

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
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**STEVEN O'NEILL,**

*Appellant*

v.

**CITY OF LOWELL &  
HUMAN RESOURCES  
DIVISION,**

*Respondents*

**Case No.: I-14-124**

**RESPONSE TO REQUEST FOR INVESTIGATION**

On June 6, 2014, Steven O'Neill ("Mr. O'Neill"), a police sergeant in the City of Lowell ("City"), pursuant to G.L. c. 31, s. 2(a), requested that the Civil Service Commission ("Commission") investigate whether the City and the state's Human Resources Division ("HRD") erred by allowing fellow police sergeants John Cullen II ("Mr. Cullen") and Donald Crawford ("Mr. Crawford") to sit for the promotional examination for police lieutenant, administered on April 29 and 30, 2014.

Pursuant to G.L. c. 31, s. 2(a), the Commission has the following powers and duties:

- (a) 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.

Id.

Mr. O'Neill alleges that Mr. Cullen and Mr. Crawford are residents of New Hampshire and do not meet the requirement of G.L. c. 31, s. 58, which provides,

... any person who receives an appointment to the police force or fire force of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town; ...

Id.

Section 58 was amended by St. 2013, Chapter 38, s. 50<sup>1</sup> to add immediately after the above-cited text of section 58 the following:

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<sup>1</sup> Chapter 38 was the General Appropriations Act for fiscal year 2014.

provided, however, that a city or town may increase the 10 mile residency limit under a collective bargaining agreement negotiated under chapter 150E[.] ...

Id.

Section 110 of St. 2013, Chapter 38 amended G.L. c. 150E, s. 7(d) in a related manner. In House Bill 3566, dated July 12, 2013, Governor Patrick vetoed section 110 stating, “ ... although I approve Section 50, which allows collective bargaining agreements to extend the present requirement that police officers and firefighters reside within 10 miles of the employing municipality, this additional unnecessary section inadvertently allows such agreements to prevail over other existing statutory provisions that employee must reside in the Commonwealth and that prefer municipal residents on civil service eligible lists.” Id. The Legislature subsequently overrode the veto. Administrative Notice.

On June 13, 2014, the Commission issued an Order to Show Cause why the Commission should grant Mr. O’Neill’s request for an investigation and/or how he is aggrieved and scheduled a conference to be held on July 8, 2014.

On June 30, 2014, HRD filed documentation related to Mr. O’Neill’s request. The documentation states that HRD entered into a delegation agreement (“Agreement”) with the City in February 2014 to create an “Assessment Center” to be used as the examination and to create an eligible list for the position of police lieutenant. The Agreement provides that the City would be responsible for determining who was eligible to take the promotional exam for lieutenant. The City selected a company named BadgeQuest to administer the exam. Mr. O’Neill ranked 6<sup>th</sup> after the exam; Mr. Cullen and Mr. Crawford were tied for 3<sup>rd</sup>.

The Commission held the scheduled conference in this matter on July 8, 2014, which was attended by counsel for each party and Mr. O’Neill, as well as Mr. Crawford and Mr. Cullen and their respective attorneys. As indicated in the Commission’s July 14, 2014 Procedural Order (“Order”) issued after the conference, it was determined, based on Mr. Cullen’s statements at the conference, that Mr. Cullen resides in Dracut Massachusetts, within ten (10) miles of the City, indicating that it was not necessary to further investigate his residence. However, the Order indicated it was undisputed that although Mr. Crawford resides within ten (10) miles of Lowell, he resides in Hudson, New Hampshire, not “in the commonwealth.” Further, at the conference, it was stated that the City and the local police union recently had discussions regarding the amendment to G.L. c. 31, s. 58 and it appeared likely that they would reach an agreement to remove the requirement for certain Lowell officers to live in the Commonwealth. As further indicated in the Order, and consistent with the Commission’s response to a request for an investigation involving another town (Request for Investigation of Rockland Fire Department, I-12-100 (January 24, 2013)(*see Erickson v Civil Service Commission and Town of Rockland*, SUCV2013-00639-D (November 3, 2014)) and a Procedural Order issued in a pending case (Request for an Investigation of the Salisbury Police Department, (I-14-71)), the Commission informed the parties that there would be a status conference and/or hearing on January 6, 2015 at 10:00 a.m., which would provide the parties six (6) months to reach an appropriate agreement resolving the matters here. At least as of the time of the Request for an Investigation of the Salisbury Police Department, HRD’s position had been that amended section 58 did not eliminate a requirement that police officers and firefighters reside “in the commonwealth.”

Shortly before January 6, 2015, the City emailed the Commission to state that the City and the union had negotiated a side letter of agreement (“Agreement”), dated November 17, 2014, permitting certain police officers to reside outside the commonwealth. The status conference and/or hearing went forward on January 6 as scheduled in order to see the Agreement and to hear the comments thereon of Mr. O’Neill and the current view of HRD on amended section 58.

At the status conference and/or hearing, the City produced the written Agreement, which provides, in part, that, Lowell Superior Officers may reside outside of the Commonwealth but not to exceed a twenty-five mile radius, from border to border. The Appellant submitted a memorandum at the status conference/hearing and averred that although section 58 “no longer is a bar to Sergeant Crawford,” local ordinance 56-29 requires officers to be “bona fide” Lowell residents and that the failure to be a resident shall be a “voluntary termination of employment.” He averred further that since Mr. Crawford was not a resident at the time he took the lieutenant exam and he should have been considered terminated, Mr. Crawford could not satisfy the requirement of G.L. c. 31, s. 59 that he should have been employed by the City for one year preceding the exam. HRD indicated that its position on amended section 58 has evolved such that it agrees with the interpretation of amended section 58 such that police officers may reside outside the commonwealth as that law may permit on a going forward basis. However, HRD also stated that its position is that since the Agreement between the City and the union was not reached until November 17, 2014 and Mr. Crawford had taken the lieutenant exam in April, 2014, the Agreement is not applicable to Mr. Crawford.

On January 9, 2015, HRD provided documents it referenced at the status conference/hearing and that I requested relating to Mr. Crawford’s residence. Mr. Crawford filed a memorandum on January 13, 2015, supplementing his oral argument and averring that the request for investigation here should be denied in view of the Agreement and because he should otherwise be deemed to have satisfied any appropriate residence requirement. Also on January 13, 2015, the City filed a brief memorandum which supports Mr. Crawford’s memorandum.

Section 58 was amended by St. 2013, Chapter 38 in the summer of 2013. The lieutenant exam at issue here occurred in April 2014. That the City and the union did not collectively bargain a change to the permissible geographic boundaries for officers’ residences until November 2014 should not be allowed to undermine the amended statute which indicates that the Legislature was aware that the prior version of section 58 had been unevenly applied, that it would take an unknown number of cities and towns and unions varying amounts of time to address the matter, and that the Legislature intended the amended statute to promote resolution of the matter by agreement. Thus, the issues raised by Mr. O’Neill have been resolved and the manner in which they have been resolved is consistent with the Commission’s determination regarding the Request for Investigation of the Rockland Fire Department and the Procedural Order issued in regard to the Request for Investigation of the Salisbury Police Department.

The Commission has broad authority with regard to the conduct of investigations. As the Court noted in Erickson, *supra*,

G.L. c. 31, s. 2(a) states that the Commission has the power to ‘conduct investigations at its [sic] discretion ...’. [T]he commission has complete discretion regarding whether and to what extent it investigates civil service employees and actions of appointing authorities *See* G.L. c. 31, s. 72. (‘The commission [...] **may** investigate all or part of the official and labor services ....’)  
Id. (emphasis added)

Under the circumstances here, the Commission finds that no further inquiry is warranted.

Civil Service Commission

*/s/ (Cynthia A. Ittleman)*

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Cynthia A. Ittleman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 22, 2015.

Notice to:  
Ryan Sullivan, Esq. (for Mr. O’Neill)  
Michael Carlson, Esq. (for Lowell)  
Andrew J. Gambaccini, Esq. (for Mr. Crawford)  
John P.M. Cullen, II (*Pro Se*)  
Patrick Butler, Esq. (for HRD)  
John Marra, Esq. (HRD)