

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RYAN DORGAN,
Appellant

G1-15-24

v.

CITY OF METHUEN,
Respondent

Appearance for Appellant:

Thomas J. Gleason, Esq.
Gleason Law Offices
163 Merrimack Street
Haverhill, MA 01830

Appearance for Respondent:

Anne L. Randazzo, Esq.
City of Methuen
41 Pleasant Street: Suite 311
Methuen, MA 01844

Commissioner:

Christopher C. Bowman

**RESPONSE TO JOINT REQUEST FOR RELIEF
UNDER CHAPTER 310 OF THE ACTS OF 1993**

On January 28, 2015, the Appellant, Ryan Dorgan (Mr. Dorgan), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Methuen (City) to bypass him for appointment as a reserve police officer.

On February 17, 2015, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Dorgan, his counsel and counsel for the City. As part of that pre-hearing conference, the City reviewed the reasons for bypassing Mr. Dorgan, which included issues related to Mr. Dorgan's prior employment and driving history. Also as part of that pre-hearing conference, the City stated that, while it had initially relied on other reasons for bypass, those reasons were removed after a family friend of Mr. Dorgan contacted the Mayor. According to the City, the Mayor, after further review, concluded that those reasons should not be included in the bypass letter. That initial bypass letter stated, in part, that Mr. Dorgan had contacted Town officials in an attempt to use political influence to gain an advantage in the appointment process.

Mr. Dorgan, a graduate of Newbury College who has worked in the County Sheriff's office for seven (7) years, argued that any driving infractions were stale and that he had a good employment history notwithstanding some minor rule violations that occurred many years ago.

At the conclusion of the pre-hearing, the parties mutually agreed to a full hearing date, which was scheduled for April 13, 2015.

Meanwhile, three (3) other candidates who were also bypassed for appointment to the position of reserve police officer filed bypass appeals with the Commission. Pre-hearing conferences were held regarding each of these appeals at the offices of the Commission in March 2015 and full hearings are scheduled for three different dates in June 2015. None of those Appellants are represented by counsel.

On April 9, 2015, four (4) days prior to the scheduled full hearing, counsel for the parties in the Dorgan case filed a joint motion to approve a settlement agreement, in which it asked the Commission to grant the traditional relief allowed to Appellants who prevail in bypass appeals. Specifically, the joint agreement would place the name of Mr. Dorgan at the top of the next Certification for reserve police officer, ensuring that he receive at least one additional consideration for appointment.

In response to the parties' joint request for relief, the Commission asked the City to provide further information regarding why it was agreeing to the relief requested and, specifically, how Mr. Dorgan was harmed through no fault of his own, the standard for granting such relief.

Later on April 9th, the City forwarded an email to the Commission stating that, upon further review, it had determined that the issues related to Mr. Dorgan's employment and driving history were stale and, presumably, have caused the City to conclude that the reasons do not justify their decision to bypass Mr. Dorgan for appointment.

Although the full hearings for the other three bypassed candidates who filed an appeal with the Commission, and who are not represented by counsel, are still several weeks off, the Commission has not received any indication from the City regarding whether those candidates had the same opportunity for a further review of their records which could result in a similar joint request for relief.

As stated in Geary v. Salem Police Department, CSC Case No. G-01-364 (2006) and, more recently in Ingham v. Natick Police Department, CSC Case No. G2-14-249 (2015):

“The Commission's authority to grant relief pursuant to Chapter 310 of the Acts of 1993 was not meant to be granted routinely, but rather, sparingly, in those circumstances where there is sufficient evidence showing it is warranted. Absent a full explanation by the Appointing Authority as to why the ... reasons for bypass ... are no longer relevant ... such relief [sought via a joint request by the parties without a full hearing] is [not] warranted.”

While the Commission strongly encourages parties to mutually resolve disputes and conserve their resources (and those of the Commission), agreements asking the Commission to grant

extraordinary relief under Chapter 310 of the Acts of 1993 are not automatically granted. Rather, given the potential harm to other candidates, whose rank on future certifications will be lowered if the relief is granted, the Commission carefully reviews whether such relief is warranted.

Here, the City has presented reasons that, standing alone, may justify a decision by the Commission to grant the joint relief requested. However, for the reasons stated below, the joint request is ***denied at this time***.

First, the Commission does not consider this request in a vacuum. As stated above, there are three (3) other bypass appeals pending with the Commission regarding their non-selection for Methuen reserve police officer, none of whom are represented by counsel. At a minimum, it would appear that those candidates' applications should receive the same "further review" that has been granted to Mr. Dorgan. While nothing precludes the City, after the further review, from deciding to move forward with the full hearing as opposed to proposing joint relief, the further review would seem to be the only way to ensure that all candidates have received fair and impartial treatment.

Second, it is not lost on the Commission, an agency whose mission is to *prevent* political influence in the hiring process, that the City, as part of its initial bypass letter, voiced concern that Mr. Dorgan had allegedly sought an advantage through political influence. Then, as acknowledged by the City, an initial bypass letter was modified after the Mayor was contacted by someone advocating on behalf of Mr. Dorgan. This eyebrow-raising set of events only reinforces our inclination that no action should be taken on this request without further information regarding the status of the other bypassed candidates.

For all of the reasons stated above, the joint request for relief under Docket No. G1-15-24 is hereby ***denied at this time***.

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 April 30, 2015.

Notice:
Thomas Gleason, Esq. (for Appellant)
Anne Randazzo, Esq. (for Respondent)
John Marra, Esq. (HRD)