

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

CHRISTOPHER DEANE,
Appellant

v.

G1-15-188

CITY OF BOSTON,
Respondent

Appearance for Appellant:

Pro Se
Christopher Deane

Appearance for Respondent:

David LaChappelle, Esq.
City of Boston
City Hall
Boston, MA 02201

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On October 14, 2015, the Appellant, Christopher Deane (Mr. Deane), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection to the labor service position of Gardener by the City of Boston (City).

On October 27, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Deane, counsel for the City, and the Human Resources Director for the City's Public Works Department.

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. (See G.L. c. 31, §§ 1, 28-29)

G.L. c. 31, § 28, which pertains to labor service appointments, states in relevant part:

"Except as provided in the last paragraph of this section, the names of persons who apply for employment in the labor service of the commonwealth and 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, subject to a renewal of application

pursuant to this section. Such person shall continue to be eligible for appointment from any such register and shall maintain his place on such register if he renews his application during the six months immediately prior to or during the six months immediately following the expiration of his five year period of eligibility. Such continuing eligibility shall have a duration of not more than five years after the date of expiration of the original five year period. A renewal filed later than six months after such expiration date will not be accepted, and the applicant who filed such late renewal will be required to file a new application and will be placed on the register as of the new date of registration.”

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.

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

Non-selected candidates for labor service position may file a bypass appeal with the Commission if the Appointing Authority appoints a candidate ranked lower than him/her on the labor service roster certification for the posting in question.

At the pre-hearing conference, the parties stipulated to the following:

1. Mr. Deane’s name first appeared on the labor service roster on July 15, 2004.
2. On May 18, 2015, the state’s Human Resources Division (HRD) sent Roster Certification No. 02864 to the City from which the City could appoint two (2) Gardeners.
3. Mr. Deane’s name was first among those candidates willing to accept appointment.
4. The two (2) candidates appointed were both ranked below Mr. Deane on Certification No. 02864.

5. The City notified HRD that it was bypassing Mr. Deane for appointment as he did not have a valid driver's license.
6. On August 21, 2015, HRD notified Mr. Deane that it had accepted the City's reasons for bypassing him for appointment.

Mr. Deane does not dispute that, at the time the City made the two (2) appointments, he did not possess a valid driver's license. According to Mr. Deane, his license was suspended "a few years ago" when he was charged with operating under the influence (OUI). According to Mr. Deane, his license was subsequently reinstated on September 18, 2015 after he paid fines and passed a new driver's test after two (2) unsuccessful attempts.

Mr. Deane argues that, at the time he signed the labor service roster (in 2004), the posting did not state that a driver's license was required. At the pre-hearing conference, the City presented the job posting that has been in place since at least 2007 which states in relevant part, "MUST HAVE A VALID MASSACHUSETTS DRIVERS' LICENSE ..."

Also at the pre-hearing conference, the City explained that Gardeners are required to drive City vehicles, sometimes alone, and perform such duties as watering vegetation on medians along City streets.

Even if the initial posting did not contain the posting regarding the driver's license requirement, the document presented by the City shows that it has indeed been a requirement since 2007. Further, given the duties and responsibilities of a Gardener, the City has a valid reason for such a requirement.

Since Mr. Deane did not possess a valid driver's license at the time of this appointment, he did not meet the minimum qualifications for the job and the City was justified in bypassing him for appointment.

While it is not necessary to address as part of this appeal, it appears that, given the passage of time, the time limits contained in Section 28 may require that Mr. Deane's name be removed from the labor service roster in question.

Since Mr. Deane did not possess one (1) of the minimum qualification for the position for which he applied, his appeal under Docket No. G1-15-188 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 12, 2015.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:

Christopher Deane (Appellant)

David LaChappelle, Esq. (for Respondent)

John Marra, Esq. (HRD)