

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

MICHAEL FORMICHELLA,
Appellant

v.

C-07-177

MASSACHUSETTS HIGHWAY DEPARTMENT,
Respondent

Appellant's Attorney:

Michelle Gates, Esq.
90 North Washington Street
Boston, MA 02114

Respondent's Attorney:

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10 Park Plaza, Suite 6620
Boston, MA 02116

Hearing Officer:

John J. Guerin, Jr.¹

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Michael Formichella (hereinafter "Mr. Formichella" or "Appellant"), is appealing the April 25, 2007 decision of the Human Resources Division ("HRD") denying his request for reclassification from the position of Civil Engineer III (CE III) to the position of Civil Engineer IV (CE IV). The appeal was timely filed and a hearing was held on August 7, 2007 at the offices of the Civil Service Commission (hereinafter "Commission"). One tape was made of the hearing. The parties submitted Proposed Decisions following the hearing, as instructed.

¹ John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1 – 16), six (6) Stipulations of Fact and the testimony of Kenneth Ravioli (hereinafter “Mr. Ravioli”), retired Massachusetts Highway Department (hereinafter “MassHighway”) District Permits Engineer, and the Appellant, I make the following findings of fact:

1. The Appellant is a nineteen (19) year employee with MassHighway and is currently a CE III and serves as the Permits Engineer in District 4, located in Arlington.
(Stipulation of Fact)
2. The Appellant has held the position of Permits Engineer for approximately the last five (5) years. The Permits Engineer is the head of the Permits Section and is responsible for reviewing/granting all permit requests for access to any MHD property in the district. (Exhibits 5, 6, 15, 16, Testimony of Appellant)
3. Prior to 2002, the position of Permits Engineer was held by Mr. Ravioli, a CE IV. Mr. Ravioli had a staff of up to seven (7) employees working in the section. (Exhibit 12, Testimony of Appellant)
4. According to an Affidavit accepted into evidence from former District 4 Permits Engineer David E. Aznavoorian, all individuals, with the exception of Mr. Ravioli, who have acted as District 4 Permits Engineer have held the title of CE III or lower. As of the date of his Affidavit, August 2, 2007, Mr. Aznavoorian had been employed by MassHighway since 1952. (Exhibit 14)
5. The Appellant began working in the Permits section in approximately 2002 at which time he held the title of Civil Engineer II (CE II). At that time, there were four other staff reporting to Mr. Ravioli. They were, Michael Healy, a CE III; Lafayette

Robinson, a Program Coordinator II; Edwin Mehrmann; and Mark Kratman, a Specifications Specialist II. (Testimony of Appellant)

6. When Mr. Ravioli retired from MassHighway, the Appellant was encouraged to apply for the position of Permits Engineer. He was told it would either be a CE III or CE IV position. (Id.)
7. District 4 is the busiest district in the state and includes Boston. The other district in MassHighway that is comparable to D-4 is D-5. The D-5 Permits Engineer is Wallace McCarroll, a CE V. (Id.)
8. The Civil Engineer IV title is part of the Civil Engineer Series. (Exhibit 2). The Civil Engineer titles are Unit 9 titles for purposes of Collective Bargaining. (Administrative Notice). Mr. Ravioli received his permanent CE IV title as a result of Civil Service List established as a result of a Civil Service Examination. Mr. Ravioli retired from MassHighway in March 2002. (Ravioli Testimony).
9. The Department posted a Notice of Promotional Opportunity, dated March 28, 2002, for the then-vacant Permits Engineer position that Mr. Ravioli previously held. The position was posted as a Civil Engineer III. (Exhibit 16).
10. The Appellant was awarded the Permits Engineer position in August 2002. One of the Appellant's subordinates when he became Permits Engineer was Mr. Kratman. Mr. Kratman held the title of Specifications Specialist at the time that the Appellant became the Permits Engineer. The Specifications Specialist title is the only title within the Specification Specialist Series and is a Unit 6 title. Mr. Kratman was reclassified to a Program Coordinator III in 2005. The Program Coordinator III title is part of the Program Coordinator Series. It is a Unit 6 title. Mr. Kratman was

reassigned to a different section in District 4 shortly after his classification. (Exhibit 4, Administrative Notice and Testimony of Appellant)

11. As of this reclassification process, the Appellant directly supervised four individuals:

Mr. Kratman, a PC III; Mr. Robinson, a PC II; Pasquale Mele, a PC II; and Steven MacVicar, a CE I. (Exhibit 3)

12. The Permits Section reviews plans and specifications for all types of proposed

projects in the District including permits for air rights over South Station in Boston, for major changes to Atlantic Avenue, for an assisted living facility in Lenox and for a fly-over on Route 2 at Crosby Corner. The section also issues permits for drilling and blasting in order to ensure the safety of the public and to safeguard the integrity of any nearby structures, as well as permits for water, sewer and utilities, many of which require a review for environmental impact. (Testimony of Appellant, Exhibit 11)

13. When a permit application is received by the District, the Appellant reviews it and

distributes it to all necessary section heads. The Appellant then either receives comments from those sections and reviews and reports the comments back to the consultants, or, alternatively, facilitates a meeting with the heads of the relevant sections to discuss each section's requirements for permitting. The Appellant then conveys those requirements to the consultants. (Testimony of Appellant)

14. The Appellant reports to Assistant Maintenance Engineer, Mr. Aznavoorian, a CE IV,

Maintenance Engineer John Hayden, a CE VI, Patty Leavenworth the District Highway Director and Paul Stedman, the Deputy Highway Director. (Testimony of Appellant, Exhibit 3, 5)

15. The Appellant interacts primarily with the other section heads in the district, including Projects Engineer, Brian Fallon, a CE V; Highway Maintenance Engineer Brett Loosian, a CE IV; Structures Engineer Prem Kapoor, a CE V; Planning Coordinator Connie Raphael, a CE IV; Traffic Engineer Michael Karas, a CE V; and Raj Kulenthirajan, now a CE IV; as well as Geotechnical Engineer Nabil Houranth a CE VI. (Exhibit 3 and Testimony of Appellant)
16. The Appellant filed a reclassification request with the Department on September 20, 2005. (Stipulation of Fact)
17. The Appellant had an interview audit on October 26, 2005 with a representative from MassHighway's Human Resources Office at which time an Interview Guide was completed. (Exhibit 3)
18. MassHighway issued their preliminary recommendation to the Appellant on June 8, 2006 denying his request for a Civil Engineer IV. The reasons for denying the request are as follows:
- “Based on the review of all information submitted by you, a review of your most recent EPRS Form and Form 30, management notes, job specification for the aforementioned title, the title of Civil Engineer III duties and responsibilities appropriately describe what you perform on a daily basis. Duties common to this level include: Acts as District Four Permits Engineer; supervises and assigns all related work to District Permits staff; coordinates all permit reviews within the District Maintenance, Traffic, Planning and Projects Sections; Coordinates permit reviews with Boston Geotechnical and Traffic Sections; Reviews plans and prepares permits for approval; Attends meetings and performs site visits on permit-related issues; and performs related work as required.”
(Id.)
19. I find that, based on the Appellant's statements in his Interview Guide (Exhibit 3), that he relied on two main factors to make his case for reclassification to the CE IV

position: the position held by one of his direct reports - Mr. Kratman as a PC III – had a higher top pay than his position of CE III, and the former incumbent of the Permits Engineer position held the higher title of CE IV.

20. The Appellant appealed the Department's preliminary recommendation/denial on June 10, 2006 requesting a reconsideration of his appeal. (Exhibit 4)

21. On September 20, 2006, the Department denied the Appellant's request for reconsideration for reclassification to Civil Engineer IV. On September 25, 2006, the appellant appealed the Department's denial to HRD. HRD denied the Appellant's claim on April 25, 2007. (Id.)

22. The Appellant filed this appeal to the Commission pursuant to G.L. c. 30, § 49 on May 3, 2007. (Exhibit 1)

CONCLUSION

After careful review of the testimony and based on a preponderance of the credible evidence presented in this appeal, the Commission concludes that the decision of the Human Resources Division to deny Mr. Formichella's reclassification request should be affirmed.

The Appellant has not met his burden of proof to demonstrate that he is improperly classified as a Civil Engineer III. It is clear that his Form 30 reflects duties that are consistent with his current CE III title. Based on a preponderance of the credible evidence at hand, the Appellant's duties do not reflect those performed by employees in the title of CE IV to which he seeks reclassification. Although some of his current duties are consistent with those of a CE IV, there is certainly no indication that Mr. Formichella

performs duties that are consistent with the CE IV title more than 50% of the time as required for consideration to be reclassified into a higher position.

The Appellant relied on two main factors to make his case for reclassification to the CE IV position: the position held by one of his direct reports - Mr. Kratman as a PC III – had a higher top pay than his position of CE III, and the former incumbent of the Permits Engineer position held the higher title of CE IV. Neither of these points reflects an adequate challenge to the denial of his reclassification request as they do not address the duties that he actually performs on a daily basis. The assertion that the Permits Engineer needs to be a CE IV was reasonably refuted by the Affidavit of Mr. Asnavoorian (Exhibit 14). Further, that Mr. Kratman's Unit 6 title of PC III has a higher top pay on its scale than the Appellant's Unit 9 title of CE III is not relevant to this matter. Even, for the sake of argument, that it was relevant, it could not be determined if Mr. Kratman actually was enjoying a higher salary than the Appellant.

As is unfortunately the case in most reclassification appeals to this Commission, the Appellant is, by all descriptions, an outstanding public servant who works hard and is respected by his fellow MassHighway employees. The bar for proving that one's position is misclassified is set very high. The Appellant presented to this hearing officer as a man of integrity, politeness and pride of service. However, the reclassification of a position requires proof that the level distinguishers of the duties one is performing are better reflected in the higher title to which one aspires. That is simply not the case here.

Therefore, for all the reasons stated herein, the appeal under Docket No. C-07-177 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on June 26, 2008.

A true record. Attest:

Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:

Michelle Gates, Esq. (for Appellant)

John L. Casey, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)