

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

Request for Investigation against
the Town of Lynnfield by
Petitioners:

- Martin Katz
- Steven W. Furey

Tracking No.: I-14-220

**RULING ON PETITIONERS' REQUEST TO
EXPAND RECORD AND AMEND REQUEST FOR INVESTIGATION
AND
ON REQUEST FOR INVESTIGATION**

On September 12, 2014, Mr. Katz and Mr. Furey (“Petitioners”) filed a lengthy request (“Request for Investigation”) that the Commission conduct an investigation under G.L. c. 31, s. 2(a), averring that in June, 2013, the Town of Lynnfield Board of Selectmen (“Town”) voted to regionalize its electrical, gas, and plumbing inspectional services, declining to reappoint Mr. Katz, as a Gas and Plumbing Inspector, and Mr. Furey hired as Inspector of Wires, in violation of their alleged civil service status. The Petitioners assert that matters as far back as approximately fifty years ago, involving previous statutes, ordinances, and various detailed Town employment actions, indicate that they are civil service employees and, therefore, they should not have been separated from their positions without consideration of their alleged civil service rights. Mr. Katz and Mr. Furey, separately, also previously filed appeals at the Commission, alleging that they were wrongfully terminated from employment. The Petitioners’ individual appeals are still open.¹

¹ In Mr. Katz’s appeal (D1-14-29), the Commission most recently held a hearing on Lynnfield’s motion to dismiss the case; a decision on the motion is pending. In Mr. Furey’s appeal, D1-14-183, a prehearing conference has been held.

On September 26, 2014, the Town of Lynnfield (“Town”) filed a detailed opposition to the Request for Investigation (“Opposition to Investigation”), denying that the Petitioners have civil service status. A Show Cause hearing was held October 7, 2014 to determine if, in the Civil Service Commission’s (“Commission”) considerable discretion in this regard, the Request for Investigation should be granted. On October 31, 2014, Petitioners submitted a lengthy and detailed proposed decision related to the Show Cause hearing on their Request for Investigation, although proposed decisions are normally only submitted after the Commission has conducted a full hearing on an appeal, not a Show Cause hearing on a request for an investigation. On December 1, 2014, the Town yet again submitted a detailed response to the Petitioners’ most proposed decision. On December 12, 2014, the Petitioners submitted a third filing, entitled a “Motion to Expand the Record and Amend the Complaint,” which I have deemed a Request to Expand the Record and Amend the Request for Investigation (“Request to Amend”). On December 17, the Town filed a response to the Petitioners’ third filing (“Opposition to the Request to Amend”). On December 18, 2014, the Petitioners submitted a detailed fourth document, this one replying to the Town’s Opposition to the Request to Amend and referencing Town employment matters dating back nearly one hundred (100) years. On December 18, 2014, the Town filed a specific response to the Petitioners’ proposed additional allegations.

The Petitioners’ Request to Amend seeks to add to the Request for Investigation the allegation that the Town’s appointment of certain civil service police officers in the Town fails to follow applicable civil service rules stating that some police appointments are made by the Town Administrator, although sometimes the Selectmen are also asked to vote on such appointments. The Town’s Opposition reminds the Commission that the Request for Investigation related to,

“ ... a handful of civil service positions in the Town that no longer exist. None of those positions were in the police department. Recently, the Petitioners discovered that the

Town treats its Town Administrator as the appointing authority when making police appointments, all of which are in civil service. Somehow that is now offered as a reason to amend the Petition and expand the record, as well as an argument why an investigation is needed. ...”
G.L. c. 31, s. 2(a).

Prior to today, the Commission has not ruled on the Petitioners’ Request for Investigation.

Pursuant to G.L. c. 31, s. 2, “In addition to its other powers and duties, the commission shall have the following powers and duties: (a) To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.” *Id.* Pursuant to Erickson v Civil Service Commission and Town of Rockland (Defendants) and Heaney (Intervener), SUCV2013-00639-D (Sup. Ct. 2014), the Commission has “broad discretionary authority” with regard to investigations. This discretion includes the discretion to decide whether or not to conduct an investigation as well as the parameters of any such investigation. *Id.* at 6 (*citing*, e.g., Whitehouse v Town of Wareham, 25 MCSR 438 (2012); Richards v. Dept. of Transitional Assistance, 24 MCSR 315 (2011); O’Neill v. City of Lowell, 21 MCSR 683 (2008, *aff’d sub nom O’Neill v. Civil Service Comm’n*, MICV2009-00391 (Sup. Ct. 2009)(*aff’d*, 78 Mass.App.Ct. 1127 (2011)(1:28 Decision)). Given that the initial request for an investigation relates to non-police position employment actions decades ago, which is an entirely different matter from current civil service police appointments, it is within the Commission’s discretion to limit the investigation to the initial request, if the Commission were to decide to conduct an investigation in response to the Petitioners’ Request for Investigation. Further, while 801 CMR 1.01(6)(f) provides for amendments of pleadings under certain circumstances, the instant matter is a request for an investigation, not an appeal and, therefore, 801 CMR 1.00 is not applicable. In addition, the Request to Amend fails to identify an

aggrieved police officer, or ten registered voters, seeking an investigation, as required by G.L. c. 31, s. 2(a). Finally, the Petitioners' allegations concerning Town appointment of certain police officers do not merit an investigation. The Petitioners aver that the Town does not currently comply with civil service law when making certain police officer appointments because both the Town Administrator and the Board of Selectman have made such appointments, instead of one of them doing so as the appointing authority. The Petitioners' averments in this regard are explained in considerable depth and detail by the Town's detailed Opposition, with citations to pertinent previous and current state law, Town Charter, By-Laws and practices. The Town Administrator is the appointing authority. The Selectmen vote on pertinent appointment matters, pursuant to pertinent provisions of the state and local law cited by the Town. Moreover, as noted in Chaves v. Civil Service Commission and Town of Hudson, SUCV2002-01362 (Sup. Ct. 2004), " ... [the] power of the board of selectmen to approve or disapprove an appointment does not make the board of selectmen the appoint authority." Id., p. 3.

For all of these reasons, the Petitioner's Request to Amend is **denied**. Furthermore, in view of the fact that Petitioners currently also have appeals pending before the Commission where appropriate relevant matters may be addressed, and to avoid end-runs around the appeal process and/or duplication of efforts unnecessarily draining everyone's limited resources, the Request for Investigation is also hereby **denied**.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 2015.

A True Record. Attest:

Commissioner

Notice to:

Michael C. Walsh, Esq. (for Petitioners)
Thomas A. Mullen, Esq. (for Lynnfield)
Ernest Law, Esq. (for HRD)
John Marra, General Counsel (HRD)