

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

TERRY THOMAS,
MARTIN BROOKS, Jr.,
KEITH DALRYMPLE,
PAUL O'CONNOR,
RICHARD SEXTON and
JOSEPH GILLESPIE,
Appellants

Docket Nos.
E-08-68
E-08-69
E-08-70
E-08-175
E-08-176
E-08-177

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appellants' Attorney:

Leah Barrault, Esq.
Pyle, Rome, Lichten,
Ehrenberg & Liss-Riordan, P.C.
18 Tremont Street: Suite 500
Boston, MA 02108

Respondent's Attorney:

Nicole Taub, Esq.
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

INTERIM ORDER

The Appellants filed the instant appeal with the Civil Service Commission appealing the action of the Boston Police Department in filling one (1) lieutenant position and one (1) captain position through "out of grade" temporary assignments, thereby bypassing the temporary and permanent promotional procedures under G.L. c. 31. The appeals from

Appellants Thomas, Brooks and Dalrymple relate to the lieutenant position and the appeals from Appellants O'Connor, Sexton and Gillespie relate to the captain position.

A pre-hearing conference was conducted at the offices of the Commission on September 15, 2008. The following facts are not disputed:

- The Boston Police Department has filled the two positions in question through “out of grade” temporary assignments for more than 60 days;
- The State’s Human Resources Division (HRD) maintains an active civil service eligibility list for the position of captain and lieutenant in the Boston Police Department;
- At the time of the pre-hearing conference, the lieutenant position had been filled via a permanent promotion;
- At the time of the pre-hearing conference, the captain position was still open and the Boston Police Department had not yet requested a certification from HRD to fill the position, either via a temporary or permanent promotion.

An appointment to a civil service position may be either “original” or “promotional.” G.L. c. 31, §§ 6 and 7. Both original and promotional appointments must be filled by certification from an eligible list, when an eligibility list exists. An Appointing Authority may make a temporary promotional appointment to a temporary position or to fill a temporary vacancy in a permanent position in accordance with the requirements of G.L. c. 31, §§ 7 and 8.

Under G.L. c. 31, § 31, an Appointing Authority may make an emergency appointment to a civil service position for not more than thirty working days during a sixty-day period in certain circumstances. An emergency appointment may also be renewed for an additional thirty days under certain circumstances.

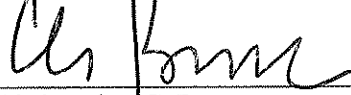
The use of “out-of-grade” promotional appointments for extended periods of time, such as those that have occurred here, circumvent the civil service law and must be

avoided. See Somerville v. Somerville Mun. Employees Ass'n., 20 Mass. App. Ct., 594, 602-603 (1985).

For all of the above reasons, the Commission enters the following interim order pursuant to Chapter 310 of the Acts of 1993:

- The Boston Police Department is hereby ordered to requisition a certification from HRD for the position of captain to fill the current vacancy that is the subject of the instant appeal;
- Upon receiving the certification, the Boston Police Department shall fill the vacancy, either through a permanent or temporary promotion, in the most expeditious manner possible;
- A status conference will be conducted at the offices of the Commission on November 17, 2008 at 9:00 A.M. to review whether or not the captain position has been filled as of that date. Also, as part of that status conference, the Commission will hear oral argument as to whether the candidates ultimately selected for the promotional appointment to the position of lieutenant and captain are entitled to any further relief under Chapter 310 of the Acts of 1993, including a retroactive civil service seniority date for civil service purposes only.

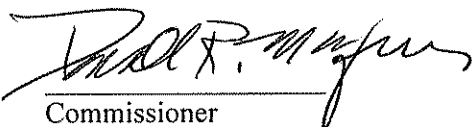
Civil Service Commission



Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on September 18, 2008.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice:

Leah Barrault, Esq. (for Appellants)

Suzanne Faigel, Esq. (for HRD)

John Marra, Esq. (HRD)

Nicole Taub, Esq. (for Appointing Authority)