

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108

Civil Service Commission G.L. c. 31, § 72 Inquiry re: Boston Fire Department

CSC Tracking No.: I-19-181

Appearance for Boston Fire Department:

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Commissioner:

Christopher C. Bowman

ORDER (CORRECTED)

On August 29, 2019, the Civil Service Commission (Commission) issued a decision affirming the Boston Fire Department (BFD)'s decision to terminate Firefighter Octavius Rowe. (See Rowe v. Boston Fire Department, CSC Case No. D1-18-074 (2019)).

A summary of the Commission's decision in Rowe stated in part that:

“Firefighter Rowe maintained a presence on social media and participated in various podcasts in which he regularly identified himself as a Boston firefighter. As part of those same public forums, he repeatedly spoke, wrote and/or posted bigoted comments that violate the norms of decency and various rules and regulations of the Boston Fire Department, including conduct unbecoming a firefighter, justifying his termination.”

As part of its decision in Rowe, the Commission also addressed allegations of disparate treatment, including allegations by the Appellant that another incumbent Boston firefighter may have engaged in similar behavior by allegedly posting racial comments on social media. Specifically, the Commission's decision stated:

“That leaves the allegations against, and the BFD’s response to, Firefighter MG. As referenced in the findings, Rowe’s counsel presented the BFD with two (2) pages that appear to be postings from a Facebook account. Each page has the name of MG as the person who posted the comments.

The posting on the first page stated:

“not sure who to post this to but here it is...today supposedly boston e-37/I26 claimed to have rescued a person from a fire or annunciation red . well guess what? they didn’t LADDER COMPANY 4 MADE THE SAVE....ACTUALLY F.F. JAMES CASHINS E-14 DETAILED TO L-4 MADE THE SAVE . this job has denigrated to a bunch of self serving douche bags who would falsify a report so that their useless company can recieve (sic) accolades they didn’t earn...these phony fucks are polishing their badges for an award THEY DIDN’T EARN. pass the word LADDER 4 AND F.F. CASHINS FROM E-14 DESERVE THE AWARD NOT THE PHONIES.”

The posting on the second page stated:

“all lives matter means shut up nigger????? Hahahahahaha funny i don’t see a mark on this man, his t-shirt isn’t ripped or slightly askew what channel can I follow this on?? cnn... nope msnbc...nope, bet...nope, fox news nope, local channels nope”

In response, the BFD asked Ed Dominguez [private investigator] to review MG’s social media activity. Dominguez was unable to find these posts on MG’s Facebook account. Rather, he only found limited postings, photographs, and other information. There were some indications in Mr. [G]’s profile of his employment with the Boston Fire Department, including photographs of him in his Boston Fire Department uniform [].

Disturbingly, Dominguez found that MG’s profile photograph depicted what appeared to be a photograph taken from inside of a vehicle of an older black male standing outside holding his hand up. According to Dominguez:

‘The hand appears to contain an unknown item. It is unclear what the photograph is depicting and the connection to Mr. [G]. Mr. [G] has used the photograph of this older black male as part of his Facebook profile cover photograph dating back to 2012. Ed Dominguez believes he recognizes this older black male as a homeless person that has panhandled on Morton Street since the early 1990s.’

The BFD brought Firefighter MG in for a ‘disciplinary interview at which time Firefighter MG admitted that he wrote and posted the ‘phony fucks ... douchebags’ posting, but denied that he wrote and/or posted the posting containing the words ‘shut up nigger’. According to the BFD, they were unable to determine whether MG wrote the second posting or not and only gave Firefighter MG a written warning for the first post.

Based on a review of the record currently before the Commission, I am not satisfied that the BFD pursued the same due diligence regarding the allegations against Firefighter MG that it did against Rowe for the following reasons. First, standing alone, the fact that Firefighter MG had, for years, purportedly used the picture of a black homeless man as his Facebook profile photo, should have been a bright red flag to the BFD. I only learned of that information after ordering the BFD to produce all records related to Dominguez's investigations of firefighters other than Rowe. There is nothing in the record to show that Firefighter MG was questioned about this inexplicable observation by Dominguez.

Second, the BFD witnesses stated at the hearing before me that they were unable to research this issue further, in part, because Rowe's counsel refused to produce any further information regarding the source of the postings. At my request, Rowe's counsel produced what was entered, post-hearing, as Appellant Exhibit 35. That document provides the names of two (2) Boston firefighters who, at a minimum, could provide the BFD with additional information as part of a meaningful investigation into whether Firefighter MG posted the second posting. There is no indication that the BFD followed up on that important information.

Third, the BFD's quick acceptance of Firefighter MG's denial regarding the second post is problematic, particularly given that the second post appears to be similar to the first post (which MG admitted to posting) in regard to tone and writing style.

In summary, when the BFD is presented with evidence that a Boston firefighter has allegedly used the n-word in a public posting, they should take every step possible to investigate the allegation and, if proven, take appropriate disciplinary action, up to and including termination. That has not happened here.

G.L. c. 31, § 72 states that:

'The commission or administrator [HRD], upon the request of an appointing authority, shall inquire into the efficiency and conduct of any employee in a civil service position who was appointed by such appointing authority. The commission or the administrator may also conduct such an inquiry at any time without such request by an appointing authority. After conducting an inquiry pursuant to this paragraph, the commission or administrator may recommend to the appointing authority that such employee be removed or may make other appropriate recommendations.' (emphasis added)

Based on the facts presented here, a Section 72 inquiry by the Commission is warranted. By separate order this day, the Commission is opening such an inquiry to ascertain what further action should be recommended by the Commission or taken by the BFD to further investigate the allegation that a BFD firefighter has allegedly used the n-word in a social media posting that has come to the Commission's attention in the course of the present appeal."

Consistent with the above findings and conclusions, the Commission, on August 29, 2019, opened a formal Section 72 inquiry under CSC Tracking No. I-19-181, stating in part that:

“The BFD has thirty (30) days to file a written response to this inquiry which should include recommended steps for conducting a further investigation of the above-referenced allegation.”

On September 30, 2019, the BFD provided the Commission with a one-page reply stating in part that:

“ ... the BFD has undertaken a further investigation of MG’s alleged use of the ‘n-word’. BFD has asked investigator Ed Dominguez to further investigate MG’s social media activity, along with that of [the two firefighters who provided the alleged post to Appellant Rowe via text message]. Upon receipt of Dominguez’s investigative report, BFD will interview all three members, after which it will make its factual conclusions, if any, and determine the appropriate action, if any, with regard to each.”

Based on the BFD’s reply, it appears that clarification is warranted regarding the Commission’s August 29th order.

Based on the plain language of Section 72, the Legislature clearly intended that the Commission, after conducting an inquiry regarding the alleged misconduct of a civil service employee, may recommend that appropriate disciplinary action be taken against that employee by the Appointing Authority, if warranted.

Here, prior to making said recommendation, the Commission ordered the BFD to provide the Commission with recommended steps for conducting a further investigation of the above-referenced allegations. While the BFD’s response to the Commission appropriately provides information regarding the steps the BFD will take to undertake this investigation, the BFD erroneously assumes that the Commission has now divested itself of jurisdiction of this matter. That is not the case. Rather, the Commission, after receiving all information related to the BFD’s further investigation, will make appropriate recommendations to the BFD, including recommendations regarding possible disciplinary action.

Further, to the extent that clarification is required, the Commission’s August 29th order did not state, imply or suggest that the BFD investigate the two firefighters who forwarded the above-referenced posting to Firefighter Rowe and any action by the BFD to do so would be inconsistent with the Commission’s August 29th order.

For all of the above reasons, the Commission hereby issues the following additional orders:

- I. The BFD shall complete its further investigation of the alleged misconduct referenced in the Commission’s August 29th order within sixty (60) days.
- II. Within ten (10) days of completing its further investigation, the BFD shall provide the Commission with all information regarding that further investigation, including, but not limited to, any findings and recommendations.

- III. Upon receipt and review of the BFD submission, the Commission will determine whether any additional information or review is warranted prior to making any appropriate recommendation to the BFD.

SO ORDERED.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on October 10, 2019.