

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL GIGUERE,
Appellant

v.

G1-17-249

HOLYOKE PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

Pro Se
Michael Giguere

Appearance for Respondent:

Colin R. Boyle, Esq.
Morgan, Brown & Joy, LLP
200 State Street: 11th Floor
Boston, MA 02109

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On December 2, 2017, the Appellant, Michael Giguere (Mr. Gigure), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Holyoke Public Schools (HPS) to not select him for a job posting for senior building custodian.

On February 14, 2018, I held a pre-hearing conference at the Springfield State Building in Springfield, MA which was attended by Mr. Giguere, a union representative, counsel for the HPS and a representative from HPS.

As part of the pre-hearing conference, the HPS submitted a pre-hearing memorandum which argued, among other things, that the Commission lacks jurisdiction to hear this appeal. Subsequent to the pre-hearing, Mr. Giguere submitted his response to the HPS's argument regarding jurisdiction.

Based on the written submissions and the statements of the parties, I find the following which, unless otherwise noted, is not disputed:

1. Mr. Giguere is a permanent civil service employee for HPS.
2. He is currently a permanent senior building custodian.
3. He is currently assigned to the Kelly Elementary School.
4. According to Mr. Giguere, the HPS posted a senior custodian position at the E.N. White Middle School.
5. Mr. Giguere and other HPS employees responded to the posting.
6. The HPS chose a provisional junior custodian for the position.
7. The chosen candidate now serves as a provisional senior custodian at the E.N. White Middle School.
8. I infer that the job posting made no reference as to whether the position was being filled as a provisional appointment, provisional promotion, transfer or reassignment.

Analysis

Regardless of how this position should have been posted, Mr. Giguere cannot show that he is an aggrieved person for the following reasons. First, under the civil service laws governing provisional appointments (G.L. c. 31, ss. 12-14), an appointing authority is permitted to appoint a candidate who is not a permanent service employee. Further, there is no “bypass” when a provisional appointment is made. Second, Mr. Giguere is currently a permanent senior building custodian. Thus, his appointment to this position would not be a provisional promotion.

Accordingly, the civil service law related to provisional promotions (Section 15) do not apply to him here. (See Mosesso v. Department of Transitional Assistance, 23 MCSR 43 (2010)

(Commission dismissed appeal of a permanent BERS C who was not selected for provisional

BERS C position in another office.) Third, Mr. Giguere disputes that what occurred here was a request for a “transfer” under G.L. c. 31, s. 35. Even, however, if it were, Section 35 of the civil service law provides the Appointing Authority with final discretion with regards to voluntary transfers. (See Ho, Pepicelli and O’Connor v. City of Cambridge et al, 20 MCSR 96 (2007), citing Cooper v. Civ. Serv. Comm’n, 314 Mass. 76, 79 (1943).

Put simply, the civil service law does not provide appeal rights for a permanent senior building custodian to contest his non-selection for a job posting in another school. Thus, the Commission does not have jurisdiction to hear this appeal.¹

For these reasons, the Appellant’s appeal under Docket No. G1-17-249 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).

Notice:

Michael Giguere (Appellant)
Colin Boyle, Esq. (for Respondent)

¹ The HPS also argued that the Commission lacks jurisdiction as the HPS is currently under state receivership which is governed by G.L. c. 69, s. 1K. Since this appeal can be dismissed without addressing that issue, I choose not to do so. However, to the extent that the HPS may be suggesting that this statute effectively eliminates all protections for all HPS civil service employees, I disagree.