

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

DANIELLE MAWN, KEVIN SHEA
& 3 OTHERS,
Appellants

v.

E-22-106

CITY OF MEDFORD,
Respondent

Appearance for Appellants:

Leah Marie Barrault, Esq.
The Labor Collaborative
3 Boulevard Street
Milton, MA 02186

Appearance for Respondent:

Brian M. Maser, Esq.
KP Law
101 Arch Street, 12th Floor
Boston, MA 02110

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

Based on the unique circumstances involved in this appeal, the Commission granted limited relief to two firefighters who were harmed through no fault of their own after two temporary fire lieutenant promotions were temporarily rescinded in order to correct a prior administrative oversight.

DECISION

On July 18, 2022, the Appellants, Danielle Mawn, Kevin Shea and three others¹, all firefighters in the City of Medford (City), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission) contesting an action by the City to rescind two

¹ Christopher Jenke, Michael Richard & Vincent Marcellino

temporary fire lieutenant promotional appointments. On August 9, 2022, I held a remote pre-hearing conference which was attended by counsel for the Appellants, counsel for the City, the City's Human Resource Director, co-counsel for the state's Human Resources Division (HRD) and Appellant Mawn.

Based on the pre-hearing submissions of the parties and HRD, the information reviewed at the pre-hearing conference, and the information provided by the City shortly after the pre-hearing, the following does not appear to be in dispute, unless otherwise noted:

1. Under the applicable civil service law and rules and pursuant to the duties delegated to appointing authorities by HRD, HRD is responsible for the following in regard to public safety promotional appointments in civil service communities: a) administering promotional civil service examinations (unless an assessment center option has been delegated to the appointing authority); b) establishing an eligible list of candidates; and c) forwarding the eligible list of candidates to the appointing authority.
2. When a permanent or temporary vacancy arises, the appointing authority is responsible for creating a certification from the applicable eligible list and making promotional appointments from among the three highest ranked individuals (for each vacancy) on the certification who have indicated a willingness to accept appointment.
3. On November 21, 2020, Appellants Danielle Mawn, Kevin Shea, Christopher Jenke and Michael Richard sat for the Fire Lieutenant examination administered by HRD.
4. On March 2, 2021, HRD established the eligible list for Medford Fire Lieutenant and forwarded the eligible list to the City.²

² When HRD sends the "eligible list" to appointing authorities, it includes a "certification" number. This misnomer, which appears to be related to systemic issued in NEOGOV, creates confusion about the distinction between an eligible list and a certification. This is more than a

5. On the eligible list, Appellant Christopher Jenke was in a tie group in the 2nd ranking.
Appellants Michael Richard and Kevin Shea were in a tie group in the 3rd ranking. Appellant Danielle Mawn was in a tie group in the 4th ranking (tied with Samuel McLain).
6. Prior to the events surrounding this appeal, the candidate ranked first on the fire lieutenant eligible list was promoted to permanent fire lieutenant.
7. On May 12, 2022, Appellants Jenke (2nd) and Richard (tied for 3rd) were promoted to permanent fire lieutenant.
8. Also on May 12, 2022, Appellant Shea (tied for 3rd) and Appellant Mawn (tied for 4th) were appointed as temporary fire lieutenants to fill two temporary vacancies. Prior to making these two temporary promotional appointments, the City did not create a separate certification.
9. On May 22, 2012, firefighter McLain, who had been out on leave at the time of the May 12th temporary fire lieutenant promotions, returned to duty. McLain was tied with Mawn for 4th on the eligible list, but McClain had more departmental seniority than Mawn, which is used by the City when choosing from tied candidates.
10. On June 1, 2022, the City rescinded the two temporary fire lieutenant positions based on the City's failure to create a certification prior to making these promotional appointments.

ministerial issue, as the date when a candidate's name first appears on a "certification" may impact when a candidate is eligible for promotion in a higher title. See [Dickinson and Hallisey v. HRD](#), 24 MCSR 200 (2011); [Daniels et al v. Boston Fire Dep't](#), 26 MCSR 19 (2013). As discussed at the pre-hearing, it may be helpful if HRD were to remind appointing authorities of their responsibility to create a "certification" each time a permanent or temporary vacancy arises.

11. According to the City, the Mayor, who is the appointing authority, waited until August 7, 2022 to create a certification and make the two temporary promotional appointments as she was obtaining information regarding the need for the temporary promotional appointments.³
12. On August 7, 2022, after creating the required certification, the City promoted Shea (ranked first on the certification) and McLain (tied for 2nd with Mawn on the certification, but with greater department seniority) to temporary fire lieutenant.

Analysis / Relief

At the August 9th pre-hearing conference, counsel for the Appellants clarified that, based in part on the events that had transpired since filing this appeal (the creation of a certification and the two temporary promotions effective August 7, 2022) , the relief being sought, in addition to ensuring that the City complies with the civil service law, rules and delegated responsibilities on a going forward basis, was limited to seeking an order providing relief to any employee harmed through no fault of their own due to the City's failure to create a certification, as required, on May 12, 2022 and the resulting rescission of the temporary promotions on June 1, 2022.

Determining what relief, if any, is warranted here is inherently complicated and is made even trickier based on the intervening return of firefighter McLain subsequent to the City making the initial temporary promotions on May 12, 2022 and the new (post-certification) temporary promotions on August 7, 2022.⁴

³ The parties agree that, between June 1, 2022 and August 7, 2022, the available shifts for fire lieutenant were covered by provisions in the collective bargaining agreement related to seniority.

⁴ The Appellants are not, at this time, challenging what appears to the City's position that, had a certification been issued on May 12th, McLain, upon his return on May 22nd, would have been entitled to assume the temporary vacancy granted to Mawn on May 12th, due to his greater department seniority.

Based solely on the unique circumstances of this particular case, including the rather limited period of time period involved, the Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, issues the following non-precedent-setting orders which should not be relied upon by parties in any subsequent appeals to the Commission:

1. Appellant Kevin Shea shall be entitled to any civil service benefits, including, but not limited to uninterrupted education and experience credit for temporary fire lieutenant from May 12, 2022 until such time as the current temporary fire lieutenant promotional appointment is rescinded on a date subsequent to the issuance of this order.
2. Samuel McLain shall be entitled to any civil service benefits, including, but not limited to uninterrupted education and experience credit for temporary fire lieutenant from May 22, 2022 until such time as the current temporary fire lieutenant promotional appointment is rescinded on a date subsequent to the issuance of this order.⁵

Civil Service Commission

/s/ Christopher Bowman
Christopher Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on August 25, 2022.

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)(l), 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

⁵ The City is asked to provide Mr. McLain with a copy of this decision.

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:

Leah Barrault, Esq. (for Appellants)

Brian Maser, Esq. (for Respondent)

Melissa Thomson, Esq. (HRD)