

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston MA 02114

(617) 979-1900

JAMES HARKINS,

Appellant

v.

CITY OF PEABODY,

Respondent

Docket number:

E-25-011

Appearance for Appellant:

James T. Harkins, Pro Se

Appearance for Respondent:

Donald L. Conn, Jr., Esq.
Smerczynski & Conn, PC
30 Main Street
Peabody, MA 01960

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission declined a police sergeant's request for a retroactive effective date of his delayed promotion to lieutenant to match the promotional dates of two peers who had been promoted ahead of him. Although the delay in his promotion was due to no fault of his own, the Commission concluded that the request had no effect on the civil service rights of the Appellant and, taking account of the fact that his peers had been serving in the position of lieutenant since December 2024, the matter would be more appropriately addressed by the officers' collective bargaining agreement.

DECISION

On January 9, 2025, the Appellant, James T. Harkins, a police sergeant with the City of Peabody (City)'s Police Department (PPD), with the support of the PPD, appealed to the Civil Service Commission (Commission), requesting that the Commission enter an order to enable the Appellant to be promoted to the position of a PPD permanent police lieutenant with a retroactive *effective* date of December 16, 2024, which was the date on which two of the Appellant's peers were promoted to lieutenant. The Commission held a remote pre-hearing conference (Webex) on February 4, 2025, and then held two subsequent remote status conferences on February 18, 2025

and March 18, 2025, during which the Commission heard the positions and arguments of the Appellant, PPD Police Chief Thomas Griffin, the state's Human Resources Division (HRD), and the two previously promoted PPD lieutenants. After careful consideration and balancing of the equities of the three tenured civil service police officers affected, the Commission declines to grant the requested relief for the reasons set forth more specifically below.

FINDINGS OF FACT

1. The Appellant achieved the *third* highest score on the lieutenant's promotional examination administered by the state's Human Resources Division (HRD) on September 23, 2023.
2. When HRD established the eligible list for PPD police lieutenant, on May 15, 2024, the Appellant's name was ranked *fourth*, below the name of Sergeant Zampitella, who had achieved a lower score on the examination but had been elevated to third after HRD awarded him a two-point preference for 25 years of service—to which he claimed to be entitled.
3. Sergeant Sanchez and Sergeant Sullivan were ranked tied in first place on the eligible list.
4. As of May 15, 2024, the PPD had three vacancies in the position of PPD Police Lieutenant.
5. The rankings on the May 15, 2024 eligible list were challenged in two matters brought before the Commission: Faletta v. Human Resources Division, CSC Docket Number E-24-136; and In re: Peabody Police Lieutenant Eligible List Rankings, CSC Tracking Number I-24-173.
6. The PPD deferred making any promotions to PPD Police Lieutenant pending a resolution of the above pending matters before the Commission.
7. On December 19, 2024, the Commission determined that Sergeant Zampitella did not actually have enough creditable service to qualify for the 25-year preference; that he should have been placed in fourth position on the eligible list; that the correct ranking of the top

three candidates on the eligible list was Sergeants Sanchez & Sergeant Sullivan, tied for first place, and the Appellant in third place. The Commission ordered HRD to recalculate the PPD lieutenant's eligible list accordingly. *Final Report and Order, Re: Peabody Police Lieutenant Eligible List Rankings*, CSC Tracking Number I-24-173; *Decision, Faletra v. Human Resources Division*, CSC Docket Number E-24-136.

8. On or about December 16, 2024, the PPD promoted Sergeant Sanchez and Sergeant Sullivan, the two candidates tied for first place on the May 15, 2024 PPD eligible list, to fill two of the three vacancies in the position of PPD police lieutenant.
9. The PPD deferred making a promotion to the third lieutenant's vacancy pending HRD's issuance of a recalculated eligible list.
10. On or about January 15, 2024, HRD issued the recalculated eligible list, on which the promotions of Sergeant Sanchez and Sergeant Sullivan are noted, with the Appellant then appearing #1 on the list.
11. The PPD now intends to promote the Appellant to fill the one remaining vacancy in the position of PPD police lieutenant.
12. But for the error in the eligible list established on May 15, 2024, the PPD would have filled all three vacancies for PPD police lieutenant simultaneously with the same effective date.
13. Due to the terms of the collective bargaining agreement between the City of Peabody and the PPD police union, if the Appellant had been promoted simultaneously with Sergeant Sanchez and Sullivan, the Appellant would have held the status of "senior lieutenant". Although this status would not affect the Appellant's civil service seniority rights, or affect the civil service rights of Lieutenants Sanchez or Sullivan, it could make a difference in their shift assignments and opportunities for temporary captain assignments.

14. The Appellant, with the support of the PPD Police Chief, seeks an order from the Commission setting the effective date of his promotion to December 16, 2024, the same date on which Sergeant Sanchez and Sergeant Sullivan were promoted to police lieutenant.

15. Lieutenant Sanchez and Lieutenant Harkins assert that the fact that they have both actually served in the position of police lieutenant since December 16, 2024 is a fact that should be taken into consideration in determining whether the Commission should grant the Appellant's request to make his subsequent promotion effective retroactively.

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996). Except when a collective bargaining agreement conflicts with the rights of a tenured employee under civil service law, the Commission is without jurisdiction to alter the terms of a collective bargaining agreement. See G.L. c. 150E, § 7(d); City of Newton v. Commonwealth Employment Relations Bd., 100 Mass. App. Ct. 574, 583-84 (2021), rev. den., 489 Mass. 1105 (2022).

ANALYSIS

After carefully considering the request by the Appellant, the Commission concludes that, on balance, the equities favor abstaining from taking any action in this appeal.

On the one hand, the Commission recognizes that, but for an administrative error in the original establishment of the PPD police lieutenant's eligible list, a matter over which the Appellant had no control, his promotion to police lieutenant would not have been delayed through no fault of his

own. Had the administrative error not occurred, the PPD would have promoted the Appellant on the same date that Sergeant Sanchez and Sergeant Sullivan were promoted. Had all three been promoted on December 16, 2024, the Appellant would have been the “senior” lieutenant as defined in the relevant collective bargaining agreement, having held the next lower rank of police sergeant longer than the other two officers.

Now that the Appellant will have been promoted on a date later than December 16, 2024, he will be the “junior” lieutenant within the meaning of the relevant collective bargaining agreement. This difference does not alter the *civil service* seniority dates of any of the three officers. It only changes the opportunities for priority in shift selection and other work-place privileges provided under the relevant collective bargaining agreement. Balanced against the Appellant’s loss of those privileges is the fact that both Lieutenant Sanchez and Lieutenant Sullivan have now undertaken several months of service in the rank of permanent police lieutenant. Under these circumstances, I conclude that, while it is a close call, the equities favor letting the actual periods of service in the position of lieutenant control, rather than the Appellant’s hypothetical future loss of privileges under a collective bargaining agreement based on his prior service in the lower title of sergeant.

It bears notice, however, that the Commission is not declining the Appellant’s request because the result he seeks would conflict with any provisions of civil service law. As stated above, whether that relief were granted or not granted, it would not affect or create a conflict with the civil service rights of any of the three officers involved. Had this been a case in which there were allegations of irregularities or bad faith on the part of the Appointing Authority, my conclusion might have been different. Nothing in this decision precludes the PPD or Sergeant Harkins from resolving this matter through appropriate grievance or other procedures (i.e. – mutual agreement) consistent with the provisions of the applicable collective bargaining agreement.

CONCLUSION

For all of the above reasons, the Appellant's appeal under Docket Number E-25-011 is hereby *denied*.

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 April 17, 2025.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or 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. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, §44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, §14, in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

NOTICE TO:

Sergeant James T. Harkins (Appellant)
Donald L. Conn, Jr., Esq. (for Respondent)
Chief Thomas Griffin
Lieutenant Javier Sanchez
Lieutenant Timothy Sullivan