

BEFORE THE CIVIL SERVICE COMMISSION  
FOR THE CITY OF SEATTLE

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APR 11 2002  
CIVIL SERVICE COMMISSION

ROSALYN BASS-FOURNIER, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 CITY OF SEATTLE, DEPARTMENT OF )  
 PARKS AND RECREATION, )  
 )  
 Respondent. )

No. 01-03-009

ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY JUDGMENT  
OF DISMISSAL

This matter comes before the Commission, by and through the undersigned Hearing Examiner, upon Respondent's Motion for Summary Judgment filed with the Commission on February 1, 2002, requesting to dismiss the appeal of Rosalyn Bass-Fournier. Having reviewed and considered Respondent's Motion and the attached Exhibits A and B as well as the file in this appeal,<sup>1</sup> IT IS HEREBY ORDERED that

Respondent's Motion for Summary Judgment of Dismissal is GRANTED.

DISCUSSION

A motion for summary judgment must be considered in the light most favorable to the non-moving party. The moving party must demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993); Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d

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<sup>1</sup> Pursuant to the First Pre Hearing Conference Order on City's Submission of Motion to Dismiss dated January 16, 2002, Appellant was required to file her Response to Respondent's Motion on or before February 22, 2002. Appellant did not submit any response to Respondent's Motion.

1030 (1982).

Respondent moves to dismiss this appeal, claiming that Appellant lacks standing to bring her appeal. Alternatively, Respondent asserts that there is no genuine issue of material fact because, according to Respondent, the selection procedures that it followed for the Collection Manager position at issue were consistent with City ordinances, policies and procedures.

In her appeal to the Civil Service Commission, Appellant states that she was aggrieved by the hiring of Dana Payne as a Collection Manager (zoo curator) at the Woodland Park Zoo because “[this] person was hired for a city position, when that person failed to meet the minimum required qualifications advertised locally and nationally. Others did not fairly have a chance to equally compete.” As to the remedy sought, Appellant stated, “Re-do the hiring process if no other candidate having the minimum required qualifications was interviewed.”

There is nothing in the record before me to indicate that Appellant applied for the Collection Manager position for which Dana Payne was ultimately hired. Nor, is there any statement by Appellant in the record indicating that she desired the Collection Manager position but did not apply for it based on her belief of what were the minimum required qualifications as advertised locally and nationally. Therefore, it is appropriate to consider whether or not Appellant has standing to bring her appeal.

SMC 4.04.260(A) provides in part that “A regular employee who is aggrieved thereby may appeal to the Civil Service Commission his/her demotion, suspension, termination of employment, or violation of this chapter or rules passed pursuant thereto;....” Civil Service Commission Rules of Practice and Procedure Rule 7.01 provides that “Any individual or department adversely affected by an alleged violation of Article XVI of the Charter of the City of

Seattle, the Personnel Ordinance or the administration of the personnel system may appeal such violation to the Commission.”

The issue here, then, is whether or not Appellant has been “aggrieved” by a violation of SMC 4.04 or its interpretative rules or “adversely affected” by an alleged violation of Article XVI of the Charter, the Personnel Ordinance or the administration of the personnel system.

In her appeal, Appellant did not identify or cite the specific ordinance or personnel rule she believes was violated.<sup>2</sup> Nonetheless, based on my review of the record, it appears that she may be claiming that the City violated SMC 4.04.040(B)(9), that is: the Personnel Director failed to “develop and administer a centralized system and regular procedures for recruitment and selection of City employees” or, as posited by Respondent, that it violated SMC 4.04.070(A), that is: “[e]mployees have the right to compete openly for positions on the basis of knowledge, skills, and abilities.”

Turning to the language used in the Ordinance and the Commission Rules, “aggrieved” is not defined in the Ordinance; nor is “adversely affected” defined in Commission Rules. Absent express definitions of these terms, it is appropriate to rely on the well-established rules of statutory construction. One of the basic rules of statutory construction is that words are to be given the meaning provided by the statute or, in the absence of specific definition, their ordinary meaning. State v. McDougal, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992); State v. Standifer, 110 Wn.2d 90, 92, 750 P.2d 258 (1988); Seattle v. Auto Metal Workers, 27 Wn. App. 669, 689, 620 P.2d 119 (1980), review denied (1981). It is well-settled that the same rules of statutory

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<sup>2</sup> I note that Appellant also identified “political patronage” as a basis for her appeal. As per Commission Rules of Practice and Procedure Rule 6.01 that issue is not before me.

construction that apply to state statutes also apply to municipal ordinances. Spokane v. Fischer, 110 Wn.2d 541, 754 P.2d 1241 (1988), citing Puyallup v. Pacific Northwest Bell Tel. Co., 98 Wn.2d 443, 448, 656 P.2d 1035 (1982).

Inasmuch as neither “aggrieved” nor “adversely affected” is defined within the Municipal Code or the Commission’s own Rules of Practice and Procedure, it is appropriate to look at how the terms are commonly defined and used.<sup>3</sup> Webster’s Unabridged Third New International Dictionary 41 (1981) defines “aggrieved” as follows: “troubled or distressed in spirit; showing grief, injury, or offense; or having a grievance; specif: suffering from an infringement or denial of legal rights.” Black’s Law Dictionary 87 (5<sup>th</sup> ed. 1979) defines “aggrieved” to mean “Having suffered loss or injury; ...injured.” It defines “aggrieved party” as “one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly affected by a decree or judgment.... The word “aggrieved” refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation.” Id.

As to the common meaning of “adversely affected”, Webster’s defines “adversely” to mean “in an adverse or hostile manner, with hostile effect: UNFAVORABLY, DISADVANTAGEOUSLY” and “affect” to mean “to act upon: to produce an effect (as of disease) upon [or] to produce a material influence upon or alteration in; to have a detrimental influence on; to make an impression on: INFLUENCE.” Webster’s Unabridged Third New International Dictionary, at

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<sup>3</sup> In its motion, Respondent has urged that the analytical framework set forth in the Administrative Procedure Act, RCW 34.05.530, be adopted in determining whether Appellant is “aggrieved” and “adversely affected”. I do not find the Respondent’s position to be well taken in light of established law that holds that the Administrative Procedure Act applies only to actions of state agencies and does not apply to local agencies. Kitsap Fire District v. Kitsap County, 87 Wn. App. 753, 757, 943 P.2d 380 (1997), review denied, 134 Wn.2d 1027 (1998). Although there may be occasions when reference to the Administrative Procedure Act would be useful in providing guidance, there is no need to do so here.

31. Black's Law Dictionary defines "adverse" to mean "Opposed; contrary; in resistance or opposition to a claim, application, or proceeding" and "affect" to mean "To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things." Id. at 73.

Turning first to whether Appellant is aggrieved, there is nothing in the record to indicate that Appellant suffered any loss or injury or was otherwise denied some legal right by Respondent's decision to hire Dana Payne or by its alleged failure to follow proper recruitment and selection procedures, including advertisement and identification of required qualifications. Appellant has not submitted any evidence that she applied and competed for the Collection Manager position. Appellant has not presented any evidence that she did not apply for the position because of the language or manner in which the required qualifications were stated or advertised. Viewing the record in the light most favorable to Appellant as the non-moving party, there is no factual basis to support Appellant's having in anyway been harmed by the recruitment and selection process followed by Respondent with regard to the Collection Manager position. I find, therefore, that Appellant is not aggrieved under SMC 4.04.260(A).

For the same reasons, I find that there is no factual basis to support the contention that Appellant has been adversely affected. She has not produced any evidence that the alleged procedures used by Respondent in advertising and filling the Collection Manager position produced any hostile, unfavorable or injurious effect on her.<sup>4</sup>

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<sup>4</sup> The definition of "grievance" in the Personnel Rules bolsters my finding that Appellant is neither aggrieved nor adversely affected by the complained of advertising and selection process. Section 1.2.100 defines "grievance" as "a dispute between an employee and his or her supervisor(s) or employing unit based upon the employee's good faith belief that an aspect of *his or her* employment has been adversely affected through the improper application of Personnel Rules, published personnel policies and procedures, City Charter Article XVI or

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Finally, on March 2, 2002, Respondent filed a Motion to Dismiss based on Appellant's failure to file a response to its Motion for Summary Judgment as required by the Commission's January 16, 2002, First Pre- Hearing Conference Order on City's Submission of Motion to Dismiss. As per that Order, Appellant's Response to the summary judgment motion was to have been filed with the Commission on February 22, 2002. More than 45 days have passed. Appellant did not submit any request for an extension or continuance; nor has she submitted any response to Respondent's March 2, 2002, Motion to Dismiss.

CONCLUSION

In summary, I have viewed the evidence in the light most favorable to Appellant and, therefore, have assumed that the job announcements regarding the Collection Manager position may well have misled "others" into believing that there were educational requirements that would not be substituted for experience. Nonetheless, Appellant has not provided any factual basis to support that she personally has been aggrieved or adversely affected. Therefore, I find that she has no standing to pursue her appeal.

Respondent's Motion for Summary Judgment of Dismissal is GRANTED.

IT IS SO ORDERED.

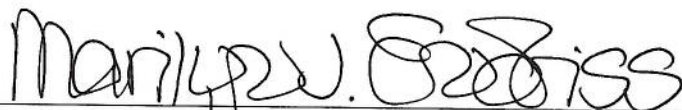
the Personnel Ordinance." (Emphasis added.) City of Seattle Personnel Rules Section 1.2.100.

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FOR THE CIVIL SERVICE COMMISSION:

Date: 9 April 2002



MARILYN J. ENDRISS  
Hearing Examiner pro tempore

/BASSR.order granting sjmo.040902.wpd

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