

**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

**RECOMMENDATION REGARDING SECTION 72 INQUIRY**

*Background*

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 racist comments on social media. Specifically, the Commission’s decision stated:

As referenced in the findings, Rowe’s counsel presented the BFD with a posting from a Facebook account which had the name of MG as the person who posted it.

The posting stated:

“all lives matter means shut up [n-word]????? 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”

The Commission was not satisfied that the BFD pursued the same due diligence regarding the allegations against Firefighter MG that it did against Rowe.

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, the Commission determined that a Section 72 inquiry was warranted and opened such an inquiry, ordering the BFD to complete a further investigation regarding Firefighter MG and to provide the Commission with the results of that investigation, including findings and recommendations.

#### *BFD’s Further Investigation*

The BFD has now completed the further investigation and provided the Commission with its findings and recommendations.

As part of its investigation, the BFD determined that:

1. Firefighter MG did author the above-referenced post on his Facebook account approximately three years ago.

2. Firefighter MG denies authoring this post.
3. Firefighter MG's denials are untruthful.

Further, the BFD found that, absent additional information about MG's post (i.e. – the posts that may have come before and after), they were “reluctant to find that the use of the n-word [in MG's post] was meant to be pejorative.”

The BFD has found that a two-tour suspension of MG is warranted based on his untruthfulness.

### *Commission's Response*

The Commission has consistently found that use of racist comments by a civil service employee constitutes substantial misconduct that adversely affects the public interest.

In Duquette v. Department of Correction, 19 MCSR 337 (2006), the Appellant authored a racist cartoon that was meant to disparage a black supervisor. The Commission, upholding DOC's decision to terminate the Appellant, stated: "One would have hoped that this century's workplace had been purged of such offenses ... There is no place for such behavior in the workplace and there is no place for the Appellant — or others that would engage in such behavior -- at the Department of Correction." When the Appellant in that appeal argued that employees who engaged in similar behavior were not terminated in the past, the Commission stated that it would not " ... use those cases as a guide (or moral compass) to lower the bar on what is considered appropriate discipline against individuals who use racist statements ..." Id. at 340.

In Davis v. Newton Fire Department, 27 MCSR 16 (2014), the Commission upheld the termination of a fire fighter based primarily on his engagement in racist harassment. Specifically, the Appellant in that case, who is African American, referred to another firefighter, who is biracial, as a “house n-word”; a “corn bread” and “home grown,” all derogatory references to the firefighter's race, during a conversation about shift swaps.

In Lavallee v. Boston Fire Department, D1-19-059 (2019), the Appellant, while intoxicated, referred to a fellow black firefighter as a “fucking [n-word].” The Commission, in upholding the BFD's decision to terminate the Appellant, stated in part that the Appellant had: “engaged in substantial (and abhorrent) misconduct which adversely affects the public interest and constitutes a violation of various rules and regulations of the BFD, including conducting unbecoming a firefighter.”

Here, the BFD stated that, based on the limited information available three years after the posting in question was made, they were unable to determine whether the use of the n-word in MG's post was “meant to be pejorative”.

Even if the Commission were to accept the BFD's questionable conclusion regarding the

intent of MG's post, there is the troubling finding regarding untruthfulness. Specifically, after a thorough further investigation, the BFD reached the well-supported conclusion that : a) Firefighter MG did indeed author the post in question; and b) his (ongoing) statements to the contrary are untruthful.

The Commission has consistently held that untruthfulness is among the most serious offenses warranting discipline, particularly when it involves untruthfulness as part of an internal investigation.

In Garrett v. Haverhill, 18 MCSR 381 (2005) the Commission found that there was reasonable justification for the discharge of a police officer who repeatedly presented false testimony during the departmental investigation of the officer's misconduct.

In Meaney v. Woburn, 18 MCSR 129 (2005), the discharge of a police officer was upheld based, in part, on the officer's consistent dishonesty and "selective memory" during the departmental investigation of that officer's misconduct.

In Royston v. Billerica, 19 MCSR 124 (2006) the Commission upheld the discharge of a police officer who "knowingly lied to the Chief during a departmental investigation to cover up" his own misconduct.

In Deshamias v. City of Westfield, 23 MCSR 418 (2009), a police officer's discharge was upheld based primarily on the officer's dishonesty about a relatively minor infraction that occurred on his shift.

Here, the BFD has found that an incumbent firefighter has been continuously untruthful during a departmental investigation regarding whether he authored a post with the n-word in it.

As referenced above, the Commission's authority here, after conducting an inquiry under G.L. c. 31, s. 72, is limited to "recommend[ing] ..that such employee be removed or [to] make other appropriate recommendations" to the Appointing Authority.

Based on a careful review of the record, including the BFD's own findings, I recommend that the BFD consider implementing discipline beyond the relatively short-term (two-tour) suspension currently proposed.

Finally, the BFD has indicated to the Commission that it is initiating a mandatory "Respectful Workplace" training program that will make clear that the use of racist comments is unacceptable in any context. That training program should, among other things, emphasize that failing to comply with that directive, on a going forward basis, will warrant serious discipline, up to and including termination.

The Commission's inquiry under Tracking No. I-19-181 is hereby *closed*.

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 January 30, 2020.

Notice to:

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