

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

RE:

Request for Investigation Against the City of Fitchburg by Petitioner Timothy McDermott

CSC Tracking Number:

I-15-42

Appearance for Petitioner:

Stephen C. Pfaff, Esq.  
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Boston, MA 02110

Appearance for City of Fitchburg:

Brian Magner, Esq.  
Deutsch Williams  
One Design Center Place: Suite 600  
Boston, MA 02210

Appearance for Human Resources Division:

Wendy Chu, Esq.  
Human Resources Division  
One Ashburton Place: Room 207  
Boston, MA 02108

Commissioner:

Christopher C. Bowman

**RESPONSE TO REQUEST FOR INVESTIGATION**

On February 27, 2015, the Petitioner, Timothy McDermott (Mr. McDermott), who currently serves as a Temporary Police Lieutenant in the City of Fitchburg (City), filed a request for the Civil Service Commission (Commission) to investigate “the Certification Delegation Process ... for recent promotions within the City of Fitchburg regarding permanent sergeant and lieutenant.”

On March 17, 2015, I held a conference to allow Mr. McDermott the opportunity to show cause why the Commission should initiate an investigation under G.L. c. 31, § 2(a). The conference was attended by Mr. McDermott, his counsel, the President and Vice President of the local police union, counsel for the City, the City’s Police Chief and Human Resources Director and co-counsel for the state’s Human Resources Division (HRD).

Based on the statements of the parties and/or the documents submitted by HRD, the following appears to be undisputed, unless otherwise noted:

1. Mr. McDermott is currently serving as a Temporary Police Lieutenant in Fitchburg.
2. As a Temporary Police Lieutenant, he is receiving the same pay as a Permanent Police Lieutenant and accruing the same training and experience credit that could be applicable to a future promotional examination.
3. Mr. McDermott's name currently appears first on an eligible list of candidates for Police Lieutenant in Fitchburg. This eligible list was created by HRD on February 17, 2015.
4. Absent any unforeseen circumstances, the City's Police Chief intends to recommend to the City's Mayor that Mr. McDermott be appointed as a Permanent Police Lieutenant when the vacancy becomes permanent.
5. On a *prior* eligible list for Police Lieutenant, which was revoked on February 17, 2015, Mr. McDermott's name was tied for first with Harry Hess.
6. Mr. Hess, after serving as a Temporary Police Lieutenant, was appointed as a permanent Police Lieutenant, effective December 4, 2014. He has more seniority than Mr. McDermott.

*Basis for Request for Investigation*

Mr. McDermott argues that, prior to the permanent appointment of Mr. Hess as Police Lieutenant, and prior to the creation of a Certification from the prior eligible list, the City's Mayor publicly announced that she would be promoting Mr. Hess, who was tied for first with Mr. McDermott.

According to Mr. McDermott, the public announcement establishes a predisposition to promote Mr. Hess and the untimely Certification is a violation of the civil service rules. Mr. McDermott argues that, taken together, this warrants an investigation by the Commission to determine if the permanent appointment should be vacated.

*City's Reply*

The City argues that the decision here was consistent with civil service law and the tenets of basic merit principles. According to the City, they simply decided to promote an individual who was tied for first on the eligible list, was serving in the position on a Temporary basis, and who had more seniority than Mr. McDermott.

## *Analysis*

G.L. c. 31, § 2(a) authorizes the Commission 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.” Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Sup. Ct. (2007). The Commission only exercises this discretion “sparingly” and usually when there is some evidence that personal or political bias has infected the hiring process. See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011).

I carefully reviewed and considered the statements of the parties and the documents submitted. Based on that review, an investigation is not warranted here.

The City’s decision to promote the individual tied for first on the police lieutenant eligible list was / is permitted under civil service law and rules and they were not required to provide Mr. McDermott with reasons for his non-selection as the non-selection did not constitute a bypass.

Further, Mr. McDermott has failed to show, or point to any evidence that may show, that the selection process here was infected by personal or political bias. The promoted candidate, who had more seniority was not only ranked first on the eligible list, but was also more senior and had been filling the position on a temporary basis for months prior to his permanent appointment.

Even accepting Mr. McDermott’s statement that the Mayor announced her intention to promote Mr. Hess prior to the creation of a Certification from the eligible list, that does not change my conclusion here. The Mayor was within her right to appoint the person tied for first on the eligible list and her decision to announce that beforehand does not equate to personal or political bias.

It is noteworthy that the Police Chief, as part of this process, stated his intention, absent any unforeseen circumstances, to promote *Mr. McDermott*, who is now ranked first on the new eligible list, to the position of permanent police lieutenant. His statement, to me, does not show political or personal bias against the second and third ranked candidates, but, rather, simply reflects the City’s predisposition to promote individuals in strict rank order – precisely the same thing they did when promoting Mr. Hess.

For these reasons, an investigation, beyond the review that has already been conducted, is not warranted here.

*Conclusion*

Mr. McDermott's request for an investigation is *denied*.

CIVIL SERVICE COMMISSION

/s/ Chris Bowman

Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on April 2, 2015.

Notice:

Stephen Pfaff, Esq. (for Petitioner)

Brian Magner, Esq. (for Town of Maynard)

Wendy Chu, Esq. (for HRD)