

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**DAVID M. DUMONT,
NICHOLAS A. MILONE,
PATRICK WALDRON,
CHARLES W. SCIACCIA,**

Appellants

v.

CITY OF METHUEN,
Respondent

Case Nos.: G1-09-20 (DUMONT)
G1-09-33 (MILONE)
G1-09-252 (WALDRON)
G1-09-261 (SCIACCA)

MODIFIED INTERIM ORDER

The Appellants separately filed the instant appeals with the Civil Service Commission on January 21, 2009 (Dumont), February 7, 2009 (Milone), May 22, 2009 (Waldron) and June 1, 2009 (Sciaccia).

Pre-hearing conferences were conducted on various dates between April 9, 2009 and June 30, 2009 at the offices of the Civil Service Commission.

All of the Appellants filed their appeals under G.L. c. 31, § 2(b), alleging that they were “bypassed” for original appointment to the position of reserve police officer by candidates ranked lower on a Certification issued to the City of Methuen by the state’s Human Resources Division (HRD) in August 2008.

The Personnel Administration Rules (PARs) define a bypass as:

“The selection of a person or persons whose name or names, by reason of score, merit preference status, court decree, decision on appeal from a court or administrative agency, or legislative mandate appear lower on a certification than a person or persons who are not appointed and whose names appear higher on said certification.” (PAR.02)

In regard to all of the instant appeals, the City has argued that the appeals are premature because no “bypass” has occurred because the City has yet to receive approval of its [selection and non-selection] reasons which were apparently submitted to HRD in January 2009.

G.L. c. 31, § 27 requires the City to “immediately file with the administrator (HRD) a written statement of his reasons” [for review by HRD] whenever a bypass occurs. Further, PAR.08 (2) states in relevant part:

“Unless an appointing authority shall, within the time periods set forth in this paragraph, make and notify the administrator of an appointment from the names certified, the certification shall become void. The time periods are as follows:

(c) within twelve weeks of any certification of names to the appointing authority by the Administrator from any eligible list established as the result of an open competitive public safety examination; provided, however, that the Administrator, in his discretion, may limit or extend the term of any certification, or ratify any appointment made from such certification; provided further, however, that any appointing authority requesting an extension must submit a written request setting forth sound and sufficient reasons as to why the appointment cannot be made within the time period set forth in this paragraph. The Administrator may, before or after an appointment has been made, cancel a certification if he finds that the certification was made in error, or that any person certified was placed on the eligible list through mistake or fraud; and, if a person has been appointed from such certification, the Administrator may revoke the appointment and order the person's discharge. No person, however, shall be deemed to have been appointed or promoted to any position requiring certification by the Administrator from an eligible list unless the appointing authority, prior to the date of expiration of such eligible list and without regard to the time periods for certifying set forth in this paragraph, shall have notified the Administrator in writing that such person has been so appointed or promoted, or that the appointing authority has notified the Administrator of its intent to appoint or promote such person, if the appointment or promotion must be delayed due to the scheduling of any training required by statute, or municipal ordinance or by-law, or departmental rule.”

At the pre-hearing conference regarding Case No. G1-09-252, the City stated that selection reasons were submitted to HRD in January 2009, but that HRD had sought additional clarification which the City has not yet provided to HRD.

Although HRD has not yet approved the selection or non-selection reasons submitted by the City, the City has directly informed the Appellants that they are not being selected for appointment through written correspondence in January 2009. According to the City, none of the candidates designated for selection have been sworn in as reserve police officers nor are they on the City's payroll.

Two of the Appellants, as part of their appeals submitted to the Commission, attached published reports alleging that some of the candidates designated for selection were related to the City's Chief of Police, a police captain and members of the City Council. The City does not dispute that some of the selected candidates are related to the above-referenced individuals, but argues that it had no impact on the review or selection process.

G.L. c. 31, § 74 states in part: “No person making an appointment to any civil service position shall receive or consider a recommendation of an applicant for such appointment given by any member of the general court, alderman, or councilman, except as to the character or residence of the applicant.”

Section II of the State Ethics Commission Advisory No. 05-01 states:

“Public employees must avoid conduct that creates a reasonable impression that any person may improperly influence them or unduly enjoy their official favor, or that they are likely to

act (or fail to act) because of kinship, rank, position or undue influence of any party or person. A reasonable impression of favoritism or bias may arise when a public employee, knowingly or with reason to know, acts on matters affecting the interest, whether financial or non-financial, of a friend, a business associate or a relative other than an immediate family member or a non-financial interest of an immediate family member.

The conflict of interest law allows public employees to act on matters, even if it creates the appearance of a conflict, if they openly admit all the facts surrounding the appearance of bias prior to any official action. Specifically, the conflict of interest law states that if a reasonable person having knowledge of the relevant circumstances would conclude that a public employee might be improperly influenced, the public employee can dispel this impression of favoritism by disclosing all the facts that would lead to such a conclusion. For example, it may be necessary for a public employee to disclose a personal relationship with someone appearing before his or her board.

Appointed employees must make such disclosures in writing to their appointing authority (the person or board who appointed them to their job). This disclosure must be kept available for public inspection. An elected employee's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made prior to any official participation or action. In addition, the Commission advises public employees to make an oral disclosure for inclusion in the meeting minutes. Occasionally, an appearance of a conflict of interest arises for the first time during a public meeting. In that case, a public employee should make an oral disclosure at the meeting and file a written disclosure as soon as possible thereafter. Alternatively, instead of filing a written disclosure under Section 23(b)(3), a public employee may simply abstain from participating, i.e. debating, voting or otherwise being involved, in a matter that creates an appearance of a conflict.

Once a public disclosure has been made, the public employee may participate in the matter notwithstanding the "appearance" of a conflict. When public employees do act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person."

For all of the above reasons, the Commission enters the following interim orders:

- Pursuant to G.L. c. 31, § 2(a), the Commission hereby opens an investigation into the review and selection process used by the City of Methuen in selecting reserve police officers in the Fall of 2008 under Docket No. I-09-290;
- The above-referenced investigation will be conducted in accordance with G.L. c. 31, § 72;
- As part of this investigation, the City of Methuen and HRD are hereby ordered to produce and deliver to the offices of the Civil Service Commission; One Ashburton Place, Room 503, Boston, Massachusetts 02108 by July 10, 2009 at 4:00 P.M. the following records in their possession, custody or control:

- For the period January 1, 2008 to the present, any emails, memos, letters or other records in their custody, possession and/or control regarding the review and/or selection process of reserve police officers by the City of Methuen in the Fall of 2008. Records include all means by which information may be stored, including, but not limited to written or printed materials, photocopies, electronic or magnetic recordings, and computer files, tapes and disks, including emails and landline phone and cell phone bills; notes taken by any of the interview panelists regarding the candidates and/or any communication received regarding the candidates from individuals who were not members of the interview panel.

- Until further order of the Commission, the City of Methuen is hereby prohibited from employing any of the candidates designated for selection for the position of reserve police officer from the certification in question as reserve police officers.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 9, 2009.

Civil Service Commission

Christopher C. Bowman
Chairman

Notice to:

Patrick Waldron (Appellant)

[REDACTED]

Charles Sciacca (Appellant)

[REDACTED]

David M. Dumont (Appellant)

[REDACTED]

Nicholas Milone (Appellant)

[REDACTED]

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