

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

(617) 979-1900

**MARC C. DARMOFAL and
FRANK M. SNIEZEK**

Appellants

v.

**TOWN OF FAIRHAVEN and
HUMAN RESOURCES DIVISION,**

Respondents

DOCKET NUMBERS:

G2-24-148

G2-24-156¹

Appearance for Appellants:

Joseph G. Donnellan, Esq.
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100 River Ridge Drive, Suite 203
Norwood, MA 02062

Appearance for Respondent:

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Appearance for HRD:

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Commissioner:

Paul M. Stein

SUMMARY OF INTERIM DECISION

The Commission, after a thorough review of legislative history and the actions by the Town of Fairhaven, concluded that, based on the facts presented here, a *Town Meeting vote* was not sufficient to remove the Town from civil service as the Town originally adopted civil service through a *ballot question during a Town election*. The Commission has withheld a final determination on the appropriate remedial relief pending a status conference with all impacted stakeholders.

¹Pursuant to Procedural Order dated October 22, 2024, these two appeals are consolidated solely for the purpose of adjudicating the threshold issue of jurisdiction.

INTERIM DECISION ON MOTIONS FOR SUMMARY DISPOSITION

On August 28, 2024 and October 7, 2024, respectively, the Appellants, Marc C. Darmofal and Frank M. Sniezek, currently patrol officers with the Town of Fairhaven Police Department (FPD), appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b), from their respective bypasses for promotion to the position of FPD Police Sergeant in or about September 2024.² The Commission held remote pre-hearing conferences on September 23 and 24, 2024 at which time the Town and the Appellants agreed that the two appeals involved substantially identical issues of fact and law concerning the Town's claim that the Commission lacked jurisdiction over the appeal because, prior to the promotions in question, Town Meeting had voted to remove the FPD from the civil service system. By Procedural Order, as amended on October 22, 2024, the Commission consolidated the two appeals and added the Human Resources Division (HRD) as a party, solely for the purposes of adjudicating the threshold jurisdictional issue.

Pursuant to the Procedural Order, on October 25, 2024, the Appellant filed a Consolidated Motion for Summary Disposition, and the Town filed a Motion to Dismiss, to which oppositions were filed by each of the parties, respectively. HRD filed a Position Statement on November 13, 2024. I held a motion hearing at the Commission's Boston offices which was digitally recorded.³ The motion papers, including exhibits attached thereto, as well as argument of counsel, were introduced into the record at the hearing (*CSC Motion Exhibits 1 through 7*) and the Commission

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ A link to the digital recording of the motion hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

has taken administrative notice of certain relevant legislation and legislative history (*CSC Post Hearing Exhibits PH.8 through PH.12*). The Commission also received certain other public records and other documentation submitted by the parties after the motion hearing which have been marked for identification. (*CSC.PH.A-ID & CSC.PH.B-ID*)

After carefully considering the evidence and argument of counsel, I conclude that the Town's motion must be denied and the Appellants' motion must be allowed, in part. The process used by the Town to purportedly remove the FPD from the civil service system was flawed and ineffective and all promotional appointments made by the Town to positions in the FPD have been, and remain to this date, subject to the requirements of the civil service law and rules. The Appellants correctly contend that they were unlawfully bypassed in violation of their civil service rights, by their non-selection for promotions to the positions of FPD Sergeant in violation of their civil service rights.

The Commission orders the parties to confer and submit, either separately or jointly, a plan to remediate the violation of the Appellant's civil service rights as well as to address what other or additional action, if any, may be required by the Commission to remediate the civil service rights of the Appellants and/or other Fairhaven police and fire sworn personnel or candidates for appointment affected by this Decision.

FINDINGS OF FACT

Based on the submission of the parties and taking administrative notice of all relevant matters, pertinent law and reasonable inferences therefrom, I find the following facts are not in dispute:

Fairhaven Accepts Provisions of Civil Service Law

1. The Town of Fairhaven (Fairhaven) is a municipality which has been incorporated as a town within the Commonwealth since 1812. In 1953, Fairhaven had a population of approximately 12,000 inhabitants and 7,097 registered voters; in 2023, Fairhaven had a population of 14,679

inhabitants and 12,997 registered voters. (CSC PH.Exh.B-ID [CSC0025-ID - [Fairhaven 1953 Annual Town Report](#)]; Administrative Notice [[2023 Fairhaven Annual Report](#)])

2. Through a town election conducted on February 2, 1953, by a vote of 2579 (YES) to 1150 (NO), Fairhaven voters approved a ballot question which read:

QUESTION #2: Shall the Town of Fairhaven vote to accept the provisions of section 47 of Chapter 31, placing the members of both the official and labor service of the Town of Fairhaven within the classified civil service?

(CSC Motion Exh.1 [CSC0023]; CSC Motion Exh.2 [CSC0057]; CSC Motion Exh.4 {CSC 0071}; CSC Motion Exh.5 [CSC0105, 0110, 123])

3. In the Fairhaven 1953 Annual Town Report, two entries appear that relate to the 1953 ballot vote to place Fairhaven's employees within the classified civil service:

- The Board of Fire Engineers reported:

Civil Service was forced upon the Department due to a vote at the last election, but it would seem at this date that ways and means have been found to eliminate the callmen and retain Civil Service for the permanent men. Through the efforts of Representative F. Eben Brown, who drew up a bill for that purpose and presented it, we feel that the answer has been found. This was in accord with the unanimous vote of the call men of the Department.

- The Chief of Police reported:

Police training has been given to officers of this department by me to better prepare them for the qualifying Civil Service Examination to be given at some future date. The officers are very responsive and are interested in furthering their knowledge of crime prevention and procedure.

(CSC PH.Exh.B-ID[CSC0026-ID to 0028-ID]; See [Fairhaven 1953 Annual Town Report](#))

4. On petition of Albert E. Santos and others (including certain selectmen) for legislation "relative to the acceptance by Fairhaven of the provisions of civil service laws applying to call members of its fire department", State Representative Brown filed a bill in the 1954 Session of the General Court, marked as House Bill No. 359, and referred to the Committee on Civil Service, which provided:

AN ACT RELATIVE TO THE ACCEPTANCE BY THE TOWN OF FAIRHAVEN OF THE PROVISIONS OF THE CIVIL SERVICE LAWS

SECTION 1. Notwithstanding the action of the voters of the town of Fairhaven in accepting the provisions of the civil service laws, said provisions shall not apply to the call members of the fire department of said town.

SECTION 2. This act shall take full effect upon its acceptance by a majority of town meeting member of said town present and voting thereon at a town meeting, but not otherwise.

(CSC PH.Exh.12 [CSC0184, 0189, 0196])

5. Also introduced in the 1954 Session of the General Court and referred to the Committee on Civil Service, was a petition of State Senator Edmund Dinis “for legislation to place certain employees of the town of Fairhaven under civil service”, Senate Bill No.7. This bill provided:

AN ACT PLACING CERTAIN EMPLOYEES OF THE TOWN OF FAIRHAVEN UNDER CIVIL SERVICE

SECTION I. Notwithstanding any provision of law to the contrary, all temporary officers or employees of the town of Fairhaven who were so employed on May fifteenth, nineteen hundred and fifty-three and, who had been employed for six months or less immediately prior to said date, on which date the said town voted to accept the provisions of chapter thirty-one of the General Laws, and who were continued as temporary officers and employees of said town under the provisions of section forty-seven A of said chapter, are hereby deemed to be permanently appointed under civil service without any probationary period.

SECTION 2. This act shall take effect as of the fourth day of February, nineteen hundred and fifty-three.

(CSC PH.Exh.12 [CSC0185, 0190])

6. On January 24, 1954, the Committee on Civil Service reported House Bill No. 2296, which provided:

AN ACT CLARIFYING THE ACCEPTANCE OF THE PROVISIONS OF THE CIVIL SERVICE LAWS BY THE TOWN OF FAIRHAVEN

SECTION 1. Notwithstanding any provision of law to the contrary, all persons employed in either permanent or temporary offices or positions of the town of Fairhaven, except call members of the fire department, on May fifteenth, nineteen hundred and fifty-three, and who are employed on the effective date of this act, are hereby deemed to be permanently appointed to the office or position held by them on said May fifteenth, in accordance with the civil service law and rules.

SECTION 2. Notwithstanding the action of the voters of the town of Fairhaven on February second, nineteen hundred and fifty-three, the provisions of the civil service law and rules shall not apply to the call members of the fire department of said town.

SECTION 3. This act shall take full effect upon its acceptance by a majority of the town meeting members of said town present and voting thereon at a town meeting, but not otherwise.

(CSC PH.Exh.12 [CSC0186 to 0187, 0191])

7. House Bill No. 2296 was enacted as written and approved by the Governor as Chapter 28 of the Acts of 1954 on January 27, 1954. *(CSC PH.Exh.12 [CSC00192 to 0199])*

8. On March 13, 1954, a Fairhaven Special Town Meeting voted unanimously to accept the provisions of Chapter 28 of the Acts of 1954. *(CSC Motion Exh.1 [CSC0019 -0021])*

The 2022 FPD Sergeant Assessment Center and Eligible List

9. The Appellants, Marc C. Darmofal and Frank M. Snizek are tenured FPD police officers who currently hold the position of patrol officer.

10. The state's Human Resources Division (HRD) approved a delegation agreement to permit Fairhaven to conduct a sole assessment center promotional civil service examination for selection of candidates for the position of FPD Sergeant. *(CSC Motion Exh.5 [CSC0103]; Administrative Notice [HRD Pre-Hearing Information Packet])*

11. On or about July 1, 2022, HRD established a civil service eligible list for FPD Sergeant based on the results of the sole assessment center containing nine names in rank order:

1	Darmofal	Marc D
2	Guerreiro	Janis M
2	Snizek	Frank M
4	Penha Jr	Jerome
5	Jodoin	Jillian
6	Chasse	Kevin W
7	Benoit	Ryan A
7	Mello	Wayne A
9	Bettencourt	Jerald I

(CSC Motion Exh.5 [CSC0103]; Administrative Notice [HRD Pre-Hearing Packet dated 9/20/24])

12. The 2022 FPD eligible list was scheduled to expire on July 1, 2024, but in the absence of another eligible list scheduled to be established to replace it, has been extended by HRD until April 30, 2025. (*Administrative Notice [HRD Pre-Hearing Packet dated 9/20/24]*)

2023 Fairhaven Town Meeting Vote Removing Police and Fire from Civil Service

13. At the May 6, 2023 Fairhaven Annual Town Meeting, Articles 14 and 15 were approved by a majority of the town meeting members.⁴ These articles provided:

Article 14: To see if the Town will vote to revoke the acceptance of Civil Service Laws for uniformed members of the Police Department in the Town of Fairhaven, effective July 1, 2023, thereby removing the police force from the provisions of the Civil Service Laws, and the rules and regulations relating to the same, provided that this revocation will not affect the Civil Service status of existing personnel in their current positions; or take any other action relative thereto.

Article 15: To see if the Town will vote to revoke the acceptance of Civil Service Laws for uniformed members of the Fire Department in the Town of Fairhaven, effective July 1, 2023, thereby removing the Fire Department from the provisions of the Civil Service Laws, and the rules and regulations relating to the same, provided that this revocation will not affect the Civil Service status of existing personnel in their current positions; or take any other action relative thereto.

(*CSC Motion Exh.1 [CSC0012, 0027-0029]*)

14. Neither the Commission nor HRD knew of the May 2023 Town Meeting vote until November 2023, until Fairhaven raised it during an earlier appeal involving the selection of a new Police Chief. (*Administrative Notice [HRD ltr dated 11/2/23, CSC email dated 11/5/2023 & Fairhaven Notice rec'd 11/6/2023 in Botelho v. Fairhaven, CSC No. G2-23-193]*)⁵

⁴ Fairhaven utilizes a representative form of town meeting. (*Fairhaven Bylaw, Appendix A502, [Town of Fairhaven, MA Special Acts](#)*)

⁵ Eventually, Fairhaven agreed that the police chief's position was placed into civil service through a town ballot vote in 1939, was not removed by the 2023 town meeting vote, and the police chief's position remained in civil service. Fairhaven reopened the selection process for the police chief anew to be conducted pursuant to civil service law and rules. *Botelho v. Town of Fairhaven*, 37 MCSR 61 (2024). A separate civil service appeal by the unsuccessful candidate for police chief is being issued the same day as this decision. See *Botelho v. Town of Fairhaven*, CSC No. G2-23R-193,

15. Eventually, HRD took an official position that Fairhaven could remove its fire and police force from civil service only through a special act of the legislature and not by a town meeting vote, and that, therefore, all members of the fire and police force remained in civil service. (*CSC Motion Exh.5 [CSC0101-0108]; Administrative Notice [CSC email to HRD 12/28/23 & HRD email dated 1/5/24 in Botelho v. Fairhaven, CSC No.G2-23-193]*)

16. In December 2023, the Commission received a related petition for investigation from the Fairhaven Firefighters Local 1555, and others, to “clarify the civil service status” of its members, to which the Fairhaven Police Brotherhood Union, NEPBA Local 64 was subsequently added as a petitioner at their request. After efforts proved unsuccessful to facilitate an opinion from the Attorney General as to whether Fairhaven had properly removed its fire and police departments from civil service, the investigation request was closed on December 5, 2024, noting that the same issues were pending in the jurisdictional motions in these appeals. (*CSC Motion Exh.2 [CSC0042-0047] CSC Motion Exh.5 [CSC0108-0113]; CSC Administrative Notice [Request for Investigation dated 12/19/2024, Town’s letter to AGO dated 4/4/2024, NEPBA Local 64 letter dated 4/7/2024, AGO letter dated 11/6/2024, Commission Response to Request for Investigation dated 12/5/24], in re: Appointments and Promotions in the Fairhaven Police and Fire Departments, No. I-23-251]*)

The 2024 FPD Promotions and the Appellants’ Appeals

17. In or about March 2024, Fairhaven, operating on its assumption that the police department was no longer in civil service, conducted a non-civil service selection process for patrol officers to be promoted to the rank of Sergeant and established its own list of candidates eligible for promotion. (*Administrative Notice [Attachments to Appellants’ Claims of Appeal]*) See also [Fairhaven Neighborhood News 9/11/2024\]](#))

18. On or about August 26, 2024, Fairhaven promoted Patrol Officer Janis M. Guerreiro and Patrol Officer Jerome Penha, Jr., to the rank of FPD Sergeant. (*Administrative Notice [Attachments to Appellants' Claims of Appeal]*; [*Fairhaven Neighborhood News 9/11/2024*](#))

19. On September 16, 2024, Fairhaven promoted Patrol Officer Wayne A. Mello and Patrol Officer Jerald I. Bettencourt to the rank of FPD Sergeant. (*Administrative Notice [Fairhaven Neighborhood New 9/18/2024]*)

20. As stated in Finding No. 12 above, the Appellant, Marc D. Darmofal, was ranked first on the FPD Police Sergeant civil service eligible list established by HRD, higher than all four of the officers promoted to FPD Police Sergeant in August or September of 2024. (*CSC Motion Exh.5 [CSC0103]*; *Administrative Notice [HRD Pre-Hearing Packet dated 9/20/24]*)

21. As stated in Finding No. 11 above, the Appellant, Frank M. Snizek, was ranked second on the FPD Police Sergeant civil service eligible list established by HRD, tied with Officer Guerreiro and higher than one of the officers promoted in August 2024 and both of the two officers promoted to FPD Police Sergeant in September 2024. (*CSC Motion Exh.5 [CSC0103]*; *Administrative Notice [HRD Pre-Hearing Packet dated 9/20/24]*)

22. In making the 2024 FPD promotions, Fairhaven was acting on the assumption that the May 2023 Town Meeting vote had removed the positions of FPD Police Sergeant from the requirements of civil service law and neither appellant received a statement of reasons related to them being bypassed for promotion by lower ranked candidates on the civil service eligible list. (*CSC Motion Exh.1 [CSC0002]*; *CSC Motion Exh.2[CSC0032-0033]*)

APPLICABLE LAW

All parties agree that G.L. c. 4, § 4B governs the process by which Fairhaven may rescind acceptance of the civil service law to positions within the FPD. That law provides, in relevant part:

At any time after the expiration of three years from the date on which a law to take effect upon its acceptance by a city or town or a municipality as defined in section four, or is to be effective in such cities, towns or municipalities accepting its provisions, has been accepted in any such city, town or municipality such statute may be revoked in the same manner as it was accepted by such city, town or municipality [subject to certain restrictions not relevant here]

G.L. c. 4, § 4B, added by St. 1979, c. 518, as amended by St.1980, c. 80 and St.1981, c. 782 (*emphasis added*)⁶

The dispute here concerns the “manner” in which the applicability of civil service law to the members of the FPD “was accepted” by Fairhaven for purposes of G.L. c. 4, Section 4B. The Appellants contend that the FPD initially came into civil service through the 1953 town-wide *ballot* vote “to accept the provisions of section 47 of Chapter 31, placing the members of both the official and labor service of the Town of Fairhaven within the classified civil service” and, therefore, Fairhaven can revoke its acceptance of civil service law as to members of the FPD only by a town-wide ballot vote. Fairhaven contends that the majority vote of the members of the March 13, 1954 town meeting accepting the provisions of Chapter 28 of the Acts of 1954 as provided by that special act was the “manner” in which Fairhaven accepted the provisions of civil service law applicable to the FPD and, therefore, the February 2023 *town meeting* vote was effective to rescind that action. HRD contends that Fairhaven came into civil service in part through Chapter 28 of

⁶ Section 4A of G.L. c. 4, added by St. 1952, c. 223, specifies that a ballot vote procedure may be employed to revoke the acceptance of any special act of the general court, but this statute is not applicable to “any action taken under chapter thirty-one [the civil service law]” and provides, further, that no revocation under this section “shall affect in any manner . . . any civil service rights”

the Acts of 1954 and that Fairhaven cannot remove members of the FPD from civil service without another special act of the legislature authorizing such action.

When a statute provides that it shall take effect upon acceptance by a town, the general rule for its acceptance is prescribed by G.L. c. 4, § 4, which prior to 1962, provided:

Wherever it is provided that a statute shall take effect upon its acceptance by a city or town, such acceptance shall, except as otherwise provided in such statute, be, in a city, by vote of the city council or, in a town, by vote of the inhabitants thereof at a town meeting.

G.L. c. 4, § 4 (Ter.Ed.1932).⁷

At the time of the 1953 Fairhaven ballot vote, G.L. c. 31, as amended by St. 1945, c. 701, prescribed the manner in which civil service laws could be accepted by a city or town:

Section 47. This chapter shall be in force with respect to the official and the labor service in all cities of the commonwealth of one hundred thousand or more inhabitants, whether or not such cities have accepted this chapter or corresponding provisions of earlier law. This chapter shall be in force in all cities of the commonwealth less than one hundred thousand inhabitants with respect to the official service and shall be in force with respect to the labor service in cities of less than one hundred thousand inhabitants which have accepted the corresponding provisions of earlier laws or accept the pertinent provisions of this chapter by vote of the city council.

This chapter shall be in force with respect to the official or the labor service, or both, in every town of more than five thousand inhabitants using official ballots at town elections which accepts the provisions of this chapter relative thereto by vote in answer to a question placed on the official ballot at an annual town election as hereinafter provided, and in every such town not using official ballots at town elections which accepts said provisions at an annual town meeting; and all applicable provisions of this chapter shall be in force in every town of more than twelve thousand inhabitants which has accepted said provisions or corresponding provisions of earlier laws by vote at a town meeting.

Section 48. Regular or permanent members of police and fire forces of cities, and regular or permanent members of police and fire forces and call fire forces of such towns as, with reference to said forces, respectively, accept the provisions of this section as hereinafter provided

In cities, acceptance of the provisions of this section relative to any such officer shall be by vote in answer to a question placed on the official ballot at a regular city election as hereinafter provided. . . .

In towns using official ballots at town elections, acceptance of the provisions of this section relative to any such officer or force shall be by vote in answer

⁷ Section 4 of G.L. c. 4 has been, and currently, remains substantively the same. See G.L. c. 4, §4, as amended by St.1962, c. 182; St.1966, c. 253; St.1977, c. 870, § 1; and St.2004, c. 122, § 1.

to a question placed on the official ballot at an annual town election as hereinafter provided, and in towns not using official ballots at town elections such acceptance shall be by vote at an annual town meeting. . . .

Acceptance of this section or corresponding provisions of earlier laws with reference to any of the aforesaid officers or forces shall not prevent subsequent acceptance of this section with reference to any or all of such officers or forces as to which there has been no acceptance of said section or provisions.

...
G.L. c. 31, § 47, as amended through St. 1945, c. 701, § 2.

Prior to 1945, G.L. c. 31, § 47 provided:

This chapter shall continue in force in all the cities of the commonwealth and in all towns or more than twelve thousand inhabitants which have accepted corresponding provisions of earlier laws. and shall be in force in all such towns which hereafter accept it by vote at a town meeting. The provisions of this chapter and the rules established under it relative to employment of laborers designated as the "labor service" shall not be in force in any city of less than one hundred thousand inhabitants, which has not heretofore accepted the corresponding provisions of earlier laws, until said provisions are accepted by the city council." G.L. c. 31, § 47 (Ter.Ed.1932) (*emphasis added*).

Prior to 1945, G.L. c. 31, § 48 provided, in relevant part:

A town . . . may accept this section as to its regular or permanent police and fire forces, or as to either of them. Acceptance as to the fire force shall include regular members and may include call members, and a town which has accepted this section or the corresponding provisions of earlier laws as to regular firemen may afterward accept it as to call firemen. . . . G.L. c. 31, § 48 (Ter.Ed.1932) (*emphasis added*).

ANALYSIS

In February 1953, pursuant to the manner prescribed by Chapter 31, and by a 2-1 margin, the majority of Fairhaven voters cast ballots in an official town election to "accept the provisions of section 47 of Chapter 31, placing the members of both the official and labor service of the Town of Fairhaven within the classified civil service provisions of civil service law." Thus, pursuant to G.L. c. 4, § 4B, the manner in which members of the Fairhaven police and fire departments may be removed from the applicability of Chapter 31 must be by the same form of action, *i.e.*, a majority vote at an official town election.⁸ The subsequent enactment of St. 1954, c. 28 and the acceptance

⁸ The validity of Fairhaven's prior piecemeal approach to removing certain town positions from civil service law is not before the Commission in this appeal and this Decision does not address any of those other actions at this time. *See, e.g.*, CSC Motion Exh. 4 [CSC0100-0101; CSC Motion Exh. 5 [CSC0111-0112]; CSC PH Motion Exh. B for Identification [CSC0031-0033].

of that special act by a subsequent vote of town meeting members did not alter the effectiveness of the 1953 ballot vote that accepted the protections of civil service law for Fairhaven police and fire department members except for “clarifying” that the acceptance did not apply to call firefighters who were included within the scope of the question that voters had approved.

The plain language of the 1953 ballot vote leaves no room for ambiguity. The voters expressly accepted the provisions of Chapter 31 and placed Fairhaven’s official service and labor service employees under civil service status. The ballot vote conformed in all respects to the requirements for such acceptance then provided by G.L. c. 4 and G.L. c. 31.

Moreover, the contemporaneous statements by Fairhaven’s Police Chief and Fire Chief in Fairhaven’s 1953 Annual Report make clear that both Chiefs understood that the 1953 ballot vote placed all members of their respective departments within civil service. The Police Chief’s report noted the keen interest of his officers in having become civil service employees and described the steps he had begun to train the officers for the upcoming civil service qualifying examinations they would be taking. The Fire Chief acknowledged that the 1953 ballot vote had “forced” all members of the Fire Department into civil service status, “but it would seem at this date that ways and means have been found to eliminate the callmen and retain Civil Service for the permanent men.” (*emphasis added*)

Second, the plain language and legislative history of St. 1954, c. 28, shows that it expressly “clarif[ied]”, and did not replace, Fairhaven’s 1953 vote that placed Fairhaven’s fire and police departments into civil service status. The title of Chapter 28 of the Acts of 1954 is: “AN ACT CLARIFYING THE ACCEPTANCE OF THE PROVISIONS OF THE CIVIL SERVICE LAWS BY THE TOWN OF FAIRHAVEN. Section 2 of that special act provides: “Notwithstanding the action of the voters of the town of Fairhaven on February second, nineteen hundred and fifty-three [*i.e. making all members of the fire department*

subject to civil service law], the provisions of the civil service law and rules shall not apply to the call members of the fire department of said town.” This language tracked the language of House Bill 359, introduced on “petition of Albert E. Santos and others (selectmen)” entitled “AN ACT RELATIVE TO THE ACCEPTANCE BY THE TOWN OF FAIRHAVEN OF THE PROVISIONS OF THE CIVIL SERVICE LAWS” and is consistent with the Fairhaven Fire Chief’s statement in the 1953 Annual Town Report. In addition, the Committee on Civil Service Report noted that another bill (S.7) entitled: “AN ACT PLACING CERTAIN EMPLOYEES OF THE TOWN OF FAIRHAVEN UNDER CIVIL SERVICE” had been filed but was not recommended and was not passed.⁹

Acceptance of the special act by town meeting vote was meant solely to provide Fairhaven an expeditious means to exclude the “call firemen” from a prior inadvertent inclusion in civil service, not to effectuate an intent to nullify and replace the decision of the voters who had properly accepted the protections and obligations of civil service law for all other employees in the manner prescribed by Chapter 31. See St. 1954, c. 28, § 3. Thus, the special act was meant to authorize the town meeting to ratify legislative action that effectuated an “opt out” of call firefighters inadvertently swept into civil service by the ballot vote, but there was no intent, and no reason for special legislation to affect all other employees already properly placed within civil service status through the prescribed statutory manner (*i.e.*, ballot vote) of doing so. In this regard, I note that, since 1945, the General Court has consistently expressed an intent to promote a town ballot vote as the preferred means to accept civil service law, reversing a prior preference for a town meeting vote as the means

⁹ St. 1954, c. 28, §1 did draw language similar to S.7 which “deemed” all Fairhaven permanent or temporary personnel, except call members of the fire department, employed on the effective date of the special act “to be permanently appointed to the office or position held by them in accordance with the civil service law and rules.” This provision seems to have been intended to exempt certain employees from taking a qualifying examination, but it cannot be read as serving as a substitute for the prior acceptance of civil service law by the prior (required) town ballot vote.

to do so. See G.L. c. 31, § 47 et seq. as amended through St. 1945, c. 701; G.L. c. 31, § 48 et seq., as amended through St. 2024, c. 238. I also note that, prior to 1945, including “call firemen” in c. 31 required an express “opt-in” vote, whereas after 1945, “call firemen” were included unless voters expressly decided to “opt-out” those employees, which may explain the misstep in the original ballot vote. Compare G.L. c. 31, § 48 (Ter.Ed. 1932) with G.L. c. 31, § 48, as amended through St. 1945, c. 701.¹⁰

CONCLUSION

In sum, in August 2024, Fairhaven promoted four patrol officers to the rank of Sergeant without conforming to the procedures required by law to make such promotional appointments in accordance with civil service law. All four of the promotions were candidates who ranked below the Appellant, Marc C. Darmofal, and three of the promotions were candidates who ranked below the Appellant, Frank M. Sniezek, thereby constituting a bypass of each of the Appellants. Neither Appellant has received any reasons for the decision to bypass him, to which each is entitled under civil service law, and which is a predicate to the opportunity to contest the reasons for his bypass at an evidentiary hearing before the Commission. In addition, it has come to my attention that there may be one or more police and fire personnel who have been appointed as entry-level police officers or firefighters after May 2023 who were appointed without following civil service law on the assumption (which this Decision has determined to be unfounded) that those positions were no longer subject to Chapter 31.

¹⁰ Thus, when the town meeting accepted the special act it was ratifying the authority granted by the legislature to “opt out” those call firefighters inadvertently included by town meeting vote, but there was no need, and no intent, for the grant of that authority by special act to affect the status of any other employees that properly had been granted civil service status by virtue of the prescribed statutory manner (*i.e.*, ballot vote) of doing so.

Accordingly, in order to determine the relief that is appropriate and necessary to rectify the violations of the civil service rights of the Appellants and any other person(s) affected by Fairhaven's erroneous promotion and/or hiring of police and fire personnel after May 2023 without following the procedures required by civil service law applicable to those positions, and to ensure that all due consideration is given to the interests of Fairhaven and other stakeholders, it is hereby ORDERED:

1. Fairhaven's Motion to Dismiss is denied.
2. The Appellant's Consolidated Motion for Summary Decision is allowed, in part.
3. The parties and impacted stakeholders shall confer and, on or before May 29, 2025, submit a plan to the Commission, either separately or jointly, to remediate the violations of civil service law identified in this Decision as well as what other or additional action, if any, may be required by the Commission to remediate the civil service rights of the Appellants and/or other Fairhaven police and fire sworn personnel or candidates for appointment affected by this Decision.
4. The parties shall inform all potentially affected stakeholders in the Fairhaven Police Department and the Fairhaven Fire Department of this Decision and afford them the opportunity to participate in the preparation of the plan(s) to be submitted to the Commission as set forth above and/or to submit a plan of their own.
5. Under separate cover, the Commission will notify all stakeholders of the date and time of a status conference and will provide all parties and potentially affected stakeholders an opportunity to be heard on the remediation plan(s).

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on May 15, 2025.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission interim decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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.

Notice:

Joseph G. Donnellan, Esq. (for Appellant)

Richard Massina, Esq. (for Respondent)

Sheila Gallagher, Esq. (HRD)