

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

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| Re: Request for Investigation against Town of Salisbury by Mark C. Thomas |
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Tracking Number: I-14-71

RESPONSE TO REQUEST FOR INVESTIGATION

On March 19, 2014, the Civil Service Commission (Commission) received correspondence from counsel for Mark C. Thomas (Mr. Thomas), a police officer in the Town of Salisbury (Town). The correspondence was addressed to the state's Human Resources Division (HRD), but, was sent to the Commission with a \$75.00 filing fee attached.

In the correspondence, Mr. Thomas alleged that fellow police officer Steven F. Sforza should not have been allowed to sit for the most recent promotional examination for sergeant as he does not meet the requirements of Section 58 which requires police officers in civil service communities to live "in the commonwealth" within ten miles of the city or town in which they are employed.

Further, Mr. Thomas alleged that other police officers, including Sergeant Anthony King, were allowed to sit for previous promotional examinations despite not being in compliance with the requirements of Section 58 referenced above.

On March 26, 2014, the Commission issued an Order to Show Cause regarding Mr. Thomas's request for investigation. As part of that order, the Commission scheduled a show cause hearing to allow Mr. Thomas to show how he is aggrieved and/or why the Commission should conduct an investigation.

On April 15, 2014, I held a show cause hearing at the offices of the Commission, which was attended by Mr. Thomas, his counsel, counsel for HRD, counsel for the Town, the Town Manager and the Town's Police Chief.

At the conference, counsel for HRD stated that HRD had not directly received the March 19th correspondence, but, rather, only received a copy of the correspondence from the Commission as part of these proceedings.

HRD stated that, although HRD is ultimately responsible for determining whether the individuals are in compliance with Section 58, it would defer to the findings and conclusions of the Commission on this matter which, under G.L. c. 31, s. 2(a) is authorized to conduct investigations.

As part of this conference, all parties reviewed two (2) outside sections of the state's FY14 budget that have impacted Section 58.

Section 58 was amended by St. 2013, Chapter 38, s. 50¹ to add the following:

provided, however, that a city or town may increase the 10 mile residency limit under a collective bargaining agreement negotiated under chapter 150E[.] ...

Id.

Section 110 of St. 2013, Chapter 38 amended G.L. c. 150E, s. 7(d) in a related manner. In House Bill 3566, dated July 12, 2013, Governor Patrick vetoed section 110 stating, “ ... although I approve Section 50, which allows collective bargaining agreements to extend the present requirement that police officers and firefighters reside within 10 miles of the employing municipality, this additional unnecessary section inadvertently allows such agreements to prevail over other existing statutory provisions that employee must reside in the Commonwealth and that prefer municipal residents on civil service eligible lists.” Id. The Legislature subsequently overrode the veto.

According to the Town, at the time of the show cause hearing, the Town and the local police union were then engaged in negotiations in which this issue was being negotiated. According to the Town, one likely result of those negotiations would be an expansion of the 10-mile requirement to 20 miles and possibly removing the requirement for police officers to live in the Commonwealth.

Mr. Thomas argued that, even if such language was negotiated, the Commission should still investigate whether, at the time of the promotional examinations, Mr. Sforza, Mr. King and possibly others were not in compliance with Section 58. At the show cause hearing, Mr. Thomas also alleged that the Town had failed to provide verification to HRD that he was eligible for the statutory two additional examination points on the sergeant promotional examination based on his purported twenty-five (25) years of service as a police officer.

Consistent with the Commission’s rulings in Erickson v. Rockland Fire Department, 26 MCSR 29 (2013), I informed the parties that the Commission would set the matter down for a status conference and/or hearing in six (6) months to determine whether, as of the date of the status conference and/or full hearing, the individuals in question were in compliance with Section 58.

In the interim, the Town was ordered to provide, within 30 days, the names of any police officers who, as of the date of the show cause hearing, were not in compliance with Section 58. Further, HRD was ordered to provide the following information within 30 days: the names and rank of those individuals who were currently on the eligible list for Sergeant in Salisbury; whether or not Mr. Thomas was provided with 2-points for having 25 years of service; a list of any promotional examinations Mr. Thomas had taken in the past six years along with information regarding whether he passed said examinations; and the eligible lists and any certifications issued for the sergeant and lieutenant positions in Salisbury over the past six years.

I issued a Procedural Order on April 16, 2014 memorializing all of the above and setting the hearing date for October 27, 2014.

¹ Chapter 38 was the General Appropriations Act for fiscal year 2014.

On May 15, 2014, the Commission received correspondence from the Town stating in relevant part: “ ... the Town believes that the following police officers are currently not in compliance with G.L. c. 31, § 58: Anthony King, Timothy Hunter, Steven Sforza, and Patrick Szymkowski. Also, please be advised that the Town and the patrol officers union have tentatively agreed subject to the parties agreeing to a new successor collective bargaining agreement to new language regarding residency ... which would supersede the requirements set forth in G.L. c. 31, § 58.”

On May 16, 2014, the Commission received correspondence from HRD stating, in part, that: “Mr. Thomas was not given 2-points for 25 years of service [on the most recent sergeant promotional examination]. HRD requires verification from the appointing authority to award credit for 25 years of service, and no such verification has been received.”

Also on May 16, 2014, the Commission received correspondence from the Town stating that the Town was in the process of reviewing Mr. Thomas’s request for the 25 years of service credit and hoped to complete the review within the next thirty (30) days.

On June 23, 2014, the Commission received correspondence from counsel for Mr. Thomas stating that the Town had still not provided verification that would grant Mr. Thomas his two (2) additional points for his twenty-five (25) years of service.

On July 24, 2014, the Commission was copied on correspondence from the Town to counsel for Mr. Thomas stating that the 2-point review was still ongoing, but, that, even if granted, it would not change Mr. Thomas’s rank on the current eligible list for sergeant (third).

On September 26, 2014, the Town notified the Commission that the Town’s Board of Selectmen had ratified new contracts containing the following language:

“Pursuant to Mass. General Laws Ch. 150E, Chapter 41, §99, UNION members employed by the Town of Salisbury shall maintain residency anywhere within twenty (20) miles of the furthest border of the TOWN. UNION members employed by the Town of Salisbury may live either in the Commonwealth of Massachusetts or in the State of New Hampshire, so long as their residence is within the twenty (20) mile limit. This article applies to current active full-time UNION members and future full-time UNION members and future full-time UNION Salisbury police officers and will remain in full force, as part of the collective bargaining agreement between the UNION and the TOWN.”

On October 3, 2014, the Town filed a “Motion for Summary Decision / Dismissal.” In summary, the Town stated that since, in their opinion, all current Salisbury police officers were now in compliance with Section 58, as amended, the Commission should close its investigation.

On October 17, 2014, counsel for Mr. Thomas filed a reply. In summary, Mr. Thomas argued that the Commission should not close the investigation for the following reasons: 1)

the statute , as amended, still required police officers to reside within the Commonwealth of Massachusetts; 2) the police officers identified were not in compliance with Section 58 at the time that the investigation was first requested; and 3) the Town, in the past, selectively enforced Section 58 by requiring Mr. Thomas to move within ten (10) miles of Salisbury.

A status conference, originally scheduled for October 27, 2014, was held on January 8, 2015, which was attended by Mr. Thomas, his new counsel, counsel for HRD, counsel for the Town and the Town's Police Chief.

At the status conference, counsel for HRD stated that, upon further review, it now agrees with the Town that the 2013 amendments to Chapter 150E and Section 58 of Chapter 31 do allow police officers and firefighters to live outside the Commonwealth, if provided for in the applicable collective bargaining agreement. Further, HRD stated that it concurred with the Commission's prior and current position effectively allowing police officers, firefighters and the Appointing Authority six (6) months to comply with the statute either through a change in residence and/or an amendment to the applicable collective bargaining agreement.

At the status conference, and later through correspondence to the Commission, the Town's Police Chief provided the Commission with confidential correspondence listing the residential addresses of the police officers in question, the distance between the residence and the border of the Town and the process used to make these calculations. This correspondence shows that the police officers in question all reside in New Hampshire, but within twenty (20) miles of the Town's border.

At the status conference, Mr. Thomas maintained that the town had previously selectively enforced the ten-mile residency requirement to his detriment (which the Town disputes), that the Commission should make a decision based on whether the police officers were in compliance with the statute at the time the investigation was requested (or when those officers took a promotional examination); and that the Town had still failed to take the steps necessary to grant him the two (2) additional points on the recent sergeant promotional examination based on his twenty-five (25) years of service.

Subsequent to the status conference, on January 16, 2015, HRD provided correspondence showing that, as of that date, the Town had still not provided verification regarding the awarding of two (2) points to Mr. Thomas, but that, even if granted, it would not change Mr. Thomas's rank on the current eligible list, as there is a three (3) point difference between Mr. Thomas and the next highest ranked candidate.

Conclusion

Outside Sections 50 and 110 of the FY14 state budget now permit a City or Town and a local union to bargain over the distance requirement in question here as well as the requirement that public safety employees reside "in the Commonwealth."

On or about September 26, 2014, the Town notified the Commission that the local union and the Town had bargained both of these issues, effectively expanding the ten (10)-mile residence requirement to twenty (20) miles and allowing public safety officers in Salisbury to reside in Massachusetts *or* New Hampshire.

As of that date, which was prior to the scheduled status conference before the Commission, all of the Town's police officers were in compliance with Section 58 of Chapter 31, as amended. For this reason, and consistent with the Commission's rulings in Erickson, no further investigation is warranted here and this investigation is closed with the following exception: within thirty (30) days of the issuance of this ruling, the Town, in the form of a sworn affidavit and any necessary documentation, shall provide HRD with the necessary information to determine whether Mr. Thomas is eligible for the statutory two (2) points based on twenty-five (25) years of service.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on February 19, 2015.

Notice to:
Darren Klein, Esq. (for Town of Salisbury)
Amy Doherty, Esq. (for Mr. Thomas)
Michael Downey, Esq. (for HRD)