

FINDINGS AND ORDER: REINSTATEMENT FOLLOWING DENIAL OF STAY

IN THE MATTER OF THE APPEALS OF:

ELIZABETH HAMILTON,

Appellant/Respondent,

vs.

**FACILITIES PLANNING MANAGEMENT, DEPARTMENT OF GENERAL SERVICES,
DEPARTMENT OF PUBLIC WORKS,** and the City and County of Denver, a municipal
corporation,

Agency/Petitioner.

This matter is before the Career Service Board on Appellant's "Motion to Compel Reinstatement to Project Manager 1 Position in Public Works." After reviewing Appellant's motion and exhibits, and the Agency's response, the Board **GRANTS** the motion and **CLARIFIES** the issue of Appellant's reinstatement pending appeal.

I. FINDINGS

On September 17, 2010, the Hearing Officer issued a decision reversing Appellant's layoff. Although not stated explicitly in the decision, Appellant's right to reinstatement is implicit in the Hearing Officer's reversal of the Agency's action. On October 11, 2010, the Agency filed a motion to stay the Hearing Officer's decision, and on October 21, 2010, the Board denied the stay. Thus, the Hearing Officer's decision and Appellant's right to reinstatement remain in effect during the pendency of the parties' cross-appeals to the Board.

The issue raised by Appellant's motion is where she should be reinstated. Appellant argues that she should be reinstated to the position of Project Manager 1 in the Department of Public Works, where her job duties were transferred before she was laid off. The Agency contends that Appellant should be reinstated to the Department of General Services, where Appellant was working at the time of her layoff, even though "there is a very real possibility" that if Appellant is reinstated at General Services, she will be laid off again because the work she previously performed at General Services has been transferred to Public Works. **Exhibit 4.**

Prior to the career service hearing, Appellant requested that Public Works be joined as a party in this appeal. The Hearing Officer ruled that a formal joinder was not necessary because Public Works was part of the same municipal corporation, the City and County of Denver. Appellant's Motion, ¶ 5. We also note that both Public Works and General Services were represented by advisory witnesses at the hearing. Appellant's Motion, ¶ 6. We agree with the Hearing Officer that Public Works and General Services are both departments within the same municipal corporation and ultimately, for purposes of this appeal, the City and County of Denver is the Agency.

Although the merits of the Hearing Officer's decision are not before us at this time, the Hearing Officer's findings regarding the old positions at General Services and the newly created positions at Public Works are relevant to the issue of reinstatement:

"The duties of the new position of Project Manager 1 at Public Works were the same as those previously performed by Senior Architects and Senior Engineers at General Services: project management of capital improvement and bond projects." Decision at 16.

"There is no evidence that the type and level of work done by General Services' Senior Architects was different in any respect from the work to be assigned Public Works' Project Managers." *Id.* at 16.

"[T]he two positions contained the same aggregate of duties and were therefore the same position under the Career Service Rules." *Id.* at 18.

"Contemporaneous emails indicate that the order of layoff and hiring was reversed in order to avoid the layoff rules." *Id.* at 24.

"In fact, one demotion was later acknowledged as an action in lieu of layoff, making it clear that the selections by competitive hire were part of the same layoff plan." *Id.* at 25.

As we have already noted, the Hearing Officer's decision remains in effect during the pendency of this appeal and based on the Hearing Officer's findings regarding the old positions at General Services and the new positions at Public Works, Appellant is entitled to be reinstated at that city agency where her job responsibilities now exist, and in this case, that agency is Public Works.

II. ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Compel is **GRANTED**, the Hearing Officer's Decision of September 17, 2010, remains in full force and effect during the pendency of this appeal, and Appellant shall be reinstated to the position of

Project Manager 1 in the Department of Public Works.

SO ORDERED by the Board on November 4, 2010, and documented this
9th day of November, 2010.

BY THE BOARD:



Co-Chair

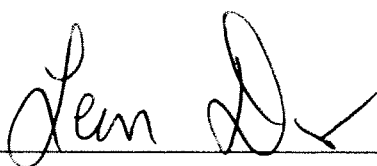
Board Members Concurring:

Nita Henry
Colleen Rea
Patti Klinge
Tom Bonner

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on
November 10, 2010, in the manner indicated below, to the following:

| | | |
|----------------------------------|---|-------------|
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Leon Duran