

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

KENNETH ELLIS,
Appellant

v.

E-22-134

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

Pro Se
Kenneth Ellis

Appearance for Respondent:

Brett M. Sabbag, Esq.
Norris, Murray & Peloquin, LLC
315 Norwood Park South
Norwood, MA 02062

Commissioner:

Christopher C. Bowman

SUMMARY OF ORDER

The Commission issued interim orders to ensure a fair, impartial promotional process for police lieutenant in the City of Brockton's Police Department.

ORDER

Procedural Background

On October 3, 2022, the Appellant, Kenneth Ellis (Appellant), a sergeant in the City of Brockton (City)'s Police Department, filed a non-bypass equity appeal with the Civil Service Commission (Commission) under G.L. c. 31, § 2(b), contesting his non-selection for promotional appointment to police lieutenant.

On November 1, 2022, I held a remote pre-hearing conference which was attended by the

Appellant and counsel for the City. As part of the pre-hearing conference, the parties stipulated to the following:

- A. On September 19, 2020, the Appellant took the promotional examination for police lieutenant and received a score of 88.
- B. On December 15, 2020, the state's Human Resources Division (HRD) established an eligible list for Brockton Police Lieutenant.
- C. At the time of the most recent vacancy for police lieutenant, three candidates, including the Appellant, were tied for first on the eligible list.
- D. All three candidates notified the City that they were willing to accept the promotional appointment if promoted.
- E. One of the candidates tied with the Appellant on the eligible list was a police sergeant who is the spouse of the Brockton Police Chief.
- F. The City's Mayor is the Appointing Authority for promotional appointments in the Brockton Police Department.
- G. The City's Mayor promoted the spouse of the City's Police Chief.
- H. Since all three eligible candidates were tied, the Appellant's non-selection did not constitute a bypass.

As part of his pre-hearing memorandum and during the pre-hearing conference, the Appellant argued that the Police Chief failed to take the necessary steps to recuse herself from the promotional process and "stayed involved in the promotional process to influence the promotion of her husband." The Appellant cited specific alleged examples to support his argument.

Counsel for the City argued that: a) there was no appealable bypass; b) the Police Chief,

prior to this promotional process, had already filed the necessary disclosure forms and had previously recused herself from participating in any matter involving her husband's employment (i.e. – including discipline, promotions, etc.); and c) the City took appropriate steps to ensure that the Police Chief recused herself from this promotional process, including assigning the City's Human Resources Director to make a recommendation regarding this promotional appointment; and d) a pending disciplinary investigation regarding the Appellant was appropriately relied upon, in part, in breaking the three-way tie.

After carefully considering the parties' arguments, and for all of the reasons discussed at the pre-hearing conference, I issued a Procedural Order on November 1, 2022 that: a) deemed the Appellant's appeal to also be a request for the Commission to initiate an investigation under G.L. c. 31, § 2(a); and b) provided the City with 30 days to file a reply stating why the Commission should not initiate an investigation. As part of its response, I ordered that the City address each of the allegations made by the Appellant as part of his pre-hearing memo and during the pre-hearing conference and include an affidavit from the City's Police Chief stating what role, if any, she played in any part of the promotional process that resulted in the promotion at issue in this appeal. The was given 10 days thereafter to file a response to the City's opposition.

City's Responses

On November 28, 2022, the City requested that the Commission convene a status conference, which was subsequently held on December 6, 2022. As part of its request for a status conference, the City wrote in part:

Upon further review of the issues raised and without conceding any violations of Chapter 31, the City proposes to enlist an entity outside the City of Brockton to repeat the selection process for the Police Lieutenant vacancy at issue in this appeal to ensure the process is fully transparent and consistent with basic merit principles.

Following its review of each of the candidates, the entity will recommend a candidate to the City's Appointing Authority.

On December 6, 2022, I convened a status conference that was attended by the Appellant and counsel for the City at which time the City discussed the proposal referenced above. At the conclusion of the status conference, I asked the City to provide some additional details regarding its proposal including whether the promotional appointment already made would first be rescinded and what steps would be taken to ensure that the outside entity was truly independent and capable of making a fair, impartial decision regarding this promotional appointment.

On December 30, 2022, the City provided the Commission with a status update, writing in part that:

On December 11, 2022, the Brockton Police Supervisor's Union sent a demand to the City to bargain over the alternative selection process, as proposed by the City in this matter. The City was obligated to meet with the union to address the issue prior to moving forward with its plan, which contributed to the delay in the process.

The City is in the process of converting the selected candidate and incumbent Lieutenant to a provisional appointment. Give that the City had filled the Sergeant vacancy created by the promotion, it would be an undue burden on the City to entirely rescind the promotion as there are no open Sergeant positions. Additionally, the City continues to explore options in terms of an appropriate outside entity, consistent with the criteria recommended by the Commission, to conduct the process and recommend a candidate to the Mayor.

Appellant Objections

On February 6, 2023, the Appellant sent an email to the Commission stating that the City has not implemented the above-referenced course of action, including notification from an outside entity regarding a selection process or any notification regarding the conversion of the promotional appointment from permanent to provisional. Further, the Appellant objected to the

City's decision not to rescind the promotion outright and stated that, since the City's December 30th communication to the Commission, a sergeant vacancy has arisen due to a retirement in the Department.

Interim Commission Orders

More than three months has transpired since the Commission held a pre-hearing conference in this matter at which time I offered the City a candid assessment of the potential issues related to this promotional process. It is time for the City to act with more urgency.

The City has ten days to provide the Commission with a detailed plan to ensure a fair, expedited, impartial review, including detailed benchmarks and information regarding how the City will provide ironclad assurances that the Police Chief will play no role, directly or indirectly, in this de novo review of the candidates. Further, the City's plan needs to ensure that the previously selected candidate has no advantage in the new process as a result of his prior selection. For example, there should be no reference to and/or credit for the time the selected candidate has served in the position of Police Lieutenant and any assessment of the candidates' experience and performance should only include the time period preceding this most recent promotional appointment. To ensure clarity, the burden is on the City to right this ship, implement a review process that is above reproach, and to do so without further delay.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on February 23, 2023.

Notice to:
Kenneth Ellis (Appellant)
Brett Sabbag, Esq. (for Respondent)