

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

Tracking Number: I-24-095

Re: Request for Investigation by Edward J. McGinn, Jr. and Two Others regarding the filling of the position of Police Chief in the City of Worcester.

INITIAL RESPONSE TO REQUEST FOR INVESTIGATION

Petitioners' Request

On June 24, 2024, the Petitioners, Edward J. McGinn, Jr., Sean J. Fleming and Carl J. Supenor, (Petitioners), all Deputy Police Chiefs in the City of Worcester (City)'s Police Department, filed a petition with the Civil Service Commission (Commission), asking the Commission to investigate the alleged failure of the City to fill the position of permanent, full-time Police Chief through the process required by the civil service law and rules.

On August 20, 2024, I held a remote show cause conference which was attended by the Petitioners, counsel for the City, a City representative, and counsel for the state's Human Resources Division (HRD). After hearing oral argument during the recorded proceeding, I provided the City with an opportunity to submit a written opposition to the request for investigation and for the Petitioners to file a reply. I have received and reviewed both submissions.

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 Initial Response

At issue here is whether the City is acting in accordance with the civil service law and rules regarding the filling of the position of Police Chief which the City Manager and City Council have recently sought to remove from civil service via a home rule petition that is currently pending before the Legislature. In short, the City's decision to *temporarily* fill the vacancy through a provisional promotion is permitted under [Section 15 of Chapter 31](#) as there is currently no active civil service eligible list in the City of Worcester for Police Chief, nor has there been since 2017.

I now turn to the more pressing issue of how and when this vacancy should be filled on a *permanent* basis.

The appointing authority's efforts to remove the position of Police Chief from the civil service system should have no bearing on the need to fill that position now. Pursuant to [Section 51 of the civil service law](#), all positions in the City, except those exempted by statute or Special Act, are covered by the civil service law. Unless and until a position has been removed from the civil service system, an appointing authority is obligated to ensure that the position is filled consistent with the civil service law and rules. Put another way, any effort by the appointing authority to unnecessarily delay the filling of the currently vacant permanent Police Chief position pending an outcome of a petition currently before the Legislature would be viewed as inconsistent with the requirements of the civil service law.

Further, the "Certification Handbook" issued to appointing authorities by HRD in 2009 specifically states that: "If a provisional promotion takes place, the appointing authority must submit documentation requesting to participate in the next exam cycle for the affected title." It appears that the City, shortly after making the provisional Police Chief appointment in September 2023, effectively represented to HRD that it was meeting this requirement by requesting to participate in a delegated assessment center examination, as opposed to participating in a traditional, statewide written examination administered by HRD. It wasn't until several months later, and only after HRD inquired with the City about the status of that delegation agreement, that the City notified HRD that it was *rescinding* its request to participate in a delegated assessment center. The City's unilateral rescission calls into question the validity of the City's provisional promotional appointment, as that appointment, as referenced above, is tied to the City's commitment to commence with the process to fill the position permanently. That is no longer the case. Rather, the City has represented, both at the show cause conference and as part of its written submission, that it plans to continue to ignore the civil service law and rules by taking no action to fill the Police Chief position on a permanent basis.

To the extent that they are even relevant, the City offers a series of arguments why it should be permitted to ignore the civil service laws and rules, many of which are unsupported by the facts or the law.

First, the City makes the head-scratching argument that the Civil Service Commission lacks jurisdiction to enforce the civil service law. The plain language of the statute and a series of prior Commission decisions lays bare how baseless this argument is.

Second, the City argues that compliance with the civil service law would limit the City's consideration of candidates for permanent Police Chiefs to incumbent Deputy Police Chiefs, eliminating any possibility of attracting a diverse pool of candidates. Setting aside the statement of three Deputy Police Chiefs that the City Manager informed them that he has already decided to appoint the provisional police chief permanently, the City's argument is simply wrong. As counsel for the City was reminded, both by HRD (in writing) and by the Commission at the show cause conference, the civil service law does allow for considering candidates outside the Department through an open competitive process, if the City so chooses. Yet, counsel for the City inexplicably recycled this argument as part of the most recent submission to the Commission.

Third, the City argues that moving forward with filling the Police Chief position permanently now could be a waste of time and resources if the pending home rule petition is approved. This argument ignores the fact that the City has failed to fill this position permanently now for over 13 months and that the City represented to HRD 13 months ago that it was indeed taking steps to fill the position permanently, which proved to be untrue several months later. Further, as part of the show cause conference, the City was encouraged to develop a plan that would prevent any waste of time and resources, by proposing a plan that would be acceptable to the City and be in compliance with the civil service law (i.e. – an open competitive process permitted by civil service law that allows for consideration of candidates outside the Department.) The City ignored that option.

In summary, the Petitioners have presented sufficient evidence that, after opening an investigation, the Commission may find that the City, at least since April 9, 2024, has been acting in violation of the civil service law and rules by employing a provisional police chief after rescinding its September 2023 commitment to the state's Human Resources Division to move forward with filling the position on a permanent basis and refusing to comply with the civil service law and rules on a going forward basis.¹

For this reason, the Petitioners' request for the Commission to open an investigation under Section 2(a) of Chapter 31 is hereby **allowed**. A notice of an expedited hearing to be held on November 18, 2024 will be issued under separate cover, including a document production schedule and an order to produce witnesses to provide sworn testimony related to this matter. The issuance of that notice is hereby stayed for 10 days, during which time the City may present to the Commission a remedial plan to, forthwith, comply with all civil service law and rules as it relates to the filling of the police chief position on a permanent basis.

Civil Service Commission

Christopher C. Bowman
Christopher C. Bowman
Chair

¹ [Section 74 of Chapter 31](#) addresses those circumstances in which an appointment is made in violation of the civil service law.

On October 17, 2024, the Commission (Bowman, Chair; Dooley, McConney and Stein, Commissioners [Markey – Absent]) voted to accept the recommendation of the Chair and open an investigation.

Notice:

Petitioners

Ian Keefe, Esq. (for City)

Tim D. Norris, Esq. (for City)