

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

Case No: I-09-412

In the matter of:

**City of Lynn Fire Chief /
Deputy Fire Chief positions**

INTERIM ORDER

Pursuant to G.L. c. 31, § 2(a), Dennis Carmody and James McDonald (hereinafter “Petitioners”), filed a request for investigation with the Civil Service Commission (hereinafter “Commission”) regarding the filling of positions of Fire Chief and Deputy Fire Chief in the City of Lynn (hereinafter “City”).

The request for investigation was filed on November 24, 2009 and a pre-hearing conference was held at the offices of the Commission on December 7, 2009.

At the pre-hearing conference, counsel for Matthew Reddy, in his capacity as President of Local 739, International Association of Firefighters (IAFF), AFL-CIO (hereinafter “Union”) filed a Motion to Intervene. The Union is hereby deemed a “Participant” to these proceedings pursuant to 801 CMR 1.01 (9)(e). This does not preclude the Commission from determining later, based on the circumstances, the Union is an “Intervenor”.

As stated in the written request for investigation, the Petitioners seek an order from the Commission enjoining the City from filling the position of Fire Chief until such time as: 1) the selection process was completed for the position of Deputy Fire Chief, a promotional appointment that has been the subject of an arbitration award (See Lynn Firefighters, IAFF, Local 739 v. City of Lynn. AAA Case No. 11 390 02483 06. (June 25, 2009)) and a related Commission decision. (See Carmody and McDonald, CSC Case Nos. G2-07-65 & G2-07-66 (2009)); and 2) a newly-elected Mayor assumes her position on January 4, 2010.¹

At the pre-hearing conference, the Commission learned that the state’s Human Resources Division (HRD) is requiring the City to delay the selection of a Fire Chief until the selection process for the Deputy Chief is completed (See HRD correspondence dated December 4, 2009).

¹ Incumbent Mayor Ed “Chip” Clancy was not re-elected in the November 2009 mayoral election. Mayor-Elect Judy Flanagan, who was in attendance at the pre-hearing conference, assumes office on January 4, 2010.

According to the City, interviews of the three eligible Deputy Fire Chief candidates are scheduled to be conducted on December 17, 2009. The three eligible candidates include Petitioners Carmody and McDonald (ranked first and second on the civil service certification) and James Caritte (ranked third).

As outlined in the arbitration award and Commission decision referenced above, the City previously selected Caritte for the position of permanent Deputy Fire Chief. As part of his decision, the arbitrator ordered the City to conduct a new selection process and, if Caritte is not selected, he shall be removed from the Deputy Fire Chief position [and returned to his title of Captain]. Until such time as the new selection process is completed, the arbitrator's decision allows Caritte to retain his title of permanent Deputy Fire Chief. Further complicating matters, Caritte has subsequently been appointed by the City as provisional Fire Chief.²

As part of the pre-hearing conference, the Participants and the Petitioners asked the Commission to prevent the appointment of a Deputy Fire Chief until such time as there is a decision on the City's appeal of the arbitration award related to this matter, which is currently pending in Superior Court. The City objected.

Based on all of the evidence available to the Commission at this time, the Commission enters the following interim orders which it deems to be consistent with the award of the arbitrator, a related Commission decision and basic merit principles:

- In accordance with the December 4, 2009 HRD directive, the City may not continue with the selection process of a permanent Fire Chief until the selection process for the Deputy Fire Chief is completed.
- The City may continue with the selection process for Deputy Fire Chief, including the interviews of the three eligible candidates already scheduled.³
- Should either Carmody or McDonald be bypassed by Caritte for the position of Deputy Fire Chief, the Commission shall accept and allow an emergency motion to conduct expedited bypass hearing(s) to determine if there was reasonable justification for the bypass and/or the selection was tainted by unlawful reasons such as political or personal bias.
- If the City attempts to "fast-track" the appointment of a permanent Fire Chief in a manner not in full compliance with civil service law and rules or that is inconsistent with basic merit principles, the Commission reserves its authority to act under either G.L. c. 31, §§ 2(a), 2(b), 72, 73 and 74, Chapter 310 of the Acts of 1993 and/or line item 1108-1011 of Section 2 of Chapter 27 of the Acts of 2009, either on its own initiative, or by motion of the Petitioners. It is noted that the Commission would have difficulty deeming a truncated, 3-week selection process for Fire Chief in a city the size of Lynn to be

² It is uncertain if the City fully complied with the notification requirements regarding a provisional appointment / promotion, but it is undisputed that there is no active eligible list for the position of permanent Fire Chief in the City of Lynn.

³ The interviews are being conducted by M.M.A. Consulting. According to the City, Provisional Fire Chief Caritte, for obvious reasons, has had no role in the selection process and will continue to recuse himself from the selection process.

consistent with basic merit principles. In the event that either Carmody or McDonald is bypassed for Deputy Fire Chief, it would be prudent for the City to await the result of an expedited bypass hearing, given that the decision may potentially impact who is eligible for promotional appointment to the position of Fire Chief.

This petition, filed under Docket No. I-09-412, shall remain open until further notice of the Commission. The Commission shall determine if additional investigation is necessary as circumstance warrant.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on December 10, 2009.

A True Copy. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

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