

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

Tracking Number: I-24-022

Re: Request for Investigation by Neil Rosie, Two Others and Medford Firefighters Union Local 1032 regarding the filling of certain positions in the Medford Fire Department.

RESPONSE TO REQUEST FOR INVESTIGATION

Petitioners' Request and Commission's Initial Response

On February 14, 2024, the Petitioners, Neil Rosie, Peter Ziobro, Dan Marino and the Medford Firefighters Union Local 1032 (Petitioners), filed a petition with the Civil Service Commission (Commission), asking the Commission to investigate “... the legality of [the City of Medford]’s refusal to implement promotions [in the City’s Fire Department] in accordance with the promotional procedures set forth in [the civil service law].”

On March 12, 2024, I held a remote show cause conference which was attended by co-counsel for the Petitioners, two representatives for the Petitioners, counsel for the City of Medford (City), and counsel for the state’s Human Resources Division (HRD). That same day, I issued a Procedural Order memorializing what was discussed at the show cause conference, including the need for the City to provide additional information regarding the filling of certain positions in the City’s Fire Department, including the positions of Fire Chief and Deputy Fire Chief.

Over the next several weeks, the Petitioners, the City and HRD submitted updates and relevant documents to the Commission, followed by a remote status conference which I held on May 24, 2024.

Commission's Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law’s provisions to decide whether and to what extent an investigation might be appropriate.

Further, Section 72 of Chapter 31 provides for the Commission to “investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services.”

The Commission exercises its discretion to investigate only “sparingly,” typically only when there is clear and convincing evidence of systemic violations of Chapter 31 or an entrenched political or personal bias that can be rectified through the Commission’s affirmative remedial intervention.

Commission’s Final Response

At issue here is whether the City is acting in accordance with the civil service law and rules regarding the filling of the Fire Chief and Deputy Fire Chief positions, the former of which the City’s Mayor recently sought to remove from the civil service system. In short, the City’s decision to fill vacancies in those positions through provisional promotions is permitted under Section 15 of Chapter 31 as there is currently no active eligible list for either position in the City of Medford.

I now turn to the more pressing issue of how and when those vacancies should be filled on a permanent basis.

The appointing authority’s efforts to remove the position of *Fire Chief* from the civil service system should have no bearing on the need to fill that position now. Unless and until a position has been removed from the civil service system, an appointing authority is obligated to ensure that the position is filled consistent with the civil service law and rules. Put another way, any effort by the appointing authority to unnecessarily delay the filling of the currently vacant Fire Chief position pending an outcome of a petition currently before the City Council¹ would be viewed as inconsistent with the requirements of the civil service law.

Further, as referenced in the March 12th Procedural Order, the “Certification Handbook” issued to appointing authorities by HRD in 2009 specifically states that: “If a provisional promotional takes place, the appointing authority must submit documentation requesting to participate in the next exam cycle for the affected title.” The next statewide examination for Fire Chief is being administered by HRD on October 2, 2024 and the next statewide examination for Deputy Fire Chief is being administered on November 16, 2024. While the City is permitted to petition HRD to conduct its own local assessment center examination (as opposed to participating in these traditional, statewide examinations), the City, if it chooses this option, should move expeditiously to ensure that these assessments centers are administered consistent with the same timeframe of the statewide examinations. To ensure clarity, opting to utilize locally-administered assessment centers should not delay filling the positions of Fire Chief and Deputy Fire Chief on a permanent basis.

¹ Even if the City Council were to approve the appointing authority’s request for a home rule petition, passage of a Special Act of the legislature would still be required to remove the position of Fire Chief from civil service as all official service positions fall under civil service positions in a City by statute. See G.L. c. 31, §§ 48 and 51. The parties agree that this path involves, at a minimum, several months, not weeks.

I was assured by counsel for the City that the appointing authority will act in good faith to prioritize filling both positions in a timely manner consistent with the civil service law and rules. Based on that assurance, and because the Petitioners are free to resubmit a request for investigation if that does not occur, I recommend that the Civil Service Commission close this investigation at this time.

Civil Service Commission

Christopher C. Bowman
Christopher C. Bowman
Chair

On June 13, 2024, the Commission (Bowman, Chair; Markey, McConney and Stein, Commissioners [Dooley-Absent]) voted to accept the recommendation of the Chair and close the investigation.

Notice:

Leah Barault, Esq. (for Petitioners)
Brian Maser, Esq. (for City of Medford)
Tracy Conlon, Esq. (HRD)