

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RE: Request for Investigation against the City of Newton by Petitioner James Pomeroy

Tracking Number: I-15-88

Appearance for Petitioner:

Walter M. Foster, Esq.
Eckert Seamans Cherin &
Melbott, LLC
Two International Place
16th Floor
Boston, MA 02110

Appearance for City of Somerville:

Donnalyn Kahn, Esq.
City of Newton Law Department
1000 Commonwealth Avenue
Newton, MA 02458

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On May 14, 2015, the Petitioner, James Pomeroy (Mr. Pomeroy), a firefighter in the City of Newton (City), filed a request for investigation with the Civil Service Commission (Commission) asking the Commission to conduct an investigation regarding “the Acting Temporary appointments made by the City of Newton’s Fire Department effective on March 15, 2015.”
2. On June 9, 2015, I held a show cause hearing which was attended by Mr. Pomeroy, his counsel, counsel for the City and the City’s Fire Chief.
3. At the conclusion of the show cause hearing, I provided the City with two (2) weeks to submit a written response to the request for an investigation and the Petitioner to submit a reply to the City’s submission two (2) weeks thereafter.
4. The City subsequently submitted a written brief on June 16, 2015. On June 30th, I received a request from counsel for the Petitioner seeking an extension of time to submit a reply. That reply was received and reviewed on July 2nd.

5. The information that follows is based on the documents submitted, the statements of the parties and any inferences I have drawn.
6. Mr. Pomeroy has been a Newton firefighter for nine (9) years.
7. On November 17, 2012, Mr. Pomeroy took and passed the civil service examination for Fire Lieutenant.
8. On April 30, 2013, the state's Human Resources Division (HRD) established an eligible list for Newton Fire Lieutenant. Mr. Pomeroy was tied for 2nd on this eligible list.
9. On June 9, 2013, the first ranked candidate and the candidate tied with Mr. Pomeroy for second were promoted to Fire Lieutenant, leaving Mr. Pomeroy ranked first on the eligible list.
10. During the life of the eligible list, which expired on April 9, 2015, Mr. Pomeroy served as a Temporary Fire Lieutenant on three (3) different occasions. After each temporary appointment expired, he reverted to his firefighter position.
11. On or around March 2015, a temporary vacancy developed in the non-civil service position of Chief of Operations. Temporary appointments were made to this position and the corresponding lower positions of Deputy Fire Chief, Captain and Lieutenant.
12. Since Mr. Pomeroy was already serving as a Temporary Fire Lieutenant in March 2015, he was not appointed to this temporary position.
13. Before the expiration of the eligible list on April 9, 2015, Mr. Pomeroy took the next promotional examination for Fire Lieutenant and did not receive a passing score.
14. On April 10, 2015, a new eligible list for Newton Fire Lieutenant was established. The names of nine (9) candidates appear on this 2015 eligible list. Since Mr. Pomeroy did not receive a passing score on the most recent promotional examination, his name does not appear on this eligible list, making him ineligible for any subsequent temporary or permanent lieutenant appointments in Newton during the life of this eligible list.

Legal Standard

The Commission maintains authority under G.L. c. 31, § 2(a) to conduct investigations. This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen's Association et al v. Civ. Serv. Comm'n, No. 2006-4617, Suffolk Superior Court (2007). See also Erickson v. Civ. Serv. Comm'n & others, No. 2013-00639-D, Suffolk Superior Court (2014). We exercise this discretion "sparingly". See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011).

Analysis

Here, Mr. Pomeroy's request for investigation is based on the premise that the March 2015 vacancy in the non-civil service position of Chief of Operations was permanent and, thus, all of the corresponding vacancies in the lower positions of Deputy Fire Chief, Captain and Lieutenant should have been filled using permanent, as opposed to temporary, appointments.

Based on the City's representation at the show cause hearing and their written submission, the Petitioner is incorrect. The City appropriately determined that the vacancy was temporary in nature and appropriately made temporary appointments in the corresponding lower positions.

Conclusion

For the reasons stated above, the Commission declines to open an investigation and this matter is *closed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on July 9, 2015.

Notice:

Walter M. Foster, Esq. (for Petitioner)
Donnalyn Kahn, Esq. (for City of Newton)
Patrick Butler, Esq. (HRD)