

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

TODD A. GURNEY,
Appellant

v.

C-17-162

MassDOT,
Respondent

Appearance for Appellant:

Pro Se
Todd A. Gurney

Appearance for Respondent:

Peter M. Mimmo, Esq.
MassDOT
10 Park Plaza: Suite 3740
Boston, MA 02116

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

1. Following its formation in December 2010, MassDOT and the collective bargaining representatives for its employees signed a Master Labor Integration Agreement (MLIA) which, among other provisions, called for a classification study in order to appropriately classify employees.
2. The MLIA was executed with the anticipation that classification issues would be resolved promptly.
3. Having anticipated a prompt resolution to the classification issues, the MLIA stated in relevant part:

“Beginning 30 days but not longer than 60 days following the completion of the [classification] study for a particular unit, any employee who believes that he/she is not classified appropriately or an employee who believes that he/she is not classified consistently with other unit employees who perform the same or similar work may file a classification appeal ... Employees seeking reclassification through c. 30 shall not be eligible to appeal under the provisions of this agreement.”

4. As of August 2016, no agreement had been reached between MassDOT or any of the relevant bargaining units. Hence, no employee had been able to take advantage of the (non c.30) appeal option that was anticipated.
5. From 2010 – 2016, approximately 90 employees in MOSES Bargaining UNIT E had filed “traditional” Section 30 classification appeals with MassDOT. Since the above-referenced classification study was still pending, MassDOT did not process any of these traditional c.30 appeals.
6. For this reason, these approximately 90 employees petitioned the Commission, asking for an investigation, and asking the Commission to order MassDOT to provide them with their right to an appeal under c. 30.
7. In response, on December 8, 2016, the Commission stated, in part: “ ... there is no justification to effectively ignore classification appeals filed by individual employees. The MLIA does not prohibit the filing (and processing) of such appeals, which should begin no later than ... 90 days ...”).
8. In May 2017, MassDOT and MOSES Unit E reached a settlement agreement which provides for the appeal right options referenced in bullet #3 above to begin. At least one (1) Unit E employee has chosen to file an appeal with the Commission pursuant to that agreement.
9. MassDOT has not, however, reached a settlement agreement with any of the other bargaining units, including MOSES Unit D.
10. Todd Gurney is a member of MOSES Unit D.
11. In February 2016, Mr. Gurney filed a reclassification request with MassDOT seeking to be reclassified from Program Coordinator III to EDP Systems Analyst IV.
12. MassDOT has not issued a determination regarding this request, citing the pending classification study referenced in the 2010 MLIA.
13. On August 17, 2017, Mr. Guerney filed a reclassification appeal with the Civil Service Commission pursuant to c. 30, s. 49.
14. In response, MassDOT has filed a Motion to Dismiss, on the grounds that the Commission has no jurisdiction to hear this appeal until MassDOT issues a determination, after which Mr. Gurney would first be required to appeal to HRD prior to filing an appeal with the Commission.
15. As part of its Motion to Dismiss, MassDOT argues that the MLIA prohibits the filing of classification appeals via c.30 until such time as the classification study is completed. The MLIA does NOT state that and the Commission already rejected that same argument when it issued its investigation response regarding the MOSE Unit E employees.

16. On September 12, 2017, I held a pre-hearing conference which was attended by Mr. Gurney and counsel for MassDOT.
17. As part of the pre-hearing conference, Mr. Gurney stated that he was properly classified as a PC III when he coordinated the driver education program for the Registry of Motor Vehicles (RMV), but that he was not properly classified at times (including the date of the pre-hearing) when assigned to special projects, such as the current project related to the replacement of a legacy system at RMV.
18. I informed both parties that a temporary assignment on a special project, with some exceptions, would not, generally, justify a reclassification. Rather, such situations would more appropriately be handled through a grievance process.
19. For this reason, I provided MassDOT with 30 days to file an amended Motion to Dismiss to address this issue of temporary assignments and Mr. Gurney with 30 days thereafter to file a reply.
20. In the interim, I encouraged MassDOT to work expeditiously on reaching a resolution regarding the issues relating to the classification study, which has now been an open issue for seven (7) years.

Analysis

G.L. c. 30, § 49 states in relevant part that:

“A manager or an employee of the commonwealth objecting to any provision of the classification affecting the manager or employee's office or position may appeal in writing to the personnel administrator ... Any manager or employee or group of employees further aggrieved ***after appeal to the personnel administrator*** may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it ...”
(emphasis added)

As argued by MassDOT, the plain language of Section 49 prohibits the Commission from hearing classification appeals unless the manager or employee has first filed an appeal with HRD. Although Mr. Gurney argues that he contacted HRD via phone to inquire about filing such an appeal, he never filed an appeal with HRD. Even if Mr. Gurney received no return phone call, as he alleges in his brief, nothing prohibited Mr. Gurney from going forward and filing such an appeal with HRD. Since it is undisputed that Mr. Gurney has failed to file a reclassification appeal with HRD, the Commission lacks jurisdiction to hear his appeal.

To ensure clarity regarding a path forward here, however, it should be noted that, although the longstanding and accepted practice has been that any appeal to the personnel administrator referenced in Section 49 is *preceded* by an audit / review by the employee or manager's *appointing authority*, Section 49 does not require that such an audit / review be completed by the appointing authority prior to an appeal being filed with HRD. Rather, Section 49 simply states that any manager or employee objecting to their classification may file an appeal with HRD. Particularly in light of the facts here, in which some employees have waited years for MassDOT to act on their request for an audit / review, HRD, consistent with the statute (and fairness and equity) would be required to accept such an appeal and complete a prompt and thorough review.

Since Mr. Gurney has not filed a reclassification appeal with HRD, his appeal to the Commission under Docket No. C-17-162 is hereby *dismissed* based on a lack of jurisdiction.

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 July 5, 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:

Todd A. Gurney (Appellant)
Peter Mimmo, Esq. (for Respondent)
John Marra, Esq. (HRD)