

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

Tracking Number: I-24-025

Re: Request for Investigation by Marc McAndrew, 10 Others and IAFF Local 718 regarding alleged acting, out-of-grade appointments by the Boston Fire Department.

RESPONSE TO REQUEST FOR INVESTIGATION

Petitioners' Request and Commission's Initial Response

On February 20, 2024, Marc McAndrews, ten other persons and the IAFF Local 718 (Petitioners), pursuant to G.L. c. 31, § 2(a), filed a request for investigation with the Civil Service Commission (Commission), regarding whether the Boston Fire Department (BFD) was engaging in impermissible “acting, out-of-grade” appointments regarding the position of Fire Captain.

An appointing authority may not fill a temporary or permanent position on an “acting” or “out of grade” basis for more than thirty days when a suitable eligible list exists from which to make an appointment. [Kelly and three others v. Boston Fire Dep't](#), Suffolk Sup. Ct. No. 1984CV03945-F (2022) (affirming Commission decision to award monetary damages to the plaintiffs who were harmed through the BFD’s use of impermissible acting, out-of-grade promotional appointments).

On March 26, 2024, I held a remote show cause conference which was attended by counsel for the Petitioners, co-counsel for the BFD, and counsel for the state’s Human Resources Division (HRD); a representative from the BFD administration; and two members of the public.

As part of their petition, the Petitioners identified what they considered to be a vacancy which, at the time of the petition, was located at Engine 53. As part of the Show Cause Conference, Captain Patrick Slattery of the BFD’s personnel division, referencing documents submitted to the Commission prior to the Show Cause Conference, indicated that the Engine 53 Captain position had been filled by a Captain from Engine 14 on March 1, 2024 via a bidding process outlined in the applicable CBA. According to Captain Slattery, the Engine 14 Captain position is now subject to the same bidding process.

Based solely on a review of the information provided at that time, and solely as it applied to the position identified by the Petitioners, there did not, at that time, appear to be evidence showing that the BFD was engaging in the use of impermissible, acting, out-of-grade appointments that would warrant an investigation at this time.

The Petitioners were provided with an additional 10 days to produce any additional evidence or information regarding why the Commission should initiate an investigation at this time. No additional evidence or information was submitted.

Commission's Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law's provisions to decide whether and to what extent an investigation might be appropriate.

Further, Section 72 of Chapter 31 provides for the Commission to "investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services."

The Commission exercises its discretion to investigate only "sparingly," typically only when there is clear and convincing evidence of systemic violations of Chapter 31 or an entrenched political or personal bias that can be rectified through the Commission's affirmative remedial intervention.

Commission's Final Response

As referenced above, acting, out-of-grade appointments are not permitted under the civil service law. In short, when an active eligible list is in place, an appointing authority cannot fill a vacancy for more than 30 days with any candidate other than those highest ranked candidates on the eligible list. Here, however, the information provided thus far does not establish that a vacancy existed for more than 30 days. Rather, it appears that, once an incumbent has transferred to another location (in the same title), the "vacated" position then gets posted and made available for additional lateral transfers (again in the same title). Assuming those transfers occur in a timely fashion and are not designed to subvert the intent of the civil service law, they do not constitute or create impermissible acting, out-of-grade appointments.

For that reason and based solely on the information provided to the Commission thus far, I recommend that the Commission decline to initiate an investigation at this time and that the matter under Tracking No. I-24-025 be ***closed***.

Civil Service Commission

Christopher C. Bowman
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Chair

On June 13, 2024, the Commission (Bowman, Chair; Markey, McConney and Stein, Commissioners [Dooley-Absent]) voted to accept the recommendation of the Chair and close the investigation.

Notice:

Leah Barault, Esq. (for Petitioners)

Robert J. Boyle, Jr., Esq. (for Boston Fire Department)