

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

RE: Request for Investigation against the City of Quincy by Marco Defelice

Tracking Number: I-15-76

Appearance for Petitioner:

John J. Greene, Esq.
15 Foster Street
Quincy, MA 02169

Appearance for City of Quincy:

Janet S. Petkun, Esq.
City of Quincy
1305 Hancock Street
Quincy, MA 02169

Appearance for Human Resources Division:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On April 22, 2015, the Petitioner, Marco Defelice (Mr. Defelice), filed a request for the Civil Service Commission (Commission) to conduct an investigation “regarding the filling of permanent full-time police officer positions in the City of Quincy [City] for the years 2014 and 2015.”
2. On May 12, 2015, I held a show cause hearing at the offices of the Commission, which was attended by the Petitioner, his counsel, counsel for the City, the City’s Director of Human Resources and counsel for the state’s Human Resources Division (HRD).
3. It is undisputed that Mr. Defelice was bypassed for original appointment to the position of permanent, full-time police officer by the City in 2014 during a hiring cycle involving Certification No. 01170. Mr. Defelice appealed that 2014 bypass to the Commission.
4. On July 24, 2014, the Commission, acting on a joint request by the parties, issued a decision granting relief to Mr. Defelice, including relief that required Mr. Defelice’s name to be

placed at the top of all future certifications for the position of Quincy Police Officer until he is appointed or bypassed.

5. In regard to that same hiring cycle, relief was also granted to three (other) individuals. For two (2) individuals other than Mr. Defelice, both of whom are on active military duty, Certification No. 01170 was revived until such time as those two (2) individuals were bypassed or appointed. One (1) other individual, whose rank was lower than Mr. Defelice on Certification No. 01170, was granted the same relief as Mr. Defelice, placing his name on future Certifications until he is appointed or bypassed.
6. As a result of the relief granted from the prior hiring cycle, Mr. Defelice will be considered for appointment again when a new Certification is issued. At that time, his name will appear first on the Certification issued to Quincy. (The two (2) active military candidates, who have now been granted conditional offers of employment, can be appointed from the prior Certification when they are available.)
7. No Certification is required when a City or Town seeks to appoint a candidate via a lateral transfer, pursuant to G.L. c. 31, § 35.
8. It is undisputed that, on November 25, 2014, rather than requesting a new Certification, the City filled one (1) permanent, full-time police officer position via a lateral transfer of a Milton Police Officer.
9. That transfer triggered the instant request for investigation, with Mr. Defelice alleging that the City was attempting to circumvent the Commission's order of relief by filling a vacancy without requesting a Certification, upon which Mr. Defelice's name would appear first.
10. At the hearing, the City disputed this allegation, arguing that there were sound reasons for seeking a lateral transfer, as opposed to requesting a new Certification. According to the City, one (1) vacancy developed when an incumbent police officer (hired during a 2013 hiring cycle) resigned during his probationary period. According to the City, based on the lack of scheduled police academies, and the cost associated with the academy training for each candidate (\$6,000), it was decided that the most cost effective and timely option would be to fill the one (1) immediate vacancy through a lateral transfer of a police officer from another community.
11. According to the City, many police officers from other communities regularly file requests with the City seeking to be transferred to the Quincy Police Department. The City stated that these requests (and resumes) are kept on file.
12. At the show cause hearing, the City was unable to identify who in the City made the decision to seek a lateral transfer and/or the selection process used to decide which transfer request to approve (among those on file). I asked the City to answer those questions via an affidavit, which was promptly submitted to the Commission days after the show cause hearing.

13. According to the affidavit of the City’s Director of Human Resources, “after discussing the situation with Chief Keenan and Mayor Koch in late August 2014, we decided to explore the possibility of a lateral transfer ... I maintain a file in my office of people who express interest in joining the Quincy police as lateral transfers and I began reviewing that file. As a result of my review, and subsequent conversations with the mayor and the police chief, we agreed on a candidate from the Milton Police Department ...”
14. The affidavit provides detailed information regarding the extensive educational and professional background of the police officer who was transferred; a description of the vetting process used prior to his appointment; and a statement that the police officer “is not related to any current or former member of the police department, nor is he related to any appointed or elected official of the City of Quincy.”

Legal Standard

The Commission maintains authority under G.L. c. 31, § 2(a) to conduct investigations. This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007). See also Erickson v. Civ. Serv. Comm’n & others, No. 2013-00639-D, Suffolk Superior Court (2014). We exercise this discretion “sparingly”. See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011).

Analysis

Beyond the inquiry already completed here, no investigation by the Commission is warranted. The City is not required to show sound and sufficient reasons for filling a civil service position via a lateral transfer, as opposed to requesting a Certification. Even if it was, the City has described a decision-making process here that appears to be based on merit-based principles and free of any personal or political bias, either in favor of the appointed candidate or against Mr. Defelice; and Mr. Defelice has not submitted any evidence to show otherwise.

For these reasons, the Commission declines to open an investigation and this matter is *closed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on June 11, 2015.

Notice:
John J. Greene, Esq. (for Petitioner)
Janet Petkun, Esq. (for City of Quincy)
Mark Detwiler, Esq. (for HRD)