

COMMONWEALTH OF MASSACHUSETTS

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

KYLE MILTIMORE,
REBECCA BOUTIN &
DAVID KENNEDY,
Appellants

D1-19-270 (Miltimore)
D1-19-271 (Boutin)
D1-19-272 (Kennedy)

v.

WESTFIELD FIRE
COMMISSION,
Respondent

Appearance for Respondent:

Tanzania Cannon-Eckerle, Esq.
The Royal Law Firm
33 Elliot Street
Springfield, MA 01105

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT’S REQUEST FOR
MODIFICATION OF COMMISSION DECISION**

Background

On May 21, 2021, the Civil Service Commission (Commission) issued a decision overturning the decision of the Westfield Fire Commission (WFC) to terminate the Appellants, two firefighters and a fire captain, previously employed by Westfield Fire Department (WFD). The Civil Service Commission’s 69-page decision, issued after seven days of hearings and a review of testimony from various witnesses and dozens of exhibits, exonerated all three of the Appellants of any wrongdoing, with one exception in which the Commission determined that a 30-day suspension was warranted for one of the Appellants.

The Civil Service Commission's review also found that:

Undisputed acts of misconduct, along with allegations of other serious misconduct by the then-Deputy Fire Chief, [had] been largely ignored, glossed over or sanctioned by the Westfield Fire Commissioners, who voted to *promote* the Deputy Fire Chief to Fire Chief shortly after the termination of the Appellants.

Significant portions of a Fire Commissioner's testimony before the Civil Service Commission, listed below, illustrated the failure of the Westfield Fire Commission to exercise its oversight duties:

Counsel: Okay, and the fact that Patrick Egloff had assaulted [Ms. N] was an undisputed fact, was it not?

Fire Commissioner: Yeah, I believe that's true.

...

Hearing Officer: ... Are you aware that Deputy Chief Egloff allegedly made crude comments that he was under the desk of ... the Fire Chief, performing oral sex on her?

Fire Commissioner: I do recall that.

Hearing Officer: ... Are you aware of any statements by Rebecca Boutin that Deputy Egloff grabbed her ponytail?

Fire Commissioner: I do recall that.

Hearing Officer: ... Are you also aware of any allegations that Deputy Chief Egloff blew up emotionally, etc. went on a tirade ... ?

Fire Commissioner: Yeah, I do recall reading it.

Hearing Officer: ... Why did you not discipline ... Deputy Chief Egloff?

Fire Commissioner: In regard to the blowing up issue, I believe it was a little over the top but I do not believe it reached the level of discipline. In regard to pulling the pony tail, I mean, it's an allegation but I was very surprised that any kind of unwanted touching of any kind can be considered an assault and it was not reported formally or otherwise, so I think it's probably horseplay, for a lack of a better word, not appropriate, but I don't think it rose to the level of discipline.

I think that answers your question.

Hearing Officer: Well, there's a couple more things in there. We have the Deputy Fire Chief apparently acknowledging that he made crude comments about performing oral sex on the female Fire Chief. How can that not warrant discipline?

Fire Commissioner: No, I do not believe that would warrant discipline.

Hearing Officer: Okay. How about the admitted misconduct about groping ... a female citizen while in uniform? Does that not warrant discipline?

Fire Commissioner: It might have, but my understanding is that [Ms. N] ... had spoken with Chief Egloff and in some way or another had satisfied herself, she had no desire to press any other charges. Perhaps it would have been appropriate to discipline him for that, but we chose not to.

Hearing Officer: Because?

Fire Commissioner: Primarily because we feel he was appointed commissioner, Fire Chief rather, and we were satisfied that he had assumed responsibility for a previous action and was prepared to change some of the ways he was doing with his people.

In short, the evidence made clear that the Westfield Fire Commission had not only previously abdicated its most basic duty to ensure a safe workplace, free of sexual and physical harassment, but chose to terminate three employees who objected to this repugnant behavior.

As a remedy, the Civil Service Commission ordered the immediate reinstatement of the Appellants, with back pay, and ordered the Westfield Fire Commission to allow the Appellants to remain on paid administrative leave until such time as the Fire Commission had taken the necessary steps to ensure a safe workplace upon their return to duty. Those required steps included: mandatory sexual harassment training for all Fire Department employees, including Egloff, and a fair, impartial investigation into Egloff's misconduct.

Upon appeal, a Hampden Superior Court judge upheld the Civil Service Commission's decision, concluding that the Commission's decision to overturn the Appellants' terminations was "supported by substantial evidence and legally sound."

After the issuance of the Superior Court's decision, the other parties reached a global settlement agreement, which resulted in the Appellants voluntarily resigning their positions (from which they had previously been reinstated, received back pay, and were put on paid administrative leave, in accordance with the Civil Service Commission's decision), reportedly upon receipt of substantial sums of additional compensation.

Westfield Fire Commission's Motion to Modify the decision of the Civil Service Commission

After reaching this global settlement agreement and noting the changed circumstances since the issuance of the Civil Service Commission's decision (i.e. – the Appellants would not be returning to duty under Egloff's administration), the Westfield Fire Commission filed the instant motion to modify that part of the Civil Service Commission's decision related to conducting a further investigation of Egloff. As part of that request, the Westfield Fire Commission confirmed that Egloff, all other members of the Department, and the Westfield Fire Commissioners had received sexual harassment training under the direction of the Massachusetts Commission Against Discrimination.

Civil Service Commission's Response

What occurred prior to the filing of this appeal, and the resulting harm done to the Appellants, is shocking. Equally disconcerting was the choice of the Westfield Fire Commission (now under new leadership) to ignore at the time – and indeed reward – the repugnant behavior of its then-Deputy Fire Chief by promoting him to Fire Chief, going so far as to dismiss his

pulling of a female Fire Captain's hair as innocent "horseplay". Egloff's documented misconduct, both on and off-duty, cannot be tolerated.

The question here is whether, considering the parties' global settlement agreement, a modification of the Civil Service Commission's decision is warranted. As noted above, the Fire Commission has complied with various aspects of the decision, including retroactive reinstatement of the Appellants with back pay, placement on paid administrative leave (until the settlement agreement was reached), and completion of sexual harassment training that included Egloff and the Fire Commissioners.

I am mindful that, because of the settlement agreement, the Appellants will not have to return to work under Egloff, which had been an important consideration regarding that part of the decision ordering a further investigation of his misconduct. That does not, however, absolve the Fire Commission from ensuring a safe, harassment-free workplace in which employees are *encouraged* to report allegations of harassment, free of any fear of reprisal or retribution.

For these reasons, I have concluded that the Respondent's request to modify the decision should be allowed, with the following condition. The attached Notice of Employee Rights, agreed to by the incumbent Westfield Fire Commissioners, shall be posted in conspicuous locations that allow for inspection by all incumbent employees and shall be sent to all incumbent employees via email or other means to ensure receipt. I am aware that, to some, the issuance of this notice may be viewed as almost meaningless, and a modification of the Commission's decision could be viewed as unwarranted. Let me assure any skeptic that the Civil Service Commission will maintain vigilance and would be prepared to act within the scope of its jurisdiction and authority should that become necessary in the future. Considering the changed circumstances, however, and based on the good faith representation by the incumbent Fire

Commissioners that they will fulfill their oversight responsibilities on a going-forward basis, I recommend that the motion to modify the decision of the Civil Service Commission be allowed, with the condition noted above.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

On August 10, 2023, Civil Service Commission (Bowman, Chair; McConney, Stein and Tivnan [Dooley – Absent]), voted to accept the recommendation of the hearing officer and allow the Respondent’s request to modify the Commission’s May 21, 2021 decision.

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 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:

Tanzania Cannon-Eckerle, Esq. (for Respondent)

Courtesy copy to:

Maurice M. Cahillane, Esq. (for Appellants)

Attachment: Notice of Employee Rights

Notice of Employee Rights

The City of Westfield and the Fire Commission hereby recognize the merit principles set forth in Chapter 31 of the Massachusetts General Laws, which include:

- 1) That all employees shall receive fair treatment in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion, and with proper regard to privacy and constitutional rights as citizens; and that all employees are protected against coercion for political purposes and are protected from arbitrary and capricious actions.
- 2) That all employees shall be retained on the basis of the adequacy of their performance, and that inadequate performance shall be corrected through a performance improvement plan; and for those whose inadequate performance cannot be corrected, they may be separated from their employment after written notice stating the action contemplated, the specific reason(s) for such action, and a full due process hearing.
- 3) That the workplace shall be a safe workplace free of harassment, sexual harassment, and bullying.

The City of Westfield and the Fire Commission further recognize the following:

- 4) No person shall deny or interfere with the right of civil service employees employed by the City of Westfield to petition, individually or collectively, the city government or any member thereof, to furnish information to the mayor, city council, or to appear before any committee of city council; and
- 5) No person shall deny or interfere with the right of any civil service employees employed by the City of Westfield to petition, individually or collectively, the Massachusetts Legislature or any member thereof, to furnish information to either branch of the Legislature (otherwise known as the “General Court”), or to appear before any of its committees.

The City of Westfield and the Fire Commission proclaim (1) that Employees will not be punished for any good-faith reporting of harassment, or participating in a harassment investigation or lawsuit, and (2) retaliation for reporting harassment or participation in harassment investigations is prohibited by the City of Westfield and the Fire Commission and will not be tolerated.