

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CHRISTOPHER SAGGESE,
Appellant

v.

I-12-78

TOWN OF WINTHROP

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

COMMISSION'S RESPONSE TO REQUEST FOR INVESTIGATION

On February 27, 2012, Christopher Saggese (Appellant or Mr. Saggese), a firefighter for the Town of Winthrop's Fire Department (Town or Fire Department), asked the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(a), to investigate the promotional practices of the Town and to issue relief pursuant to Chapter 310 of the Acts of 1993. A pre-hearing and a status conference were held and the parties submitted briefs and reply briefs.

The issue presented here is whether the Town's Fire Chief, motivated by personal bias, sought to prevent Mr. Saggese from being promoted to the position of Fire Lieutenant.

Upon receiving a request for an investigation, the Commission conducts a preliminary inquiry to determine whether an investigation, potentially resulting in some type of relief, is warranted. For the reasons discussed below, I have concluded that an investigation is not warranted.

Background

In 2009, the state's Human Resources Division (HRD) administered a promotional examination for Fire Lieutenant in Winthrop. Mr. Saggese did not take this examination. On May 14, 2010, HRD, based on the 2009 examination results, established an eligible list of candidates ("List 1") that would expire on May 14, 2012. As of December 2010, then-firefighter Stephen Calandra, who did take and pass the 2009 promotional examination, was the only individual on List 1.

In November 2011, HRD administered another promotional examination for Fire Lieutenant in Winthrop. Mr. Saggese and Mr. Calandra were the only two individuals to take this 2011 examination. On May 15, 2012, HRD, based on the 2011 examination results, established a new eligible list of candidates ("List 2") that is scheduled to expire in May 2014. The only name on List 2 is Mr. Saggese since Mr. Calandra did not pass the November 2011 promotional examination. In February 2012, prior to the expiration of List 1, the Town promoted Mr. Calandra to permanent Fire Lieutenant.

In his initial filing with the Commission, Mr. Saggese challenged the Town's ability to make a permanent (as opposed to temporary) appointment. In a supplementary brief filed with the Commission, Mr. Saggese did not contest that issue. Rather, he now argues that the Town's decision to promote Mr. Calandra in February 2012 was based on the personal bias of the Town's Fire Chief, who wanted to ensure that Mr. Saggese would not be considered for the position. The Town vigorously denies the charge and insists that Mr. Calandra's promotion was based on the needs of the Fire Department at the time and was consistent with basic merit principles.

Discussion

The Commission typically hears appeals regarding the non-selection for original appointment or promotion via "bypass appeals", filed pursuant to G.L. c. 31, §§ 2(b) & 27. In those cases, a candidate with a higher rank on a Certification has been "bypassed" by a candidate with a lower rank, requiring the city or town to provide the bypassed candidate with sound and sufficient reasons to justify the bypass, which the bypassed candidate can then appeal to the Commission.

Here, Mr. Saggese was not bypassed, since his name did not appear on the Certification from which the promotion was made as he did not take the 2009 examination and, thus, was not included on the eligible list that was effective through May 14, 2012.

Although he was not bypassed, Mr. Saggese has asked the Commission to investigate the circumstances under which this promotion occurred and determine if it was consistent with basic merit principles.

G.L. c. 31, § 2 states:

"In addition to its other powers and duties, the commission shall have 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.”

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).

To determine whether an investigation was warranted, I held a pre-hearing conference, allowed the parties to submit written briefs and, at a subsequent status conference, heard sworn testimony from Mr. Saggese and Winthrop Fire Chief Paul Flanagan. After careful review and consideration, I have determined that an investigation under Section 2(a) is not warranted for the reasons cited below.

First, there is a “limited nature of the rights conferred on persons who pass” civil service examinations, including the fact that individuals do not have a vested right in their particular positions on the list. Callanan v. Personnel Administrator for the Commonwealth, 400 Mass. 597, 601 (1987).

The narrow interpretation of applicants’ rights is a product of a statutory scheme that leaves important issues of timing almost completely out of their control: “there can be no expectation that certain positions will become available during the period of a particular list. Positions might become available immediately before the establishment of a new list, or immediately after the expiration of an old one. Kelley citing Davis at 1115 and Kern v. Personnel Administrator of Dept. of Pers. Admin., 28, Mass. App. Ct. 938, 940 (1990).

The cases cited above address the limited rights of individuals who take and pass a civil service examination and are not selected for a position while their name is active on the eligible list for that position. Here, Mr. Saggese’s name never even appeared on the eligible list from which the promotion was made because he chose not to take the 2009 promotional examination. Thus, not only did Mr. Saggese have no expectation of being appointed, civil service law prohibited his permanent or temporary appointment to Fire Lieutenant while List 1 was still active. The Town, consistent with civil service law and rules, promoted the one individual whose name appeared on List 1 at the time. Had Mr. Saggese wanted to be considered for any vacancies that occurred from May 2010 to May 2012, he should have taken the promotional examination in question. He chose not to.

Second, I carefully considered the testimony, affidavits and other evidence presented by Mr. Saggese in support of an investigation. In general, he alleges that his role as local union president and a personal animus between him and the Fire Chief prompted the Town to fill a Fire Lieutenant vacancy from List 1. More specifically, Mr. Saggese alleges that the Town, in February 2012, knew that Mr. Calandra may not have passed the November 2011 Lieutenant examination, which would result in Mr. Saggese being the only person whose name would appear on List 2. Thus, according to Mr. Saggese, the Town moved to fill the vacancy sooner rather than later to ensure that Mr. Calandra was selected – and Mr. Saggese was not.

Mr. Saggese raised examples which, according to him, demonstrate the Fire Chief's personal bias.

In his brief, Mr. Saggese stated that "as recently as late 2009 and early 2010, [Mr. Calandra] performed contracting work at ... Chief Flanagan's residence." The Fire Chief acknowledged that Mr. Calandra, who has a Master Plumbing license, has performed work on his residence and others employed by the Fire Department. However, the Fire Chief produced copies of invoices and a canceled check (for \$4,444.00) showing that payment was made for the work performed. I credit the Fire Chief's testimony that he paid for all plumbing services performed by Mr. Calandra on his residence.

Mr. Saggese also alleged that the Fire Chief was biased against him because of an incident that occurred in 2006 when the Fire Chief was a Captain and Mr. Saggese was a firefighter. Mr. Saggese testified that, while training, he (Saggese) accidentally struck a fire station with a ladder truck. Mr. Saggese testified that the Fire Chief, who was a Captain at the time, urged Mr. Saggese to pin the blame on another Fire Captain by telling the Fire Chief at the time that the Fire Captain in question was always yelling at him and that this affected his training. When Mr. Saggese refused to do so, Flanagan, "seemed disappointed" according to Mr. Saggese.

Chief Flanagan equivocated in his testimony regarding this 2006 incident and I infer that Mr. Saggese's account is generally accurate. I do not find it plausible, however, that Chief Flanagan has a bias against Mr. Saggese as a result of this six-year-old incident.

Mr. Saggese also testified about two relatively recent incidents where he purportedly ruffled the feathers of the Fire Chief by taking actions that led the Fire Chief to believe that Mr. Saggese was going over his head or casting him in a negative light to the Town Manager or members of the Town Council. The Fire Chief acknowledged in his testimony that he was not pleased on at least one recent occasion where he believed there was a breach of protocol.

Mr. Saggese's written submission also references a 2011 altercation between him and the Fire Chief that resulted in Mr. Saggese receiving a short-term suspension. In his written affidavit, Mr. Saggese acknowledges making "inappropriate comments" toward the Fire Chief. The Fire Chief's report on that matter is a bit more specific. According to the Fire Chief's report, Mr. Saggese, upset about the Fire Chief's decision to not allow firefighters to wear shorts as part of their uniform, confronted the Fire Chief at the scene of a fire, stating, "enjoy that uniform for only another couple of weeks" and "I will be at your funeral and spit on your coffin." Mr. Saggese accepted a 24-hour suspension for the incident.

Finally, I credit Chief Flanagan's testimony that he has chosen to overlook recent incidents that may have otherwise justified disciplinary action against Mr. Saggese.

As referenced at the outset, this is not a bypass appeal and no bypass occurred. The promotional appointment of Mr. Calandra occurred at a time when Mr. Saggese was not eligible for promotion because he chose not to take the promotional examination.

Some of the issues raised here may be worth considering as part of a traditional bypass hearing, just as it would be worth exploring whether Mr. Saggese's recent conduct, for which he was disciplined, would be sufficient to justify a bypass. They do not, however, warrant any further investigation into what was a lawful promotional appointment of a long-term firefighter whose name appeared on an eligible list for appointment to this position.

Conclusion

For the reasons cited above, the Appellant's request for an investigation under Docket No. I-12-78 is hereby *denied*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on July 26, 2012.

A true record. Attest:

Commissioner

Notice:

Leah Barrault, Esq. (for Appellant)
Darren Klein, Esq. (for Respondent)