

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

ELIZABETH DELANEY

Appellant

v.

D-06-112

WORCESTER PUBLIC SCHOOLS,

Respondent

Appellant's Attorney:

Anthony Pini
Massachusetts Laborer's District Council
7 Laborers' Way
Hopkinton, MA 01748
(508) 435-4164

Respondent's Attorney:

Sean P. Sweeney, Esq.
Murphy, Lamere & Murphy, P.C.
South Shore Executive Park
Ten Forbes Road West
Braintree, MA 02185
(781) 848-1850

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, Elizabeth Delaney, (hereafter "Delaney" or "Appellant") filed an appeal against the Worcester Public Schools (hereafter "Worcester Public Schools or Appointing Authority") with the Civil Service Commission on May 26, 2006. The Appellant is appealing her having been barred from bumping to a position held by a less senior employee after her position was eliminated. The appeal was timely filed. On

November 27, 2006, a pre-hearing conference was held at which the Commission allowed the Appointing Authority's request to file a written Motion to Dismiss. The Appointing Authority submitted its Motion on January 8, 2007. On January 26, 2007, the Appellant filed an answer in the form of a Motion to Move Forward For a Full Hearing.

The Appellant, a Word Processor, was employed by the Worcester Public Schools in the functional position of a school secretary. On or about May 4, 2006, prior to the close of the 2005/2006 academic year, the Appointing Authority determined as part of an overall budget analysis that the closure of three schools was necessary for the upcoming school year, 2006/2007. As a result of these closings, the Appellant and two other secretaries assigned to the schools were advised that they were being laid off. The secretaries were notified in accordance with G.L. c. 31 of their rights to a hearing. In that notice, they were advised that they could return a bumping consent form which would allow them to secure a similar position in the same civil service job title. On May 8, 2006, the Appellant signed the bumping consent form, agreeing, pursuant to G.L. c. 31, §39, to bump effective July 1, 2006 as an alternative to a hearing to determine whether she should be laid off from her current position. Due to the retirement or resignation of other secretaries, three or four positions became available at other schools. The Appellant was allowed to bid into vacant positions at these schools, thus avoiding a layoff and ensuring minimal disruption to operations.

G.L. c. 31, §39 states, in relevant part, that an employee who has received written notice to separate him/her from employment for lack of work, lack of money or abolition of positions may, as an alternative to the separation, file with the Appointing Authority a

written consent to being demoted to a position in the next lower title or titles if in such next lower title or titles there is an employee junior to him/her in length of service. This section states, "As soon as sufficient work or funds are available, any employee so demoted shall be restored, according to seniority in the unit, to the title in which he was formerly employed." The evidence indicates that the Appellant filed the written consent to bump, referred to in G.L. c. 31, §39, but it was not necessary for her to exercise this right as positions became vacant and she was allowed to bid, by seniority date, into one of these three vacancies at the same Civil Service title.

Based on the above, the Appellant contends that she was denied her right to bump and was forced to take a position that became available due to retirement or resignation of other employees. However, G.L. c. 31 does not bestow the right to bump *any* less senior employee. As the Appointing Authority notes, the result of this would be to set off a chain reaction of additional bumps of displaced employee.

In sum, the circumstances in this case demonstrate that the Appellant was never separated from her employment nor did she sustain any loss of pay or other employment benefit. In short, she was never denied any rights under G.L. c. 31.

For all of the above reasons, the Motion to Dismiss is allowed and the appeal under Docket No. D-06-112 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis, Commissioners [Taylor - Absent] on April 5, 2007).

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.

Pursuant to M.G.L. c. 31 sec. 44, 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 sent to:
Anthony Pini
Sean P. Sweeney, Esq.