

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SCOTT SAUNDERS,
Appellant

G2-14-291

v.

TOWN OF HULL,
Respondent

Appearance for Appellant / Petitioner:

Peter Delano, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116

Appearance for Respondent:

James B. Lampke, Esq.
Town Counsel
115 North Street
Hingham, MA 02043

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL & RESPONSE TO REQUEST FOR INVESTIGATION

Background

On December 17, 2014, the Appellant / Petitioner, Scott Saunders (Mr. Saunders), a Hull Police Officer, filed a promotional bypass appeal with the Civil Service Commission (Commission), related to the position of Hull Police Sergeant.

On January 13, 2015, I held a pre-hearing conference, which was attended by Mr. Saunders and counsel for the Town of Hull (Town). As part of the pre-hearing conference, the parties agreed that Mr. Saunders was not bypassed for promotional appointment to police sergeant. Rather, his name was ranked 2nd on Certification No. 14PSGT0914, created by the Town on September 15, 2014. The Town appointed the first ranked candidate for promotional appointment.

During the hiring cycle, however, another vacancy developed for police sergeant, which Mr. Saunders is now filling on a provisional basis. As Mr. Saunders was the only person on the eligible list, which expired in April 2015, the Town was permitted to fill the position provisionally.

Mr. Saunders, who failed the subsequent promotional examination, and thus, whose name does not appear on the new eligible list, argues that the Board of Selectmen, for reasons unrelated to basic merit principles, decided to let him “die on the vine.” Specifically, Mr. Saunders argued that the Board of Selectmen and Police Chief may have a bias against him.

In summary, Mr. Saunders is not contesting a promotional bypass, but, rather, asking the Commission to investigate whether the Town’s decision to let him “die on the vine” is based on political or personal bias. For this reason, I gave Mr. Saunders until February 13, 2015 to show cause why the Commission should initiate an investigation under G.L. c. 31, s. 2(a). The Town had 30 days thereafter to submit a reply.

Petition for Investigation / Town’s Response

On February 13, 2015, Mr. Saunders, who is now represented by counsel, submitted a seventy-nine (79) page (including attachments) request, outlining the reasons why the Commission should initiate an investigation. On April 13, 2015, the Town submitted a sixty (60) page (including attachments) reply / opposition. I reviewed each submission in their entirety.

In summary, Mr. Saunders alleges that the Town, contrary to a well-established practice, refused to make a promotion from a “short list” (eligible list containing less than three (3) names), on which he was the only candidate, due to personal and political bias against him.

According to Mr. Saunders, this bias is related to: 1) him reporting to the Attorney General that approximately \$130,000 in funds were discovered missing from the union treasury when he took over as union president in March 2013; and 2) a motion that he made in his capacity as union president for a no confidence vote in the Town’s Police Chief. A 23-page list of reasons for the vote was sent to the Town Manager.

In its response, the Town argues that it never intended to immediately fill the recently-created vacancy. The Town argues that, rather than limit itself to one (1) candidate, they simply chose to wait for a brief period of time for the establishment of a new eligible list, which could include up to ten (10) police officers who sat for the recent promotional examination. Further, the Town argues that Mr. Saunders’s role in reporting missing union funds and his role in the no-confidence vote against the Police Chief played no role in the Town’s decision not to permanently promote him to Sergeant. Finally, they point to the decision to appoint Mr. Saunders to the sergeant position on a provisional basis as proof that there is no political or personal bias against him.

Legal Standard

The Commission always maintains authority under G.L. c. 31, § 2(a) to conduct investigations, including when allegations are made that an appointment process was not consistent with basic merit principles. 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, however, “sparingly” and when there is evidence that personal or political bias has potentially infected the hiring process. See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011).

Analysis

In Cutillo v. Malden, 23 MCSR 48 (2010), the Commission, after conducting an investigation, concluded that a personal bias against Mr. Cutillo by the City’s Police Chief was the reason that Mr. Cutillo’s name “died on the vine” of a promotional list for sergeant. Having concluded that personal bias had infected the appointment process, and that Mr. Cutillo had been prejudiced, the Commission ordered relief that ultimately required the City to consider Mr. Cutillo for the vacant sergeant slot.

Here, Mr. Saunders, similar to Mr. Cutillo, argues that bias has infected the appointment process and is the primary reason for letting his name die on the vine of an eligible list that, as of this decision, has now expired. As shown in Cutillo, the Commission does not hesitate to investigate such allegations and, when appropriate, order appropriate relief.

Here, however, Mr. Saunders has opted to seek redress regarding the same matter in three (3) other venues, including:

- A demand for arbitration to the American Arbitration Association;
- A charge of prohibited practice to the state’s Department of Labor Relations; and
- A civil rights complaint, which includes a so-called “whistleblower” allegation, in federal district court. (See G.L. c. 149, § 185)

G.L. c. 149, § 185 (f) states:

“Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract; except that **the institution of a private action in accordance with subsection (d) shall be deemed a waiver by the plaintiff of the rights and remedies available to him, for the actions of the employer, under any other contract, collective bargaining agreement, state law, rule or regulation, or under the common law.**” (emphasis added)

Since the allegations contained in the Whistleblower claim involve the same issue, Mr. Saunders has waived any rights and remedies available to him from the Commission under the state’s civil service law or rules. Even if he hadn’t, the same issue is now the subject of arbitration and a prohibited practice complaint. Those entities have the ability to grant the same (or more) relief than the Commission, if warranted. As such, any investigation by the Commission would be duplicative and a waste of valuable resources. For these reasons, an investigation is not warranted.

Conclusion

Since no bypass occurred here, Mr. Saunder’s bypass appeal is *dismissed*. Further, for the reasons stated above, the request to initiate an investigation is *denied*.

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 May 14, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Peter Delano, Esq. (for Appellant / Petitioner)

James Lampke, Esq. (for Respondent)