

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

JOSEPH BRANGWYNNE,
DAVID FEYLER & WILLIAM KING,
Appellants

v.

E-21-092

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellants:

Pro Se
Joseph Brangwynne
David Feyler
William King

Appearance for Respondent:

Melissa Thomson, Esq.
Human Resources Division
100 Cambridge Street
Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ORDER

On April 27, 2021, Joseph Brangwynne, David Feyler and William King (Appellants), all members of the Town of Billerica (Town)'s Fire Department (BFD), filed a non-bypass equity appeal with the Civil Service Commission (Commission) stating: "Smith v. Billerica (G2-18-079) ordered the promotional list for fire captain, established 4/11/2017, remain active until Smith was promoted or bypassed. Smith was promoted 4/20/21. We are requesting the subsequent list held in abeyance now receive an adequate length of certification."

On June 8, 2021, I held a remote pre-hearing conference which was attended by Appellants Brangwynne and King and counsel for the state's Human Resources Division (HRD).

The following facts are not in dispute:

1. On December 20, 2018, the Commission, after concluding that the bypass of then-Lieutenant Jason Smith was not justified, issued a decision allowing Lt. Smith's appeal and ordered appropriate remedial relief. ([Smith v. Billerica](#), 34 MCSR 400 (2018)); affirmed by the Superior Court on November 4, 2020 ([Billerica v. Smith](#), Middlesex Sup. Ct. No. 2019-00176 (2020)).
2. The Commission's decision in [Smith](#) ordered in part that the eligible list for Fire Captain in place at the time, which had been established on April 11, 2017, remain in place until Smith was subsequently promoted or bypassed for the next Fire Captain vacancy.
3. On April 2, 2021, Smith was promoted to the next available vacancy for Fire Captain.
4. But for the Commission's order, a new eligible list would have been established on July 1, 2019.
5. Concurrent with the promotional appointment of Smith, the new eligible list is now effective April 2, 2021.
6. Appellants Brangwynne and Feyler are tied for second on the new eligible list and Appellant King is ranked fourth.
7. Other than the vacancy filled by Smith, no other Fire Captain vacancy has occurred in the BFD since July 1, 2019, when the new eligible list would have been established had it not been for the remedial relief ordered by the Commission in [Smith](#).

Discussion / Analysis

As part of the pre-hearing conference, the Appellants indicated that they were primarily seeking a clarification regarding when the “new” eligible list would expire and, depending on the expiration date, whether and how an extension could be granted.

Section 25 of G.L. c. 31 states in relevant part that:

“ ... Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: (1) such eligibility is extended by law because such persons are in the military or naval service; (2) the administrator is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order; or (3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established ...”

Generally, HRD has a longstanding practice of revoking an eligible list two (2) years after it was established unless no new eligible list has been established, in which case HRD extends the eligible list to three years from the first day of the month in which the underlying promotional examination was given. Here, in which no new eligible list has been established, that would result in the eligible list for Billerica Fire Captain expiring on November 1, 2021.

I see no reason at this time for the Commission to intervene in regard to the November 1, 2021 expiration date. Setting aside the one vacancy which was the subject of the appropriate remedial relief in the Smith decision, there have been no other vacancies for which the Appellants should have been considered had the eligible list been established on July 1, 2019. The Appellants referenced a potential vacancy occurring in July 2021. If that should occur, two of the Appellants, currently tied for second on the eligible list, would be eligible for consideration consistent with the 2N+1 statutory formula.

Further, any intervention by the Commission at this time would be premature. Any request for an extension of the eligible list from the current expiration date of November 1, 2021 would need to be initiated by the Town and reviewed by HRD.

Conclusion

For all of the above reasons, the Appellants' appeal under Docket No. E-21-092 is ***dismissed.***

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 17, 2021.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Appellants

Melissa Thomson, Esq. (for Respondent)