

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**SEAN MAHER AND  
13 OTHERS,**

*Appellant*

v.

**CITY OF WORCESTER,**

*Respondent*

**Case No.: I-12-67**

**RESPONSE TO REQUEST FOR INVESTIGATION BY SEAN MAHER AND 13 OTHERS**

On February 16, 2012, Sean Maher and 13 others (Petitioners) asked the Civil Service Commission (Commission) to investigate the hiring and promotion practices of the City of Worcester (City), alleging that the City has “systematically made labor service original provisional appointments to the official service, provisional titles in the official service, while never holding or, even intending to hold tests for such promotions.” The Petitioners claimed that the above-referenced actions or inactions were in violation of the Delegation Agreement between the City and the state’s Human Resources Division (HRD).

On March 27, 2012, a pre-hearing conference was held at the offices of the Commission to determine whether the Commission would conduct such an investigation. In attendance were: Mr. Maher, representatives from the National Associations of Government Employees (NAGE), counsel for the City, a human resources representative from the City and counsel for HRD.

G.L. c. 31, § 2 states:

“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.”

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).

As part of the pre-hearing conference, I asked the City to outline the process used to make hiring and promotional decisions regarding labor service and official service positions.

According to the statements of the City, which were not refuted by Mr. Maher, the City, consistent with civil service law and rules, uses a labor service roster and certification process to make original appointments to labor service titles and complies with the statutory “2n + 1” formula. Similarly, the City makes promotional appointments in the labor service from among the three most senior qualified employees in the designated title.

Similar to all civil service cities and towns (and state agencies) in Massachusetts, almost all appointments and promotions to non-public safety positions are provisional, since HRD has not conducted examinations for these positions in many years. See Kasprzak v. Department of Revenue, 18 MCSR 68 (2005), on reconsideration, 19 MCSR 34 (2006), on further reconsideration, 20 MCSR 628 (2007); Glazer v. Department of Revenue, 21 MCSR 51 (2007); Asiaf v. Department of Conservation and Recreation, 21 MCSR 23 (2008); Pollock and Medeiros v. Department of Mental Retardation, 22 MCSR 276 (2009); Pease v. Department of Revenue, 22 MCSR 284 (2009) & 22 MCSR 754 (2009); Poe v. Department of Revenue, 22 MCSR 287 (2009); Garfunkel v. Department of Revenue, 22 MCSR 291 (2009); Foster v. Department of Transitional Assistance, 23 MCSR 528; Heath v. Department of Transitional Assistance, 23 MCSR 548.

Further, Mr. Maher was not able to substantiate other allegations made at the pre-hearing conference that the City was removing titles from civil service, changing said titles and then filling them through a non-civil service hiring process.

Mr. Maher and the NAGE representatives did point to two issues where the City has failed to comply with the delegation agreement with HRD: 1) failing to file timely “Section 67” reports; and 2) failing to notify HRD who serves as the delegated Personnel Administrator for the City.

In regard to the “Section 67” reports, the City filed those shortly before the pre-hearing conference and I issued a verbal order directing them to file such reports in a timely manner on a going-forward basis. In addition, I issued a verbal order directing the City to update HRD (and NAGE) with the name of the delegated Personnel Administrator.

The Petitioners have failed to present any information that would justify an investigation beyond the above-referenced inquiry and orders referenced above. For this reason, the Petitioners’ request for investigation under Docket No. Docket No. I-12-67 is hereby *denied*.

Civil Service Commission

Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 19, 2012.

A True Record. Attest:

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Commissioner

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.

Notice to:

Sean Maher and 13 Others (Petitioners)  
William Bagley, Esq. (for City of Worcester)  
Michele Heffernan, Esq. (for HRD)