

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

EDWARD P. WALSH,
Appellant

v.

G1-12-167

CITY OF BOSTON,
Respondent

Appellant's Attorney:

Pro Se
Edward P. Walsh

Respondent's Attorney:

Jordan Ablon, Esq.
City of Boston
City Hall: Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On May 11, 2012, the Appellant, Edward P. Walsh, who is currently employed as a labor service employee for the City of Boston (City), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection to the labor service position of Parking Operations Person.

A pre-hearing conference was held on June 5, 2012. Since civil service rules provide that Mr. Walsh's name should have been removed from the Parking Operations Person labor service roster upon his appointment to another labor service position, he should not have been considered for this position and his appeal is dismissed.

Background

Mr. Walsh has served as a labor service employee for the City since May 3, 2008 and currently holds the labor service title of First Assistant Drawtender. He is responsible for operating drawbridges.

The state's Human Resources Division (HRD) maintains a labor service roster for various labor service positions in the City. Mr. Walsh's name appeared on the labor service roster for the position of Parking Meter Operations Person.

On January 24, 2012, the City submitted a request to HRD for a labor service certification (requisition no. 220) from which it could appoint one (1) permanent, full-time Parking Meter Operations Person. On January 26, 2012, HRD issued Certification No. 249 to the City.

On or around March 15, 2012, HRD received notification from the City that it had appointed two (2) individuals to the position of permanent, full-time Parking Meter Operations Person.

On or around April 26, 2012, HRD completed its audit of the City's certification. On or around April 27, 2012, HRD sent notifications to bypassed candidates, including Mr. Walsh, with the bypass reasons provided by the City.

The reasons for bypassing Mr. Walsh was that he failed to respond to a call for an interview. Mr. Walsh strongly contests this assertion and stated at the pre-hearing conference that he provided a City representative with his name and two (2) contact phone numbers. He stated that he never received a call from the City.

Discussion

So called "labor service" positions are those jobs for which applicants do not have to take a competitive examination, and appointments are made on the basis of priority of registration.

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."

Section 19 of the Personnel Administration Rules (PAR.19), promulgated by HRD and approved by the Commission, contains the rules that apply to all labor service employees in cities and towns covered by the civil service law.¹

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 [HRD] ... [HRD] shall establish and maintain rosters for each departmental unit and by appropriate class containing

¹ PAR.20 contains rules for those cities and towns that have been "delegated" labor service functions by HRD. The City of Boston is the only civil service city or town in Massachusetts that has not been designated by HRD as a delegated community in regard to labor service functions.

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.

PAR.19(3) states in relevant part that:

“If an applicant whose name is registered for more than one title accepts a permanent appointment to any position in the labor service, the administrator or the local labor service director shall remove his name from the register for all other titles.” (*emphasis added*)

In a separate decision being issued on the same day as this decision, the Commission, notwithstanding the City’s failure to comply with civil service law and rules regarding labor service appointments, issued a series of orders that will result in Mr. Walsh and hundreds of other City employees being designated as permanent in their current labor service title. (See Investigation Re: City of Boston Labor Service Appointments, CSC Case No. I-11-267 (2012). Applied to the instant appeal, those orders will result in Mr. Walsh being deemed permanent in his current labor service title of First Assistant Drawtender.

Since Mr. Walsh received a permanent appointment to the labor service title of First Assistant Drawtender, his name should have been removed from the register of all other titles, including Parking Meter Operations Person. Therefore, he is not eligible for consideration for the original appointment which is the subject of this appeal. For this reason, his appeal must be dismissed.

Conclusion

For all of the above reasons, Mr. Walsh’s appeal under Docket No. G1-12-167 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on August 23, 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:

Edward P. Walsh (Appellant)

Jordan Ablon, Esq. (for Respondent)

John Marra, Esq. (HRD)