

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

JONATHAN W. WALLACE,
Appellant

v.

G1-20-062

TOWN OF SAUGUS,
Respondent

Appearance for Appellant:

Pro Se
Jonathan W. Wallace

Appearance for Respondent:

Raymond P. Ausrotas, Esq.
Arrowood LLP
10 Post Office Square
7th Floor South
Boston, MA 02109

Commissioner:

Christopher C. Bowman

NOTICE OF SHOW CAUSE CONFERENCE TO SHOW WHY THE COMMISSION
SHOULD NOT OPEN AN INVESTIGATION AGAINST THE TOWN OF SAUGUS
PURSUANT TO G.L. c. 31, §§ 72 & 74

On July 28, 2022, the Commission issued a decision allowing the bypass appeal in [Jonathan Wallace v. Town of Saugus](#), CSC Case No. G1-20-062, after concluding that the Town's reasons for bypassing the Appellant for permanent, full-time firefighter were either unsupported by a preponderance of the evidence or unrelated to his current ability to perform the duties and responsibilities of a Saugus firefighter. Further, the evidence showed that the Town applied starkly different standards regarding the review of the Appellant, who was 38 years old at the time of the hearing before the Commission, when compared to younger, lower-ranked candidates, some of whom were familiar to the Fire Chief or had familial connections to the Fire

Department. Finally, the decision to bypass the Appellant appeared to be rooted in a personal animus that the Fire Chief had developed against the Appellant.

The decision was sent to the parties via email, including to Attorney John Vasapoli, who filed a notice of appearance for the Town with the Commission on May 6, 2021, after the full hearing in this matter had been conducted.

The relief ordered in the July 28, 2022 decision required that:

“1. A copy of this decision shall be placed in the Appellant’s personnel file. If and when the Town, or any agent thereof, is contacted by potential employers regarding the reasons for bypassing the Appellant, the Town shall provide the potential employer with a copy of this Commission decision.

2. HRD shall place the name of the Appellant at the top of any current or future certification issued to the Town of Saugus for the appointment of permanent, full-time firefighter until he is appointed or bypassed.

3. In any future consideration of the Appellant, the Town shall not bypass him as a result of any facts or circumstances of which it had knowledge prior to this most recent decision to bypass him. Chief Newbury shall recuse himself from consideration of any future application for employment by the Appellant.

4. No appointment to firefighter of any candidate ranked below the Appellant shall become effective until such time as: a) the Town has provided the Appellant with reasons for bypass; b) the Appellant has had the opportunity to file an appeal with the Commission; and c) the Commission has issued a final decision related to the bypass.

5. If the Appellant is appointed as a firefighter, he shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 05324.” (emphasis added)

On August 30, 2022, as part of a pre-hearing conference regarding another matter, the Commission learned that: a) HRD issued Certification No. 08310 to the Town of Saugus on January 31, 2022 from which the Town sought to appoint firefighters; b) As of the date of the pre-hearing (August 30th), that Certification was still active and the Town had not yet made any final appointments from the certification, as it was waiting to schedule those candidates who had been granted a conditional offer of employment for a Physical Abilities Test (PAT).

Despite the issuance of the Commission's July 28, 2022 decision, ordering that Mr. Wallace's name be placed at the top of any **current** or future certification for firefighter, the Town did not consider Mr. Wallace for appointment as part of Certification No. 08310. To ensure compliance with the Commission's July 28, 2022 order, I held a status conference with Mr. Wallace, counsel for the Town¹, and counsel for HRD. As part of the status conference, the Town stated that six candidates had been granted a conditional offer of employment from Certification No. 08310, including one candidate who is currently on active military duty.

In order to ensure that the Appellant, forthwith, received the relief ordered by the Commission, while preventing any adverse impact on other candidates who had received a conditional offer of employment, the parties agreed to the following clarification of the Commission's order, which was ordered by the Commission on September 8, 2022, with the clarifications highlighted in red:

1. A copy of [the Commission's initial] decision shall be placed in the Appellant's personnel file. If and when the Town, or any agent thereof, is contacted by potential employers regarding the reasons for bypassing the Appellant, the Town shall provide the potential employer with a copy of this Commission decision.
2. The name of the Appellant shall, forthwith, be placed at the top of Certification No. 08310 to ensure that the Appellant **receives immediate consideration for appointment.**
3. [As part of the above-referenced consideration], the Town shall not bypass him as a result of any facts or circumstances of which it had knowledge prior to this most recent decision to bypass him. Chief Newbury shall recuse himself from consideration of [this] application for employment by the Appellant.
4. In the event that the Appellant is bypassed for appointment, the appointment of the lowest-ranked candidate of the six granted conditional offers of appointment shall be deemed a temporary appointment, until such time as the Appellant has had the opportunity to file an appeal with the Commission and the Commission has issued a final decision related to the bypass. Nothing in this decision prevents the Town from creating a 7th vacancy for permanent, full-time firefighter.

¹ Attorney Raymond Ausrotas, who appeared before the Commission on August 30th after filing a notice of appearance for the Town in regard to the Wallace v. Saugus matter.

5. If the Appellant is appointed as a firefighter, he shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 05324.

To ensure clarity, the Commission issued this modified decision based on the good faith representation by counsel for the Town that the Appellant would receive **immediate** consideration for appointment. Put simply, there was no ambiguity regarding this point, including a discussion with the Appellant regarding whether he was available for immediate appointment based on his current work and personal schedule.

More than three months after the issuance of this modified decision was issued by the Commission, the Appellant notified the Commission on December 8, 2022, that he had received no communication from the Town regarding reconsideration of his appointment as a Saugus firefighter. In response to the Appellant's email, counsel for the Town issued a reply stating in part: "... I have shared Mr. Wallace's inquiry with the Town of Saugus, and been informed there have been no further changes or developments since the time of the hearing."

For all of the above reasons, a remote show cause conference will be held on Tuesday, January 24, 2023 at 10:00 A.M. to give the Town of Saugus the opportunity to show cause why the Commission should not open an investigation against the Town of Saugus, pursuant to its authority under G.L. c. 31, §§ 72 & 74, to investigate why the Town has failed to afford the Appellant the relief that was ordered to restore his rights under the civil service law. Section 2(a) of G.L. c. 31 states that the Commission shall have the following powers and duties:

"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." (emphasis added)

Section 72 of G.L. c. 31 states in part that the Commission may:

“ ... 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.”

Additionally, “[t]he [C]ommission . . . may summon witnesses, administer oaths and take testimony for any hearing, investigation or inquiry conducted pursuant to the civil service law and rules[,]” and issue subpoenas. *Id.*

At least ten days prior to the show cause conference, the Town shall produce all of the documents listed in Attachment A.

SO ORDERED.

Civil Service Commission

Christopher C. Bowman
Christopher C. Bowman
Chair

Notice to:
Jonathan W. Wallace (Appellant)
Raymond P. Ausrotas, Esq. (for Respondent)
Emily Sabo, Esq. (HRD)
Regina Caggiano (HRD)

Issued: December 19, 2022

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

ATTACHMENT A: ORDER TO PRODUCE DOCUMENTS

1. Hereinafter, “you” and “your” shall refer to the Town of Saugus (Town) and any and all municipal officials, employees, agents, advisors, accountants and legal counsel. You are requested to produce all documents in your possession, custody or control, including all documents that are in the custody of your employees, attorneys, consultants, agents, or any person presently acting, or purporting to have acted on your behalf, regardless of the location of such documents.
2. The term “document” or “documents” means the originals and all non-identical copies, whether different from originals by reason of notations made on such copies or otherwise, or in lieu thereof, true and exact copies, regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, electronic, punched or graphic matter of any kind, type or nature whatsoever, however produced or reproduced, including but not limited to electronic communications, data compilations, letters or other correspondence, emails, text messages, memoranda and notes of telephone conversations, telephone logs, memoranda, notes of meetings and interviews, inter-office communications, instructions, notes, reports, summaries, manuals, magnetic tapes, records, work papers, research papers, books, journals, microfiche, microfilm, photographic film, surveys, charts, studies, data sheets, desk calendars and diaries, policies, printed matter, work sheets and working papers and all documentary materials of any nature whatsoever.
3. The phrase “related to” means concerning, describing, evidencing, or constituting.
4. If you object to any of the specific Requests for Production set forth below, the precise grounds for your objection(s) should be stated, with particularity. If any objection rests in whole or in part on a claim of privilege, the privilege claimed should be stated with particularity. In the event that you object to or claim a privilege with respect to any of these instructions or any Request for Production, in whole or in part, you are requested to produce all documents (or portions thereof) requested in that portion of the Request for Production as to which you have no objection or claim of privilege.
5. With respect to each responsive document withheld from production pursuant to a claim of attorney-client privilege, attorney work product, or any other privilege or protection, please state or identify: (i) the date of the document; (ii) the document’s author(s) or originator(s); (iii) the title of the author(s) or originator(s); (iv) all recipients of the document and all persons coming into possession of the document; (v) the type of document; (vi) the subject matter(s) of the document; (vii) the number of pages of the document; and (viii) the precise basis, in detail, for the privilege claimed or the objection made with respect to the document.

6. If any document responsive to a Request for Production was, but no longer is, in your possession, custody or control, please identify that document and state whether any such document (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred voluntarily or involuntarily; or (iv) has been otherwise disposed of, and, in each instance, please explain in detail the circumstances surrounding any such disposition.
7. In the event that not all of the requested documents can be produced on or before January 14, 2023, the Commission requests that the Town provide the Commission with a partial response of those documents that can be produced by January 14, 2023, and an anticipated timeline for further production.
8. Where feasible, the Commission requests that the documents be provided to the Commission electronically, in native format. Otherwise, the Commission requests that the documents be sent to the Commission, at the address listed above, via trackable first class mail, Fedex or UPS delivery.

DOCUMENTS ORDERED TO BE PRODUCED

- A. All documents created on or after July 28, 2022 related to the appointment of permanent, full-time firefighters in the Town of Saugus.
- B. All documents created on or after July 28, 2022 related to Jonathan Wallace.
- C. All documents created on or after July 28, 2022 sent to / from the state's Human Resources Division.
- D. All calendar entries created on or after July 28, 2022 related to phone conversations, meetings and/or discussions directly or indirectly related to Jonathan Wallace and/or his consideration for appointment as a firefighter.
- E. All notes created on or after July 28, 2022 related to any phone conversations, meetings and/or discussions directly or indirectly related to Jonathan Wallace and/or his consideration for appointment as a firefighter.
- F. All emails, texts, voicemails created on or after July 28, 2022 related to Jonathan Wallace and/or his consideration for appointment as a firefighter.
- G. All documents created on or after July 28, 2022 concerning your communications with any external individual or entity relating to Jonathan Wallace.
- H. All documents, except those bearing no relationship whatsoever to the subjects of the foregoing requests, created on or after July 28, 2022 containing the following term or terms: Wallace, Jonathan Wallace, Mr. Wallace, Commission, civil service, Civil Service Commission.