

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

SEAN LAYTON,

Appellant

v.

G1-10-293

CITY OF SOMERVILLE,

Respondent

RYAN LAYTON,

Appellant

v.

G1-10-292

CITY OF SOMERVILLE,

Respondent

PROCEDURAL ORDER

The Appellants (who are brothers) both filed individual appeals with the Civil Service Commission that are related to the same general issue.

Sean Layton and Ryan Layton took and passed a civil service examination for the position of firefighter that was administered by the state's Human Resources Division (HRD). Based on their assertions at the time of the examination that they satisfied the residency requirement (resided in Somerville at least one year prior to the date of the examination), HRD placed their names on an eligible list of candidates with a residency preference.

Both of the Appellants were then appointed as reserve firefighters after the City completed a background check that included an inquiry into whether they did indeed reside in Somerville at least one year prior to the date of the civil service examination. Although the investigator from the City's police department raised some questions regarding whether there was sufficient information to verify their residency at the time, the City, apparently satisfied that the requirement had been met, appointed both of them as reserve firefighters. Due to vacancies at the time, Sean Layton, whose name appeared higher than that of his brother Ryan, was almost simultaneously appointed as a permanent full-time firefighter by the City.

Several months later, while Sean Layton was still serving his probationary period as a permanent full-time firefighter, additional vacancies for permanent full-time positions became available and Ryan Layton was considered for appointment to a full-time position.

In the interim, another individual, Sean O'Brien, filed an appeal with the Commission, arguing that he was aggrieved because the City failed to consider him for appointment as a reserve firefighter immediately after he took and passed a military make-up examination after returning from active military duty in Iraq. For reasons stated in a decision regarding that

matter, the Commission ordered that Mr. O'Brien be given at least one consideration for the position of reserve firefighter. If not selected, he will have a further right of appeal to the Commission. As part of the O'Brien appeal (See Case No. E-10-139), the Appellant's advocate / representative, a former member of the Somerville City Council, indicated that allegations of nepotism would be part of any future bypass hearing (the father of Sean and Ryan Layton is a Somerville firefighter).

When considering whether to appoint Ryan Layton (who was then a reserve) as a permanent full-time firefighter, the City conducted another background investigation, including an inquiry into whether Ryan Layton had satisfied the residency requirement. A different investigator from the City's police department, based on what appears to be largely the same information that was considered and reviewed months earlier, concluded that neither Ryan Layton – or Sean Layton – had satisfied the residency requirement. Based on this conclusion, the City determined that Ryan Layton and Sean Layton should not have been listed as residents on the eligible list and should not have been considered for appointment. Thus, the City terminated Sean Layton from his position as a permanent firefighter, did not appoint Ryan Layton as a permanent firefighter and terminated him from his reserve firefighter position.

Both Ryan Layton and Sean Layton have now filed an appeal with the Commission, arguing that that the Commission should hear these appeals as timely "bypass appeals" as the City effectively re-opened the selection process, and, based on its further investigation, deemed that the Appellants should not be "selected" for appointment. Thus, the Appellants argue that they have been bypassed and, as they have filed an appeal with the Commission within the applicable 60-day time period, the Commission should hear and decide these appeals as bypass appeals.

The City argues that the Appellants were employees terminated prior to serving their statutorily-required probationary period and the Commission has no jurisdiction to hear a disciplinary appeal regarding these probationary employees.

As a threshold matter, the Commission must determine if it has jurisdiction to hear these appeals. As part of the November 30, 2010 pre-hearing conference, I ordered the City to file a Motion to Dismiss within 30 days and gave the Appellants 30 days thereafter to file a reply. Briefs should accompany both filings. Oral argument will be heard at a motion hearing.

It is the Commission's standard practice to conduct hearings that involve communities in the Greater Boston area at its offices in Boston. Here, in an effort to ensure the greatest level of transparency possible, this motion hearing will be held at Somerville City Hall as part of a hearing that is open to the public. This hearing, assuming that briefs are timely filed and that meeting space is available, will be conducted on February 7, 2011 at 10:00 A.M. at a meeting room to be determined by the parties within Somerville City Hall. In the event that briefs are submitted ahead of schedule, either party may request an expedited hearing schedule.

The Commission reserves the right to consider these appeals or any matters related to these appeals under G.L. c. 31, §2(a).

The City shall ensure that this procedural order is posted by the City Clerk and that it is also posted in a conspicuous location within the Somerville Fire Department headquarters.

Civil Service Commission



Christopher C. Bowman
Chairman

December 9, 2010

Notice to:

Paul Hynes, Esq. (for Appellants)

Robert V. Collins, Esq. (for City of Somerville)

John Marra, Esq. (HRD)