

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 Town of Franklin by Petitioners James Hagerty & Eleven (11) Others

Tracking Number: I-15-41

Appearance for Petitioners:

Leah Barrault, Esq.
Pyle Rome
2 Liberty Square: 10th Floor
Boston, MA 02109

Appearance for Town of Franklin:

Melissa Murray, Esq.
Collins, Loughran & Peloquin
320 Norwood Park South
Norwood, MA 02062

Appearance for Human Resources Division:

Michael Downey, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On February 23, 2015, James Hagerty and eleven (11) others (Petitioners), all firefighters in the Town of Franklin (Town), filed a request for investigation with the Civil Service Commission (Commission) asking the Commission to conduct an investigation “regarding the proper method that the Town of Franklin must employ to rescind its acceptance of civil service coverage for its employees of the Franklin Fire Department.”
2. On March 31, 2015, I held a show cause hearing which was attended by some of the Petitioners, their counsel, counsel for the Fire Department and representatives of the Town; and counsel for the state’s Human Resources Division (HRD).
3. As part of the show cause hearing, the parties agreed to several undisputed facts, which follow.

4. In February 2014, the Town Council voted to exempt all positions in the Fire Department from civil service. That resolution also stated that the resolution would not affect any civil service rights of existing employees.
5. For several months, the Town, its firefighters and their union, operated on the assumption that the Town Council vote, with the exception of the grandfathering language, had removed the Town's Fire Department from Civil Service.
6. In or around October 2014, the Town Manager concluded that, since the Town's Fire Department was put under civil service via a 1950 ballot question (as opposed to Town Meeting vote), that the Town Council vote had NOT removed the Fire Department from civil service.
7. Upon reaching this conclusion, the Town notified HRD that it needed an eligible list of candidates for Fire Captain to fill a vacancy.
8. Based on a review of the email communication between the Town and HRD, it appears that HRD had also concluded (incorrectly) that the Town's Fire Department had opted out of civil service. That confusion was subsequently corrected, an eligible list was issued and a promotional appointment made.
9. The Town now believes that it has two paths to remove the Fire Department from civil service: a) a Town ballot question; or b) successful passage of a home rule petition sent to and approved by the legislature. Based on the statements at the show cause hearing, the Town intends to seek a home rule petition.
10. The Petitioners do not necessarily concur that a home rule petition, alone, could exempt the Fire Department from civil service. Rather, they argue that successful passage of a ballot question may still be needed. Further, they seek some objective verification that the 1950 ballot question was indeed the vehicle that brought the Fire Department under civil service in the Town.
11. The Petitioners are asking that HRD provide clarity on the above-referenced "pathway out" dispute.
12. Further, the Petitioners are seeking clarification on the so-called grandfathering provision. Specifically, the Petitioners ask whether, subsequent to a valid, "opt-out", would promotional appointments be subject to the civil service law, even if an eligible list was already in place and/or a Certification created at the time of the revocation.
13. Counsel for HRD agreed, to the extent possible, to provide clarity on these disputed issues.
14. On May 12, 2015, HRD provided the clarification requested, as referenced below.
15. HRD, in its clarification, stated that the Town of Franklin has two paths to remove the Fire Department from civil service: (1) Through revocation of the Town's acceptance of civil

service coverage “in the same manner as it was accepted...” pursuant to MGL Chapter 4, §4(b); or (b) Successful passage of a home rule petition to the legislature. HRD takes the position that a home rule petition “trumps” the c. 4, §4(b), method of rescinding the civil service laws.

16. In regard to “grandfathering” provisions, HRD stated: “Although Franklin Fire Department employees who are covered under the civil service laws as of the Town’s effective “opt-out” date will retain certain civil service protections (i.e. layoff & recall procedures, discipline appeals) beyond that date, these “grandfathered” protections do not extend to promotional appointments. The Town’s Fire Department will no longer be covered by the civil service laws and, therefore, they will no longer receive eligible lists or certifications from the Commonwealth. In other words, the Commonwealth is removed entirely from the Town’s appointment process. I presume that employee appeals of promotional appointments will be governed by the collective bargaining agreement between the Town and the Union.”

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

Here, the Town candidly acknowledges that it erred by believing that the Town’s Fire Department could be removed from civil service simply through a vote of the Town Council. Unfortunately, that mistaken assumption resulted in confusion as to whether a promotional process was – or was not – subject to the civil service law and rules.

While this confusion is unfortunate, there is no evidence that the Town’s actions were the result of any political or personal bias, the traditional reasons that the Commission would initiate an investigation. The “clarification” sought here by the Petitioners, while understandable, does not require the initiation of an investigation.

However, to the extent that the Commission can provide clarity to the Town – and the civil service community in general – we concur with the clarifications provided here by HRD in regard to the “opt out” procedures as well as the grandfathering provisions.

In regard to the hypothetical question related to the rules of the road if a revocation occurs while an eligible list and/or Certification has already been created, we would encourage the parties to resolve such issues through the collective bargaining process and/or ensure that clarifying language is included in the home rule petition. However, again for the sake of clarity,

we cannot envision any scenario where the Commission would hear a bypass appeal after the effective date of the civil service revocation of a Town or Town Department.

For the reasons stated above, 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:
Leah Barrault, Esq. (for Petitioners)
Michael Downey, Esq. (for HRD)
Melissa Murray, Esq. (for Town of Franklin)