

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 23-0010

IN THE MATTER

OF

JOSEPH SOLOMON

ORDER TO SHOW CAUSE

1. The State Ethics Commission (“Commission”) is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On May 18, 2023, the Commission found reasonable cause to believe that Joseph Solomon (“Solomon”) violated G.L. c. 268A, §§ 19, 23(b)(2), 23(b)(4) and 26.

3. Solomon was at all relevant times the Chief of Police of the City of Methuen.

4. Solomon’s appointing authority was the Mayor of Methuen.

5. Solomon has a bachelor’s degree in accounting.

The negotiation of union contracts

6. Under Solomon’s individual employment contract as Methuen Police Chief, Solomon was to be paid “2.6 times the highest paid permanent, full time police officer.”

7. In 2017, the two unions representing the Methuen Police, the patrolmen’s union and the superior officers’ union, negotiated collective bargaining agreements (CBAs) for the fiscal year 2017-2020 period.

8. Negotiations for both CBAs took place over several months in 2017.
9. Negotiations for the patrolmen's CBA occurred on or about May 22, June 28, July 20, August 7, and August 31.
10. Solomon, Methuen's assistant city solicitor, city solicitor and the Mayor (collectively "the city's negotiating team") represented the city in the negotiation of both CBAs.
11. The city's negotiating team for both CBAs excluded the city's longtime auditor ("Auditor"), who had participated in previous contract negotiations.
12. The superior officers' union and the Auditor had previously disagreed on the manner in which pay is calculated.
13. Prior to 2017, the term "base pay" used in both CBAs referred to the salary an officer earned without the addition of any stipend, allowances and incentives.
14. In the 2017 negotiations of the superior officers' CBA, the union sought, and the city agreed, to include in the calculation of base pay, holiday compensation, uniform allowances and protective vest stipend.
15. The change in how base pay was calculated affected salaries in two ways: First, if an officer had percentage-based compensation, that percentage was multiplied by the higher base pay, resulting in a larger salary. Second, the superior officers' pay rates, which were based on subordinate officers' base rates, also increased.
16. At no time did the city negotiating team request or obtain an analysis of the changes from the Auditor.

17. Solomon understood that the change in how base pay was calculated could have a significant financial impact.

18. After the final meeting to negotiate the superior officers' CBA, the Mayor asked the head of the superior officer's union (Union Leader), who had no contract drafting experience, to draft a clean copy of the final CBA.

19. The Union Leader provided a draft of the CBA to Solomon and the Mayor on August 31, 2017.

20. The Mayor instructed the Union Leader to add a "0/2/2 provision" – indicating that salaries would not increase the first year, but increase by 2% for each of the next two years.

21. The Union Leader added the 0/2/2 provision in bold print, but in a section titled "Compensation," he wrote that base pay would be calculated to include the factors to which the negotiating teams had agreed (holiday compensation, uniform allowance, and vest stipend), but added an additional factor, "education incentive", to which the negotiating teams had not agreed.

22. The compensation provision also stated: "Base pay and added base pay calculations are to be calculated in the following order and manner to arrive at base pay for all purposes; Base pay, then add cleaning allowance, subtotal, then calculate and add Holiday compensation under Article XII, then add calculated Protective Vest/Hazardous Duty and Technology Compensation percentage, calculate Quinn Bill/Education Incentive."

23. This method of calculation had been sought by the superior officers' union and rejected by the Auditor in previous years.

24. The Union Leader also added the term "including all added base pay calculations" to the provisions that described how a superior officers' salary was based off of a percentage of the next highest-ranking officer.

25. This provision would have a stacking effect on superior officer compensation, resulting in estimated salary increases between 35% and 183%.

26. The Union Leader changed the spacing and margins in the document so that all changes to the document were confined to a single page and did not affect other pages, including the signature page.

27. These changes to the spacing and margins made the Union Leader's substantive changes difficult to identify.

28. The Union Leader consulted with Solomon when he added the new language and reformatted the superior officers' CBA, including the change in how base pay was calculated.

29. Solomon was aware of the changes made by the Union Leader and understood the financial implications of the changes, including the change in how base pay was calculated.

30. On September 4, 2017, the Union Leader gave the revised version of the superior officers' CBA to Solomon and the Mayor.

31. Neither the Union Leader nor Solomon provided the revised version of the CBA to other members of the city's negotiating team or to the Auditor, or informed them of the additional changes, including the change in how base pay was calculated.

32. Solomon instructed the Union Leader to sign the CBA and date it August 31, 2017.

33. The Mayor signed the CBA on September 6, 2017.

34. The Mayor did not read the CBA again when he signed it, and did not observe the language had changed from the draft he received on August 31, 2017.

35. The Mayor did not intend any of the ancillary benefits, stipends, or allowances to compound into the wage calculations when he signed the contract.

36. On September 6, 2017, Solomon emailed the president of the Methuen Police Patrolmen's Association, who was responsible for negotiating the patrolmen's CBA on behalf of the union, a new revised draft of the patrolmen's CBA that contained the same change in how base pay was calculated, consistent with the Union Leader's edits to the superior officers' CBA.

37. Solomon knew that the changes to the patrolmen's CBA would substantially increase his own compensation as police chief.

38. Solomon did not advise any other member of the city's negotiating team of the changes he made to the patrolmen's CBA, including the change in how base pay was calculated, nor of the financial implications of the changes.

39. Solomon did not disclose to the Mayor that he had made changes to the patrolmen's CBA, nor did he advise the Mayor of how the changes, specifically, the change in how base pay was calculated, affected Solomon's financial interests.

40. The Mayor signed the version of the patrolmen's CBA that included Solomon's edits and presented this version of the CBA to the City Council for approval.

41. The changes Solomon made to the patrolmen's CBA would result in an estimated pay increase for Solomon for fiscal year 2019 to over \$375,000, an over 30% increase, or \$90,000, from Solomon's fiscal year 2018 salary, as Solomon's salary was 2.6 times that of the highest paid patrol officer.

42. No one asked the Auditor about the financial impact of approving the CBAs prior to the Mayor presenting the CBAs to the Methuen City Council for approval.

43. No one discussed the financial impact of the CBAs with the City Council.

44. The City Council approved the contract on September 18, 2017.

45. On January 7, 2022, an independent arbitrator determined the superior officers' CBA was invalid because the city officials approving the contract did not understand what they agreed to.

46. At no time did Solomon make a written disclosure to and receive a written determination from the Mayor pursuant to § 19(b)(1) authorizing him to participate in making changes to the patrolmen's CBA notwithstanding his financial interest in those changes.

The employment of intermittent police officers

47. Methuen is the only civil service community in the Commonwealth that distinguishes between reserve and intermittent police officers. In Methuen, reserve police officers are governed by civil service law, while intermittent police officers are not.

48. Methuen Police Department (“MPD”) use of non-civil service intermittent police officers began in the aftermath of World War II under the authority of the 1945 Special Act, which allowed for such officers to serve so long as no members of the regular or reserve police force are available.

49. Between 2014 and 2018, Solomon recommended for hire seven non-civil service intermittent police officers whom he would eventually employ in the same capacity, with the same opportunities and benefits, as full-time civil service police officers.

50. In each instance, Solomon determined whom to hire, and made recommendations to the Mayor, the appointing authority for each intermittent officer.

51. The 1945 Special Act stated, in relevant part: “[n]o member of the permanent intermittent police force shall be called into service as a police officer so long as there are members of the regular or reserve police forces of said town available for service.”

52. When Solomon called into service at least five of the intermittent officers on a full-time basis, four or more individuals were on the civil service list and available for hire.

53. For each of these five officers, Solomon could not have truthfully certified that no regular or reserve officer was available for the work for which he appointed the intermittent officer on a full-time basis.

54. The 1945 Special Act also states that intermittent officers may be employed for a period not to exceed thirty days, pending the filling of such vacancy from the civil service list.

55. At each 30 day period an intermittent officer was employed, Solomon did not determine if an individual on the civil service list was available for employment or seek to hire from that list.

56. For each of the seven officers, individuals on the civil service list were available after most if not all 30 day periods.

57. Three intermittent officers, hired in March 2014, May 2015, and January 2017, were employees of Solomon's private security firm.

58. The intermittent officer hired on June 30, 2016, Sean Fountain ("Fountain"), was the Methuen City Council Chair at the time.

59. At the time Fountain was hired, at least four individuals were available to hire on the civil service list.

60. At the time of hire for each officer, Massachusetts law required that intermittent police officers attend a minimum of a reserve police academy. G.L. c. 41, § 96B.

61. The purpose of this requirement was, in part, to ensure that all officers received basic training in the duties of law enforcement, including the use of firearms.

62. Solomon recommended, and continued to employ, at least four of the intermittent officers, including Fountain, without proof that they had attended a police training academy of any kind.

63. Solomon did not take steps to verify attendance of a training academy by the four officers.

64. On August 9, 2017, Solomon issued a personnel order stating that Fountain, then serving as a part-time intermittent officer, would become a full-time intermittent officer.”

65. When Solomon issued the August 9, 2017, order, Solomon had received no record of the required training for Fountain.

66. On September 20, 2017, Solomon issued a personnel order stating that “Fountain’s badge number will change effective immediately from I29 to P162.”

67. The “P” designation indicated full-time civil service officers.

68. Subsequent to the September 20, 2017, order, Fountain’s badge number changed accordingly from I29 to P162.

69. On June 28, 2019, Solomon issued an order stating: “effective immediately, [i]ntermittent officers who are working in a full time capacity shall be called for extra work by seniority and by hours in the same manner as regular full-time officers.”

70. The order gave six intermittent officers the same work privileges as civil service officers.

71. Providing non-civil service officers the same work and hours as civil service officers is in violation of civil service law.

72. Between 2016 and 2020, Methuen paid the seven intermittent officers just over \$1.1. million.

73. Methuen paid Fountain over \$406,000 from August 2017 to May 2020 as a full time intermittent officer, including regular, overtime, detail, holiday, court and other payment.

74. Methuen eliminated the position of full-time, permanent intermittent police officer effective July 21, 2020.

The submission of false information

The Section 67 List

75. Pursuant to G.L. c. 31, § 67, each appointing authority shall send a list of civil service employees to the state's Human Resource Division ("HRD") each year, under the pains and penalties of perjury (the Section 67 List).

76. In January 2019, in compiling Methuen's Section 67 List, Solomon directed Methuen Human Resources staff to improperly include Fountain and to use Fountain's previous civil service as a firefighter to calculate his civil service seniority date, without any interruption in service.

77. When compiling the Section 67 List, Solomon knew Fountain was not a civil service officer.

78. When compiling the Section 67 List, Solomon knew that the civil service time for a firefighter position did not count for a police civil service seniority.

79. On January 30, 2019, Methuen's Human Resources Director sent Methuen's Section 67 List to HRD, listing Fountain with a civil service seniority date of August 29, 1999, as a full time police officer, as classified by civil service.

80. Fountain was a North Andover firefighter between August 29, 1999 and August 12, 2017.

81. At the time Methuen filed the Section 67 List, the city intended to lay off police officers due to a budget shortfall.

82. Under G.L. c. 31, § 39, a city may only lay off the officers with the least amount of civil service experience.

The Training Certificate

83. On February 14, 2019, a local reporter made a public records request to Methuen for Fountain's police academy training certificate.

84. Solomon did not respond to the reporter as required by the public records law.

85. After the public records request, Methuen officials also asked Solomon to produce Fountain's training certificate.

86. In April 2020, Solomon petitioned the Municipal Police Training Committee (MPTC) for a temporary waiver regarding training on Fountain's behalf.

87. The MPTC did not grant the waiver.

88. On May 5, 2020, Solomon emailed the Methuen HR Director with what he represented as Fountain's training certificate.

89. The certificate was fabricated.

90. On September 22, 2020, Solomon provided the Methuen HR Director with what he represented as Fountain's personnel file. The file contained a letter from North Andover Police Chief Richard Stanley indicating that he sponsored Fountain for a training academy.

91. The letter from Stanley was also fabricated.

92. Solomon knew or had reason to know the certificate and letter were fabricated when he submitted them to the HR Director.

93. Methuen paid Fountain at least \$36,700 in police wages including regular, overtime, detail and other pay after Solomon submitted the fabricated certificate and letter.

LAW

Section 19

94. Section 19 of General Laws chapter 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he has a financial interest.

95. As the MPD Police Chief, Solomon was a municipal employee pursuant to G.L. c. 268A, § 1(g).

96. The patrolman's CBA was a particular matter.

97. Solomon participated in the patrolmen's CBA by discussing the CBA terms during the contract negotiations from May until September 2017 and by emailing the head of the patrolmen's union with changes to the CBA on September 6, 2017, including the change in how base pay was calculated.

98. Solomon knew he had a financial interest in the patrolmen's CBA because he knew his salary was based off the highest paid patrol officer and he knew that the change in how base pay was calculated would affect his salary.

99. Section 19(b)(1) states it shall not be a violation of this section "if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes a full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

100. Solomon did not advise his appointing authority, the Mayor, of how the change in how base pay was calculated impacted his salary, and therefore his financial interest, nor did he obtain advance written authorization from the Mayor to participate in any negotiations involving the patrolmen's CBA.

101. Therefore, by participating in the negotiation of the patrolmen's CBA, as the Methuen Police Chief, Solomon repeatedly violated § 19.

Section 23(b)(2)(ii)

102. Section 23(b)(2)(ii) prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use their official position to secure, for such employee or others, unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

The patrolmen's CBA

103. Receiving a significant salary increase without scrutiny or review is an unwarranted privilege of substantial value.

104. Solomon, having an accounting degree and having been the only city official to discuss with the Union Leader the changes the Union Leader made to the to the superior officers' CBA, knew or had reason to know that the change in how base pay was calculated would result in a salary increase for him of over 30%.

105. When Solomon emailed changes to the Patrolmen's CBA without discussing the matter with other members of the city bargaining team, or identifying the effect the change would have on his or the superior officers' salaries, Solomon knowingly or with reason to know, used his position as Police Chief to attempt to provide himself the unwarranted privilege of a significant salary increase without scrutiny or review.

106. Similarly situated public employees cannot properly take steps that result in a substantial salary increase that avoids review or scrutiny.

107. Therefore, by adding changes to the patrolmen's CBA without advising his appointing authority or other Methuen officials of the changes' impacts, Solomon violated § 23(b)(2)(ii).

The Intermittent Officers

108. A position in the MPD is a privilege.

109. A position on the MPD is an unwarranted privilege for a person hired contrary to law.

110. A civil service salary and benefits are also privileges.

111. These privileges are unwarranted if the individual granted them is not a qualified civil service officer.

112. A position in the MPD and a civil service salary and benefits are each of substantial value.

113. Solomon knew or had reason to know that when he recommended for hire and continued to employ at least five of the intermittent officers, their hirings were not in compliance with the 1945 Special Act.

114. Solomon knew or had reason to know that when he issued the August 9, 2017, personal order appointing Fountain as a full time intermittent officer, he did not have evidence that Fountain completed the required training.

115. Solomon knew or had reason to know that when he issued the September 20, 2017, personnel order changing Fountain's badge number to a number of a civil service offer, Fountain was not a qualified civil service officer.

116. Solomon knew or had reason to know that when he issued the June 28, 2019, order allowing intermittent officers the same seniority status as civil service officers, the order was contrary to civil service law.

117. Solomon knew or had reason to know that when he included Fountain on the Section 67 List for submission to Methuen's HRD that Fountain was not a civil service officer.

118. Solomon knew or had reason to know when he included Fountain's effective civil service date to include when Fountain served as a firefighter, that the firefighter service time would not apply even Fountain was a civil service police officer.

119. Solomon knew or had reason to know that when he sent a copy of Fountain's training certificate to the Methuen Human Resource Director on May 5, 2020, the certificate was fabricated.

120. Therefore, by recommending for hire, continuing to employ, and offering benefits equal to civil service officers, to at least five intermittent officers, Solomon repeatedly violated § 23(b)(2)(ii).

Section 23(b)(4)

121. Section 23(b)(4) prohibits a municipal employee from knowingly, or with reason to know, presenting a false or fraudulent claim to his employer for any payment or benefit of substantial value.

122. At all relevant times, the City of Methuen was Solomon's employer.

123. Continued employment with the MPD is a benefit of substantial value.

124. Listing Fountain on the Section 67 list was material to Fountain's claim for payment and benefits commensurate with civil service officers.

125. On May 5, 2020, Solomon knowingly, or with reason to know, submitted a fabricated training certificate for Fountain and/or a letter listing Fountain as a recruit to demonstrate Fountain met Methuen's training qualification for officers.

126. Solomon's claim that Fountain was a civil service officer allowed his employer to continue paying Fountain.

127. By filing the false statement that Fountain was a civil service officer, allowing that officer to continued to be paid, Solomon violated § 23(b)(4).

Section 26

128. Section 26 provides that any person who, with fraudulent intent, violates §§ 23(b)(2) or 23(b)(4), shall be punished by a fine of not more than \$10,000 if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than \$1,000 in any 12 month period.

129. Solomon violated § 23(b)(2)(ii) with fraudulent intent when he continued to employ Fountain while concealing Fountain's failure to meet the requirements of a Methuen police officer and submitted false documents relating to Fountain's training.

130. The value of continued employment and benefits which Solomon secured for Fountain far exceeds \$1,000.

131. Therefore, by recommending for hire, continuing to employ, and offering benefits equal to a civil service officer to Fountain, while taking steps to conceal Fountain's failure to meet the legal requirements of a police officer, Solomon repeatedly violated § 26.

WHEREFORE, Petitioner asks that the Commission:

1. find that Solomon violated G.L. c. 268A, §§ 19, 23(b)(2)(ii), 23(b)(4), and 26; and
2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully submitted,

Petitioner State Ethics Commission
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