

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

Tracking No. I-21-203

Re: Investigation of Police Promotional Appointments in the City of Brockton's
Police Department

RESULTS OF COMMISSION INVESTIGATION

Background

On January 4, 2021, Ernest S. Bell (Officer Bell), a police officer in the City of Brockton (City)'s Police Department (BPD), filed a non-bypass equity appeal with the Civil Service Commission (Commission), asking that his name be placed at the top of the then-current eligible list for police sergeant in Brockton.

Officer Bell argued that the BPD, in violation of the collective bargaining agreement, failed to fill a vacant sergeant position after the BPD became aware that Sgt. A, the incumbent, would not be returning to that position. Further, Officer Bell argued that the sergeant's decision to wait to file his application for disability retirement was not coincidental. Thus, he argued that he was aggrieved, and asked that he be placed at the top of next eligible list, effectively arguing that he should be guaranteed consideration for the vacancy likely to become available once the sergeant's retirement application was approved.

Based solely on the arguments raised at that point, it appeared that, *when considering the alleged facts most favorable to the Appellant*, his non-promotion from the prior eligible list may have, arguably, been caused by the actions of a colleague who may have delayed his retirement to prevent the Appellant from being promoted.

As there was a question of whether, even when viewing the facts most favorably to the Appellant (as they had been presented to the Commission at that point), the Appellant would be entitled to any relief, the Commission provided the BPD with thirty days to submit a Motion for Summary Decision and Officer Bell with thirty days thereafter to file a reply.

After reviewing the parties' submissions, the Commission concluded that Officer Bell's arguments were far too speculative to show that he qualified as an aggrieved person who was harmed through no fault of his own and that the matter appeared to more squarely involve whether there was a violation of the *collective bargaining agreement*, as opposed to civil service law.

However, there were troubling allegations raised in Officer Bell's brief that: (a) there has been a "well-known and well-established policy" in the Brockton Police Department to pay officers out on injured leave to retire in order to create promotional opportunities prior to the expiration of an eligible list; and (b) Officer Bell was encouraged by three members of the command staff to engage in such behavior here.

While Officer Bell did not allege that the retiring sergeant sought such a "payment" from him or anyone else who would stand to potentially benefit from the timing of the sergeant's retirement, the *allegation* was serious enough and sufficiently related to whether there have been violations of basic merit principles to warrant further inquiry.

Commission Order for City to conduct investigation

Although the Commission dismissed Officer Bell's non-bypass equity appeal, with a future effective date, on November 4, 2021, the Commission simultaneously, under Tracking No. I-21-203, opened an inquiry regarding the allegations raised by Officer Bell and ordered the BPD, within 90 days, to investigate the allegations and reports its findings to the Commission.

Results of City's investigation

On January 27, 2022, the BPD submitted an investigative report completed in response to the Commission's November 4th decision and Officer Bell submitted a reply on February 8, 2022. The Commission carefully reviewed the entirety of the investigation report, including all addenda, as well as Officer Bell's reply. The Commission saw no reason to revoke the dismissal of Officer Bell's appeal but opted to keep the Commission's investigation open.

Regarding the dismissal of Officer Bell's appeal, the Commission noted that Officer Bell did not allege, as part of his appeal to the Commission, nor as part of the City's investigation, that the retiring sergeant asked him for money in exchange for retiring prior to the expiration of the police sergeant eligible list upon which he was ranked first at the time. Also, as noted in the Commission's November 4th decision, a series of unrefuted documents submitted by the City appeared to show, overwhelmingly, that the sergeant's retirement date was tied more to bona fide medical issues, including his surgery date and his treating physician's desire to wait a period of time post-surgery prior to rendering any final medical opinion regarding his fitness for duty, rather than being tied to the date upon which a new eligible list was established. In short, even when viewing the facts in a light most favorable to the Appellant, his failure to be promoted from the eligible list before it expired was not the result of any so-called "pay-to-play" scheme. Thus, the Appellant was not able to show that he was an aggrieved person who should be granted relief by the Commission.

Commission keeps open and assumes responsibility for investigation

The Commission concluded that the City's investigation, which had indicia of being result-driven and possibly tainted by personal animus against the Appellant based on his allegations, was not sufficient. For that reason, the Commission assumed responsibility for the investigation on a going-forward basis.

Commission's Further Investigation

As part of its further investigation, the Commission reviewed all of the documents submitted by the BPD as well as the results of the BPD interviews. Further, in October 2022, the Commission interviewed City Councilor Winthrop Farwell who previously served as a ranking Brockton Police Officer. He discussed rumors of pay-to-play in the 1980s but, despite being “looped in”, was not aware of any such impermissible practice in the present day.

In November 2022, the Commission interviewed Brockton Police Captain William Hallisey. Captain Hallisey mentioned an allegation dating back to 1994 and discussed a rumor regarding an incident in 2009 which appears unrelated to the allegations raised by Officer Bell.

Also, in November 2022, the Commission interviewed Officer Bell. Officer Bell was unable to offer any supportable evidence of misconduct by others but repeated that he *suspected* that the retiring sergeant referenced in his appeal was looking for Officer Bell to give him a handout and that the now-retired Brockton Police Chief had encouraged him (Bell) to do so—which the now-retired Police Chief denied during the City’s investigation.

Based on a thorough, objective view of the record, there is insufficient evidence to show that payments or other incentives were made or offered to members of the Brockton Police Department to influence the timing of their retirements in recent history; nor is it likely that any further review by the Commission would produce any such evidence.

For these reasons, I recommend that the Commission close its investigation under Tracking No. I-21-203.

Civil Service Commission

Robert L. Quinan, Jr., Esq.
General Counsel

On August 10, 2023, the Commission (Bowman, Chair; McConney, Stein and Tivnan, Commissioners [Dooley-Absent]) voted to accept the recommendation of the General Counsel and close the investigation.

Notice:

Ken Anderson, Esq. (counsel for Officer Bell)

Aileen Bartlett, Esq. (counsel for City of Brockton)