted to bump into a lower title, is covered by the second paragraph of Section 39, which provides that, when funds become available, the employee shall be “restored . . .to the title in which he was formerly employed.” This provision only covers return to the job from which the employee was displaced in the layoff, i.e. Bus Driver. The first paragraph of Section 39 applies to “reinstatement” of an employee “separated from employment” to “the same positions *or positions similar* to those formerly held” prior to the layoff. See Scheffen et al v. City of Lawrence, 24 MCSR 524 (2011) (*emphasis added*) Thus, Mr. Almeida’s post-bumping civil service rights of “restoration” are limited, under the second paragraph of Section 39, to the position of Bus Driver, but give him no special Section 39 post-layoff “reinstatement” rights, if any, to other positions, such as Cafeteria Helper.

Mr. Almeida has no “reinstatement rights” to the Laborer position for precisely the same reasons that the Commission had decided that he had no such rights to “reinstatement” to a full-time Cafeteria Helper position. The Commission may, either on motion or upon its own initiative dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). See, e.g., Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36, (2008) (discussing standard for deciding motions to dismiss)

Accordingly, for the reasons stated, the appeal of the Appellant, Paul A. Almeida, in Case No. G1-12-59 is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, Marquis and Stein, Commissioner) on April 19, 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:
Paul A. Almeida [Appellant]
Jane Medeiros Friedman, Esq. [for Respondent]