

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE

IN RE THE APPEAL OF:)

THERESA RAMOS,)

Appellant,)

v.)

SEATTLE DEPARTMENT OF PLANNING)
AND DEVELOPMENT,)

Respondent.)

MEMORANDUM DECISION

CSC Appeal No. 04-03-010

I. INTRODUCTION

The Commission here decides the threshold issue of jurisdiction over Petitioner Theresa Ramos' complaint that her demotion by the Department of Planning and Development violates personnel rules. Section 5.01(b) of the Civil Service Commission Rules provides for the Commission to determine the probationary status of employees who seek to appeal personnel actions before it.

The Commission finds that Ms. Ramos ceased performing in her former position, completed training and began new duties effectively placing her in a different position at least one year before she received notice of her demotion in July 2004. Further, City personnel records establish that she had been classified as a regular employee at least as far

1 back as September 2003. Thus, the evidence does not support a finding that she was
2 serving a one year probationary period at the time of her demotion. Instead, at the time of
3 her demotion, she had either already served a probationary period or had been recognized
4 as a regular employee in a new position without the requirement to serve a probationary
5 period. Reserving the question of whether a City of Seattle civil service employee may be
6 required to serve more than one one-year probationary period, the Commission rules that it
7 has jurisdiction over Petitioner's appeal in this case because she was not a probationary
8 employee when she received notice of her demotion.

9 II. PROCEDURAL BACKGROUND

10 On July 24, 2004, Ms. Ramos received notice that she would be demoted or
11 terminated from her Building Plans Examiner entry position because she was not making
12 satisfactory progress in her probationary period (Respondent Ex. 25). After unsuccessfully
13 seeking an extension of her probationary period in a July 24, 2004 letter (Respondent
14 Ex. 24) she appealed her demotion to the Commission on August 11, 2004.

15 The Department moved for dismissal of her appeal on the grounds that the
16 Commission lacked jurisdiction because she was a probationary employee on
17 November 22, 2004. Ms. Ramos then obtained representation of counsel and on
18 September 2, 2004 opposed the Department's motion to dismiss. She also moved for
19 notice of undisputed facts and Historical Records, determination of Ms. Ramos' regular
20 status and determination that Ms. Ramos' demotion violated the Seattle Municipal Code.
21 The Department did not respond to Ms. Ramos' motion. The Commission issued an Order
22 on September 15, 2005 declining to take notice of facts, rule on authenticity of documents,
23 or decide the issue of probationary status until the hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

III. FINDINGS OF FACT

Petitioner Theresa Ramos, a City of Seattle employee since 1974, worked as a Permit Specialist Supervisor (PSS) in the Department of Planning and Development from 1990 through 2001. As a PSS, she directed and organized the work of Permit Specialists and Technicians who issued and accepted applications for construction and land use permits based on preliminary discussions with applicants. (Appellant Ex. 2).

The Department in 2000 decided to reorganize its staff in the applicant services center in order to more efficiently service members of the public seeking approval of building plans. The Department's goal was to staff the service counter with employees with technical knowledge and experience that would allow them to approve plans on the spot without delay. The reorganization contemplated elimination of the Permit Specialist position. The Department offered various opportunities to permit specialists, including the choice to follow a track that would culminate in the Permit Process Leader position. It also offered Permit Specialists such as Petitioner who had not had the coursework in structural engineering desired by the department the opportunity to obtain additional training in structural engineering as part of the transition to the Permit Process Leader position.

Following a training period projected to be complete in May 2003, the plan called for employees to move through a series of positions, serving a 1-year probationary period in each: Building Plans Examiner Entry, Building Plans Examiner Journey, and Permit Process Leader. (Respondent Exs. 11, 12). The Building Plans Examiner Entry (BPE entry) position involved "under continuing supervision, perform[ing] increasingly independent work related to the review, examination, interpretation and approval of plans for structurally less complex single family homes . . ." [Appellant Ex. 3]. Permit Process

1 Leaders “manage and participate in the process for review and approval of a wide range of
2 construction and land use projects . . .” [Appellant Ex. 2]. Ms. Ramos decided to pursue
3 the Permit Process Leader track.

4 In September 2001, Ms. Ramos left the permit counter in the applicant services
5 center on Floor 20 and moved to an office on Floor 22. She was located away from the
6 public on Floor 22 so that she could study for classes in structural engineering at the
7 University of Washington. While engaged in coursework, she also conducted plan review
8 in order to apply the skills she was learning and acquire experience in plan review in
9 preparation for work as BPE entry. Transcript pp. 16-18. The Department does not
10 dispute that Ms. Ramos was no longer performing the duties of the PPS position during
11 this time. Both Ms. Ramos and the Department presented evidence that she was
12 performing plan reviews; Ms. Ramos did not dispute the Department’s evidence that she
13 was performing far fewer plan reviews than employees already in the BPE entry position.
14 Respondent Exs. 2, 3; Appellant Ex. 5.

15 In May, 2002, Ms. Ramos completed her coursework. She continued to work on
16 Floor 22, and to work on plan review. Transcript pp. 16-18; 40. She did not return to her
17 duties as PSS. *Id.* At hearing, Ms. Ramos presented evidence showing that she
18 accomplished numerous plan reviews from May 2002 through 2003 and 2004. [Appellant
19 Ex. 5] The Department did not present any data on the number of plan reviews
20 accomplished by other employees the BPE entry position during that time for comparison.
21 It also did not offer testimony that the number of plan reviews accomplished by
22 Ms. Ramos following her completion of coursework was unusually low, though it did
23 present testimony that Ramos’ plan reviews were commonly signed off by others.

1 Whether or not Ms. Ramos was working as independently as employees with
2 experience in the BPE entry position following completion of her coursework, there is no
3 dispute that she was engaged solely in plan review and was not working as a PSS after
4 May 2002. Her Annual Review for January 1, 2002 through November 27, 2002 was for
5 the BPE entry position and reviews her performance in planning job duties, not
6 supervisory permit specialist duties. [Appellant Ex. 19].

7 On December 19, 2002, the Department presented a draft plan for change to
8 employees. It called for a training period, which would end by May 2003, followed by on
9 the job experience. [Respondent Ex. 11].

10 From the end of 2002 through Spring 2003, several events occurred which could
11 signify that Ms. Ramos had completed any training transition period and was working as a
12 BPE entry.

- 13 • In December 2002 or January 2003, Ms. Ramos moved from Floor 22 to Floor 20,
14 where she worked at the permit counter, responding to the public and reviewing
plans. [Appellant Ex. 5; Transcript pp. 18; 50-61.]
- 15 • Also in January 2003, Ms. Ramos passed an Aptitude Assessment Exam required
16 to enter the BPE track and started the track. [Testimony pp. 9; 22-24] In April,
Ms. Ramos passed another Aptitude Assessment Exam, although she was not
17 required to pass it since she had passed the earlier January test.
- 18 • On March 4, 2003, the Department submitted a Position Description Questionnaire
stating that a change of assigned duties is in progress and that incumbents have
19 been trained. [Respondent Ex. 5; Testimony p. 25].
- 20 • In May 2003, Ms. Ramos passed a course representing a final component of
required coursework. [Testimony pp. 46, 49].

21 The Commission thus finds that at least two months (and perhaps six months)
22 before July 27, 2003, Ms. Ramos was performing the duties of the BPE entry position.

1 Accordingly, if she was required to serve a probationary period, she had begun that period
2 more than one year prior to her July 27, 2004 demotion.

3 Indeed, the Department provided no evidence of any event that might mark the
4 transition from a “training period” to a probationary period within one year of Ms. Ramos’
5 demotion, other than the her formal designation on September 2, 2003 by Personnel in the
6 BPE entry position. However, if there is no evidence that any change in job duties
7 occurred at that time, or that any overt action was taken to inform Ms. Ramos that she was
8 beginning probationary status, this personnel action cannot establish the beginning of a
9 probationary period.

10 Moreover, far from aiding the Department’s argument that Ms. Ramos was
11 probationary at the time of her demotion, the Personnel Department records from
12 September 2003 show Ms. Ramos actually held *regular status* at that time, long before her
13 demotion.

- 14 • On September 2, 2003, the Personnel Department issued a Reallocation of Permit
15 Process Specialists and Supervisors to Permit Process Leaders. The Reallocation
16 referenced Attachment A, a Classification Determination designating the
underfilled employees (who may not actually be Permit Process Leaders), including
Ms. Ramos, as holding *regular status*. [Respondent Ex. 13; Testimony, p. 27].
- 17 • Ramos’ Job History, a personnel record, also showed that she was recognized in the
18 BPE entry position, *regular status*, effective September 2, 2003. [Appellant Ex. 6].
19 Although the Department objected to the document at hearing, it did not contest its
20 authenticity. Counsel for the Department stated that although, Counsel had been
unable to come up with a satisfactory explanation for the designation of Ms. Ramos
as having regular status even though Ms. Ramos had submitted a copy of the
document with her Motion a few weeks prior to the hearing.
- 21 • Further, payroll printouts submitted by the Department show that Ms. Ramos had
22 *regular standing* in the BPE entry position effective September 2, 2003, with the
same salary, salary grade and salary step she had in the PPS position. [Respondent
23 Ex. 8, 10; Testimony p. 13].

1 These records in combination establish conclusively that the Personnel Department
2 had classified Ms. Ramos as a regular employee in the BPE entry position. Testimony at
3 hearing established that the Department did not contest or appeal that Personnel decision.
4 [Testimony, p. 27].

5 Further, Ms. Ramos' performance reviews for the time after she left the PPS
6 position in September 2001 through 2003 are consistent with her having assumed the
7 duties of the BPE entry position and are inconsistent with the existence of any defined
8 probationary period. The annual review *for BPE entry*, which Ms. Ramos received in
9 October 2002, concerned planning job duties, not permit process supervisor duties. On
10 October 31, 2003, the Department gave Ms. Ramos an "Annual Review/2-Month
11 Probationary Review" evaluating her work *in the BPE entry* since November 1, 2002.
12 [Respondent Ex. 7] Although Ms. Ramos refers in her comments in the 2002/03 review to
13 being in her probationary period, the review otherwise provides little support for
14 probationary status. The 2002/03 review does not indicate that she is on probation during
15 the review period, does not note how far she has progressed through any probationary
16 period, and does not make reference to the dates of her purported probationary period.
17 [Respondent Ex. 7]. Further, neither performance review provides any evidence of when a
18 probationary period might have begun. Finally, the Department offered no testimony that
19 Ms. Ramos had received quarterly "probationary reviews" during probation as envisioned
20 under the reorganization plan, and produced no regular reviews tracking Ms. Ramos'
21 progress towards the end of any probationary period.

22 Thus, the Commission finds: (1) that Ms. Ramos's job duties changed and she
23 ceased to act in the capacity of a PPS in September 2001; (2) she completed her

1 coursework in May 2002; (3) she received on-the-job training and conducted plan review
2 away from the application counter from May 2002 through the end of 2002 to early 2003;
3 (4) she returned to the application counter where she continued reviewing plans and passed
4 her Aptitude Assessment Exam and began the BPE entry track in early 2003; and (5) she
5 passed the final required course for the track in May 2003. Because she was qualified for
6 the BPE entry position and was performing the duties of the BPE entry position by either
7 early 2003 or May 2003, and because she was designated by Personnel as a “regular”
8 employee in the BPE entry position in September 2003, the Commission also finds that she
9 was a regular employee and was *not* serving a probationary period when she was demoted
10 by memorandum on July 24, 2004.

11 IV. CONCLUSIONS OF LAW

12 The parties argued and presented evidence on a narrow jurisdictional issue.
13 Ms. Ramos argued that (1) she had been performing in the BPE entry position for so long
14 that her probationary period was over and (2) because new duties had been given to her in
15 advance of the September 2003 reallocation, she was properly recognized at that time as a
16 regular employee without serving a probationary period. The Department argued that
17 Ms. Ramos had been in training since she began coursework in September 2001 and did
18 not begin her probationary period until September 2003, when the job allocations in the
19 Department’s reorganization were approved.

20 Neither side argued or briefed the issue of whether or not a member of the civil
21 service could be required to serve more than one one-year probationary period. Indeed,
22 Ms. Ramos conceded that the City could require her to serve another probationary period
23 and in fact initially sought an extension of the probationary period. Accordingly, in the

1 spirit of judicial restraint, the Commission has reached its decision on the narrow grounds
2 argued by the parties and has not extended the precedent established by its decision in *In re*
3 *the Appeal of Pamela Ackely Bell v. Seattle Department of Parks and Recreation*, CSC
4 Appeal No. 02-01-002.

5 However, the Commission could have ruled on broader grounds in this case, and
6 may do so if the probationary status question is presented again in a subsequent appeal.
7 The Commission has observed with increasing concern the application of probationary
8 periods to employees in circumstances that do not arguably represent a new employment
9 status. The Commission believes, though it does not here hold, that the use of
10 probationary periods in demotions and transfers runs afoul of the spirit and language of the
11 merit provision of the City Charter. Article XVI, Sec. 4 of the City of Seattle Charter
12 provides that “the civil service shall be administered in accordance with the following
13 merit principles . . . Limitation of periods of probationary status to one year and
14 examination of all employees within one year of employment . . .” Further, while
15 performance review periods with guarantee of return to an employee’s prior position may
16 be appropriate when an employee is promoted to a new employment status, the
17 Commission considers imposition of actual probationary periods inconsistent with the
18 intent of civil service.

19 In *Ackley-Bell*, the Commission ruled that the petitioner was not probationary
20 because changes made in her duties several months prior to her reallocation effectively
21 made her job change a reclassification exempt from any requirement to serve a
22 probationary period. “The Department made a conscious decision to add duties to
23 Appellant’s position as part of a planned reorganization. However, the facts presented at

1 hearing show that this was anything but a straightforward reallocation . . . what began as a
2 reallocation did not remain a reallocation; the Department ultimately treated Appellant as if
3 her position had been reclassified.” *Id.* at p. 8. The Personnel Rules provide that “[w]hen
4 a position is reclassified because of a gradual change in the nature, scope or complexity of
5 the duties, the incumbent will have the same status (i.e., probationary or regular) as
6 previously held.” PR 2.1.6(B). Thus, the Petitioner in *Ackley Bell* retained her regular
7 status. *Id.* at p. 11.

8 Here, as in *Ackley-Bell*, the Department’s reorganization did not keep pace with the
9 changes in Ms. Ramos’ duties. Her job duties changed long before the reallocation was
10 complete, and indeed several City personnel records confirm that her status was “regular”
11 as of September 2003, many months before her July 2004 demotion. Because the change
12 in Ms. Ramos’ job duties was more akin to a reclassification than a reallocation, she was
13 not required to serve a probationary period at any time. PR 2.1.6(B).

14 The Commission in *Ackley-Bell* also held that the Petitioner was not probationary
15 because there was no evidence that the year prior to her dismissal was actually treated as a
16 probationary period. It noted, among other factors, that the Department did not inform the
17 Petitioner of when her probationary period began and did not conduct probationary
18 evaluations during the period in which it claimed she was on probation. *Id.* at 9-10. In
19 *Ackley-Bell* the Commission observed, “In fact, the Department had selected Appellant
20 such that her actual service in her [new] position well exceeded one year.” *Id.* at 10.

21 Here too, the evidence establishes that Ms. Ramos served in excess of one year in
22 her new BPE entry position. There is no evidence that the beginning of her probationary
23 period was ever made clear to her or that she ever received the quarterly probationary

1 reviews required by the Department. While Ms. Ramos may have believed that she was
2 probationary at some time, there is no evidence to support the City's assertion that her
3 probationary status began with the reallocation of PPS to Permit Process Leader on
4 September 3, 2003. There is no evidence that that date corresponded to a change in job
5 duties or a threshold in Ms. Ramos' training or testing marking a beginning in that
6 position.¹

7 The Commission thus concludes that Ms. Ramos' probationary period, if any,
8 began prior to July 24, 2003 – when she passed any one of a series of milestones in
9 performing the BPE entry job (May 2002, January 2003, or May 2003). The Department
10 cannot now rely on the September 3, 2003 date of reallocation when the weight of the
11 evidence shows that it did not treat the time following that date as a distinct probationary
12 period – particularly when the reallocation documentation and other City records show that
13 Personnel recognized Ms. Ramos' regular status on that date.

14 V. CONCLUSION

15 As in *Ackley-Bell*, the evidence does not support the existence of a probationary
16 period within the year preceding Ms. Ramos' demotion. She either completed a year's
17 probation prior to her demotion, or was never required to serve a probationary period
18 because her job gradually evolved into the BPE entry job so that she was properly
19

20 ¹ The City argues that a decision in Ms. Ramos' favor will deter the City in the future from
21 providing training opportunities for employees and developing their skills rather than
22 laying them off in a restructuring. This decision need not have any such effect. If the City
23 wishes to offer employees the opportunity for extended on-the-job training, (such as the
two years of training the City maintains it provided Ms. Ramos before the September 2003
beginning of her probationary period), it can protect itself from later dispute by having
participating employees sign clear agreements setting forth the consequences of the
training period.


1 recognized as a regular employee in the position. Thus, the Commission has jurisdiction
2 over her claim and she may appeal her demotion on the merits.


3
4 The Commission therefore, **denies the Respondent's motion to dismiss.**

5
6 DATED this 16th day of November, 2005.

7 FOR THE CITY OF SEATTLE
8 CIVIL SERVICE COMMISSION

9 
10 _____
11 Ellis H. Casson, Chair

12 
13 _____
14 John H. Cunningham, Commissioner

15 
16 _____
17 Jennifer K. Schubert, Commissioner