

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

PETITION FOR REVIEW OF AGENCY DECISION

Barry Weise)
1816 Kalorama RD NW #301)
Washington, D.C. 20009)

Petitioner,)

v.)

District of Columbia)
Department of the Environment)
Human Resources Division)
c/o Denise Rivera Portis, Associate Director)
1200 First St. NE, 5th Floor)
Washington DC 20002)

AND)

District of Columbia)
Department of Human Resources)
c/o Ms. Shawn Stokes, Director)
One Judiciary Square)
441 4th Street, NW Suite 330 South)
Washington, D.C. 20001)

Respondents.)

DOCKET NO. _____ MPA

PETITION FOR REVIEW OF AGENCY DECISION

A. Notice is hereby given that Petitioner Barry Weise (“Weise”), through his attorney Paula Dinerstein of Public Employees for Environmental Responsibility, petitions to the Superior Court of the District of Columbia for review of the decision of Denise Rivera Portis, Associate Director of the Human Resources Division for the Government of the District of Columbia District Department of the Environment (“DDOE”), dated the 3rd day of April, 2014. A copy of that decision is attached to this petition. The decision was served by email on Weise’s counsel on April 15, 2014. Weise had no notice of the decision prior to April 15, 2014. While we believe that this matter comes under the Superior Court’s general jurisdiction and could therefore be raised through a normal complaint subject to the Superior Court Rules of Civil Procedure, in order to preserve our rights, we are filing this petition within the 30-day statute of limitations of Superior Court Rules of Civil Procedure for Agency Review, Rule 1.

Description of judgment or order:

Petitioner Weise challenges the final denial of his grievance of the DDOE Human Resources Department's selection process for DDOE Special Assistant Grade 14 - Job ID 22727, a position for which he applied and was qualified but not selected.

A. Concise statement of the Agency proceedings and the decision as to which review is sought and the nature of the relief requested by petitioner:

In July 2013, Petitioner Weise, a resident of the District of Columbia and experienced seven-year civil servant with the DDOE and the D.C. City Council, applied for DDOE position Special Assistant Grade 14 - Job ID 22727. Mr. Weise had previously served as DDOE's Special Assistant for nearly one year. Under D.C. Law 17-108, the "Jobs for D.C. Residents Amendment Act of 2007," District agencies must grant a 10-point preference to all qualified District resident applicants over qualified non-District residents for all employment decisions for positions in the Career Service. DDOE's hiring process involves an initial step of analyzing a candidate's qualifications using a point-based system on a "Rating and Ranking Schedule". Based on that schedule, applicants are then placed on Certification lists. Hiring managers are usually only given the Certification lists, which unlike the Rating and Ranking Schedule, do not record the number of points a candidate received. Within each certification category, however, even if a hiring manager has access to the Rating and Ranking Schedule, they have no obligation to favor any candidate over another regardless of their point score. Only those placed on the "Highly Qualified," "Well Qualified," or "Qualified" lists have the chance to be interviewed and possibly hired.

Petitioner Weise did not receive an interview, and later discovered, as reflected in the Grievance Denial Decision which is the subject of this Petition, that Respondent District of Columbia's practice is to apply the 10-point preference only *after* the Certification lists are determined. Thus, the District's policy applies the residency preference points at a stage when they have become irrelevant to a candidate's chances of being interviewed and possibly hired. Had Petitioner Weise's ten residency preference points been factored into the Certification list step of the hiring process – as clear legislative history indicates they were meant to – Petitioner Weise would have received a score sufficient for the "Highly Qualified" Certification list. As the Grievance Denial Decision attests, Weise was not awarded the 10-point residency preference until after the Certification lists were determined, and was not placed on the "Highly Qualified" list. Only individuals on the "Highly Qualified" list were interviewed and considered for selection.

Petitioner Weise filed a grievance with the D.C. Department of Human Resources, alleging, *inter alia*, that the District's method for applying the residency preference of the "Jobs for D.C. Residents Amendment Act of 2007" violates the Act, effectively subverts the Act's purpose, and enables the District to eliminate candidates for improper political reasons. In addition to violation of the Act by an improper method of awarding the 10-point residency preference, the Grievance also alleged that the District was in violation of federal law because it ultimately

selected a non-resident even though there were available residents in the “Highly Qualified” category, in violation of Public Law 101-168, Sec. 110B(a)(2)(A), 103 Stat. 1276-77.

The Human Resources Division of the D.C. Department of the Environment denied Weise’s grievance in a decision dated April 3, 2014 and served on Weise’s counsel on April 15, 2014.

Petitioner Weise seeks the following relief.

1. Appointment to the position listed in this complaint;
2. An order requiring Respondents to abate and refrain from any further violations of the Jobs for D.C. Residents Amendment Act of 2007 (D.C. Law 17-108, § 101, 54 D.C.R. 10993; Mar. 25, 2009, D.C. Law 17-353, § 223(a), 56 D.C.R 1117), Public Law 101-168, Sec. 110B(a)(2)(A), 103 Stat. 1276-77, and implementing regulations and guidelines, in relation to positions for which Petitioner Weise has submitted applications or in the future submits applications, as well as in relation to all D.C. residents who apply for jobs with the D.C. government;
3. An order prohibiting Respondents from interfering with any applications Petitioner Weise might make for positions in the District government in the future;
4. Reasonable attorneys’ fees for Petitioner Weise’s attorneys in this matter;
5. An order requiring Respondents to issue a notice, and provide copies to all their employees that (1) states that this Court found that Respondents violated the rights of Barry Weise, and ordered appropriate relief; (2) describes the laws protecting candidates for employment by the District of Columbia, (3) provides the name and address where complaints of violations may be sent, (4) informs employees that complaints must be filed within specified time limits after any adverse action.

B. Address of Respondent Agency or Official:

District of Columbia Department of the Environment
Human Resources Division
c/o Denise Rivera Portis, Associate Director
1200 First St. NE, 5th Floor
Washington DC 20002

D.C. Department of Human Resources
c/o Ms. Shawn Stokes, Director
One Judiciary Square
441 4th Street, NW Suite 330 South
Washington, D.C. 20001

C. Names and addresses of all other parties to the Agency proceeding:

Barry Weise
1816 Kalorama RD NW #301

Washington, D.C. 20009

D. Names and addresses of parties or attorneys to be served:

D.C. Office of the Attorney General
c/o Irvin Nathan, Attorney General
441 4th St. NW
Washington, DC 20001

District of Columbia Department of the Environment
Human Resources Division
c/o Denise Rivera Portis, Associate Director
1200 First St. NE, 5th Floor
Washington DC 20002

D.C. Department of Human Resources
c/o Ms. Shawn Stokes, Director
One Judiciary Square
441 4th Street, NW Suite 330 South
Washington, D.C. 20001

E. A copy of the Agency decision or order sought to be reviewed is attached to this petition.

F. Signature

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