

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

DEAN DOWNER,
Appellant

v.

D1-17-133
I-18-029

CITY OF NORTHAMPTON,
Respondent

Appearance for Appellant:

Devin M. Moriarty, Esq.
Marshall Moriarty, Esq.
Moriarty Law Firm, Inc.
34 Mulberry Street
Springfield, MA 01105

Appearance for Respondent:

Layla Taylor, Esq.
Sullivan, Hayes & Quinn, LLC
One Monarch Place – Suite 1200
Springfield, MA 01144-1200

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT’S MOTION TO DISMISS & RULING REGARDING
RESPONDENT’S RESPONSE TO ORDER TO SHOW CAUSE WHY THE COMMISSION
SHOULD NOT INITIATE AN INVESTIGATION UNDER G.L. c. 31, §2(a)**

On June 29, 2017, the Appellant, Dean Downer (Mr. Downer), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Northampton (City) to demote him from Water Treatment Plant Operator to Laborer.

On August 23, 2017, I held a pre-hearing conference at the Springfield State Building in Springfield, MA which was attended by Mr. Downer, his counsel, counsel for the City and the

City's Director of Human Resources.

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

1. Mr. Downer has been employed by the City since September 24, 2007, when he was hired as a DPW Seasonal Laborer.
2. Mr. Downer has been serving as a Water Treatment Plant Operator since January 18, 2010;
3. On May 4, 2017, Mr. Downer was "demoted" to the position of laborer and was notified of said demotion the same day.
4. On June 29, 2017, Mr. Downer filed the instant appeal with the Commission.

At the pre-hearing conference, the parties were not clear on whether the position of "Water Treatment Plant Operator" in Northampton is an "official service" title or a "labor service title." In [Dinicola v. City of Methuen](#), however, it was determined that the position of Treatment Plant Operator in Methuen is "an official service position" that was, at one point, part of the "Continuous Testing (ConTest) Program" administered by the state's Human Resources Division (HRD). The ConTest program was discontinued by HRD on October 16, 2008. Thus, the ConTest Program is not relevant to this appeal.

Absent evidence showing otherwise, I advised the parties that it would appear that the position of Water Treatment Plant Operator in Northampton is an "official service" position and the position of "laborer" is a "labor service" title.

Also as part of the pre-hearing conference, I asked the City if labor service positions were filled based on the requirements of the civil service law and rules. ([Delegated Labor Service Manual](#)) The City stated it does not make appointments or promotions to labor service titles

based on the civil service law and rules.

Based on all of the above, I advised the parties that, absent additional evidence, it appears that:

- A. Mr. Downer never served as a permanent, tenured civil service employee in the official service title of “Water Treatment Plant Operator”.
- B. Since Mr. Downer never obtained permanency in the official service title of “Water Treatment Plant Operator”, the Commission has no jurisdiction to hear his appeal regarding a demotion to the labor service title of “laborer”.
- C. The civil service status of dozens of City employees working in labor service titles is uncertain, given that the City had not made appointments through the process outlined in the Delegated Labor Service Manual (i.e. – creation of labor service rosters and roster certifications).

For all of the above reasons, I ordered the following via a Procedural Order issued on September 19, 2017:

- I. The City had 30 days to file a Motion to dismiss the instant appeal for lack of jurisdiction.
- II. The Appellant had 30 days thereafter to file a reply to the City’s Motion to Dismiss.
- III. Separate from the instant appeal, the City had 60 days to show cause why the Commission should not open an investigation under G.L. c. 31, s. 2(a) regarding the City’s appointment and promotion process regarding labor service positions.

I subsequently received the following from the parties:

- 10/19/17: City’s Motion to Dismiss Appellant’s Appeal
- 11/29/17: Appellant’s Opposition to Motion to Dismiss

- 11/29/17: City’s Motion and Memorandum in Support for Why the Commission Should Not Open an Investigation
- 12/18/17: Appellant’s Motion and Memorandum in Support of Why the Commission Should Open an Investigation

City’s Motion to Dismiss

The City argues that the Commission has no jurisdiction to hear Mr. Downer’s appeal for two (2) reasons. First, according to the City, Mr. Downer’s appeal was filed with the Commission more than a month after the ten (10) business-day filing deadline required by G.L. c. 31, § 43. Second, the City argues that the Commission has no jurisdiction to hear Mr. Downer’s appeal as he was serving in a provisional title at the time of his demotion.

Mr. Downer argues that his appeal with the Commission was timely as it was filed within ten (10) business days of a “final decision” from the City, which he defines as having been after “pursuing the attempted adverse action through the grievance process . . .” While difficult to discern, it appears that Mr. Downer also argues that prior Commission and judicial decisions stand for the proposition that provisionally promoted employees may appeal a demotion to the Commission.

In City of Springfield v. Civ. Serv. Comm’n & Joseph McDowell, 469 Mass. 370 (2014), the SJC upheld a Commission decision in which the Commission determined that a provisionally promoted employee, who previously held permanency in a lower title, only retains appeal rights in regard to that lower, permanent position (i.e. – employee could appeal a termination from employment or a demotion to a position lower than his permanent title.) Applied here, the City’s

decision to demote Mr. Downer from his provisional title of Water Treatment Plant Operator to his permanent title of Laborer had no impact on his position as a laborer.

In Graver v. Springfield Housing Authority, 26 MCSR 16 (2013), a majority of the Commission affirmed that the ten (10)-day statutory filing deadline begins on the day the disciplined employee is notified by the appointing authority of the results of a local hearing regarding the discipline and is not tolled while the employee explores whether to pursue the matter through the grievance and arbitration process. Applied here, Mr. Downer had ten (10) business days from the date he was notified of the City's decision to demote him (May 4, 2017) to file an appeal with the decision. His appeal was untimely as it was not received by the Commission until June 29, 2017.

For these reasons, the Commission lacks jurisdiction to hear Mr. Downer's appeal and his appeal under Docket No. D1-17-133 is hereby *dismissed*.

Civil Service Commission
/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 15, 2018.

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).

[SEE PAGE 7 FOR RULING REGARDING RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE WHY THE COMMISSION SHOULD NOT INITIATE AN INVESTIGATION UNDER G.L. c. 31, §2(a)]

Response Regarding Whether the Commission Should Initiate an Investigation under Section 2(a)

The City acknowledges that, on or about March 15, 1945, the Northampton City Council voted to accept the provisions of the civil service law relative to the employment of laborers in the Water Department, Sewer Department, and the Board of Public Works.

The City argues, however, that amendments to the civil service law in 1945 (St. 1945, c. 725) and 1978 (St. 1978, c. 393) effectively removed these positions in the City of Northampton from civil service. Accepting the City's novel, but erroneous, interpretation of these amendments would potentially eviscerate civil service protections for thousands of labor service employees across Massachusetts. The amendments cited by the City simply did not do this. Rather, the amendments cited essentially re-codified the civil service law, defined the roles of the Civil Service Commission and the Administrator and provided *expanded* protections for labor service employees by covering certain positions in communities with a population greater than 100,000, regardless of whether the city or town accepted the provisions of the civil service law.

Further, documents on file with the state's Human Resources Division (HRD) (attached) show that the City of Northampton had a Classification Plan (see attached) on file with an effective date of November 10, 1975 and a notation that Northampton had been delegated responsibility for the labor service positions as of July 28, 1981.

Absent a Special Act of the Legislature, the method for removing positions from civil service is clearly spelled out in G.L. c. 4, §4B which states that a law accepted by a city or town "may be revoked in the same manner as it was accepted by such city, town, or municipality". The

legislature clearly had the civil service law in mind when it adopted this statute, stating in Section (e): “This statute shall not affect any contractual or civil service rights which have come into existence between the city, town or municipality ... as a result of the original acceptance of any such law or provisions thereof ...” The City appears to be well aware of the methods for removing positions from civil service law, as it petitioned the Legislature to remove “all clerical [official service] positions” in Northampton from civil service in 2008 (See St. 2008, c. 408) The City has not provided the Commission with any evidence, however, that any action was taken to remove these labor service employees in the City of Northampton from civil service.

This is not the first time the Commission has found that a community had been ignoring the provisions of the civil service law as it relates to labor service employees. In [Investigation Re: City of Boston Labor Service Appointments](#), 25 MCSR 369 (2012), the Commission found that, since at least 1998, the City of Boston had failed to comply with the civil service law and rules regarding labor service appointments and promotions, including the failure to appoint individuals to labor service positions from labor service rosters. As a result, the Commission: 1) ordered the City to comply, forthwith, with civil service law and rules regarding labor service appointments on a going-forward basis; 2) ordered HRD to conduct an audit of the City’s practices; and 3) ordered the City to propose a remedy regarding the civil service status of those labor service employees appointed after 1998. As a result, the City began complying with the civil service law, including making appointments of labor service employees from labor service rosters. Further, at the request of the City, in concurrence with the applicable labor union, the Commission granted civil service permanency to those labor service employees who had

effectively been appointed over many years through a non-civil service process (i.e. – not labor service rosters.)

The City of Northampton has not shown any reason why similar orders should not be issued here to ensure compliance with the civil service law regarding labor service appointments.

For these reasons, the Civil Service Commission, pursuant to its authority under G.L. c. 31, §§ 2(a) and 72, hereby initiates an investigation regarding labor service appointments and promotions in the City of Northampton and, as part of this investigation, orders the following:

- I. Absent evidence that the City of Northampton has removed these labor service positions from civil service, the City shall, within three (3) months, request that the state’s Human Resource Division conduct an audit of the City’s practices regarding labor service appointments and promotions. and make recommendations regarding how the City can begin complying with the civil service law regarding such appointments and promotions.
- II. Within six (6) months, after consulting with HRD and representatives from any local unions representing incumbent labor service employees, provide the Commission with a plan to ensure compliance with the civil service law on a going-forward basis and provide relief (i.e. – civil service permanency) to any incumbent civil service employees who have been aggrieved by the City’s failure to comply with the civil service law and rules.

All correspondence related to this investigation shall reference CSC Tracking No. I-18-029, Investigation Re: City of Northampton Labor Service Appointments.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 15, 2018.

Notice:

Marshall Moriarty, Esq. (for Appellant in CSC Case No. D1-17-133)

Devon Moriarty, Esq. (for Appellants in CSC Case No. D1-17-133)

Layla Taylor, Esq. (for Respondent in CSC Case No. D1-17-133 and for City in CSC Case Tracking No. I-18-029)

John Marra, Esq. (HRD)

Regina Caggiano (HRD)

July 28, 1981 - Northampton Labor Service
Delegated

75-2890
Effective Date: November 10, 1975

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NORTHAMPTON CLASSIFICATION PLAN

LABOR SERVICE

MUNICLASS
CODE

TITLE

Class I

1961E	Sealer's Helper
3502A	Laborer
3502B	Working Foreman Laborer
3503A	House Worker
6907A	Yardman

7408A	Cafeteria Helper
7408B	Utility Food Worker
7408C	School Lunch Attendant

Class II

2549B	Signal Maintainer Helper
3504B	Grounds Worker
3504D	Working Foreman Grounds Maintenance Man
4102B	Painter Helper

4243D	Water System Maintenance Man
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4243E	Sewer System Maintenance Man
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NORTHAMPTON CLASSIFICATION PLANLABOR SERVICEMUNICLASS
CODETITLEClass II (Continued)

3305B	Working Foreman parking meter repair.
4243P	Working Foreman Sewer System Maintenance Man
4742B	Public Works Maintenance Man
4742D	Working Foreman Public Works Maintenance Man
4752B	Building Maintenance Man
4752D	Working Foreman Building Maintenance Man
5021A	Forestry Maintenance Man
5042B	Tree Climber
5318B	Flood Control Equipment Maintenance Man
5348D	Sewage Plant Maintenance Man
5348M	Wastewater Treatment Plant Maintenance Man
5703A	Motor Equipment Operator
5703B	Heavy Motor Equipment Operator
5703C	Special Motor Equipment Operator
5703D	Bus Operator

NORTHAMPTON CLASSIFICATION PLAN

LABOR SERVICE

MUNICLASS
CODE

TITLE

Class II (Continued)

5703E	Working Foreman Motor Equipment Operator
5703F	Working Foreman Heavy Motor Equipment Operator
5703G	Working Foreman Special Motor Equipment Operator
5806A	Motor Equipment Maintenance Man
7404B	Assistant Cook
7408D	Senior Cafeteria Helper
	<u>Class III</u>
2549D	Working Foreman Signal Maintainer
4102A	Painter
4240A	Water Meter Repairman
4243A	Water System Maintenance Craftsman
4243B	Sewer System Maintenance Craftsman
4243L	Working Foreman Water System Maintenance Craftsman
4243M	Working Foreman Sewer System Maintenance Craftsman

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NORTHAMPTON CLASSIFICATION PLANLABOR SERVICEMUNICLASS
CODETITLEClass III (Continued)

4742A	Public Works Maintenance Craftsman
4742C	Working Foreman Public Works Maintenance Craftsman
4752A	Building Maintenance Craftsman
5004A	Cemetery Maintenance Craftsman
5004C	Working Foreman Cemetery Maintenance Craftsman
5042A	Tree Surgeon
5318A	Flood Control Equipment Repairman
5318D	Working Foreman Flood Control Equipment Repairman
5348C	Sewage Plant Repairman
5841A	Motor Equipment Repairman
5841D	Working Foreman Motor Equipment Repairman
5877A	Fire Apparatus Repairman
7404A	Cook
7404C	Senior Cook

*Title added to title of Fire Fighter
in accordance with Sec. 26 of C. 31, D.L.
by method of a transfer. 81-3147*

