

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

BRIAN INGHAM,
Appellant

G2-14-249

v.

NATICK POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Jason Powalisz, Esq.
McDonald, Lamond, Cazoneri &
Hickernell
352 Turnpike Road, Suite 310
Southborough, MA 01772-1756

Appearance for Respondent:

Karis L. North, Esq.
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Quincy, MA 02169

Commissioner:

Christopher C. Bowman

RESPONSE TO JOINT REQUEST FOR CHAPTER 310 RELIEF

1. On October 27, 2014, the Appellant, Brian Ingham (Sgt. Ingham), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Natick Police Department (Department) to bypass him for promotional appointment to the position of Police Lieutenant.
2. On November 25, 2014, I held a pre-hearing conference at the offices of the Commission, which was attended by Sgt. Ingham, his counsel and counsel for the Department.
3. At the conclusion of the pre-hearing, a full hearing was scheduled to be held on February 9, 2015 to determine if the Department had reasonable justification to bypass Sgt. Ingham for this promotional appointment.
4. On December 31, 2014, counsel for the Department and Sgt. Ingham notified the Commission that the parties had reached a mutual agreement that would eliminate the need for a full hearing.

5. As part of the mutual agreement, the Commission was asked to issue an order that would result in Mr. Ingham's name remaining at the top of any current or future Certifications for the position of Police Lieutenant in the Department until he is promoted or bypassed, without the need for Sgt. Ingham to take a further promotional examination.
6. Granting such relief could adversely affect other individuals in the Department who take and pass a future promotional examination for lieutenant (i.e. – potentially lowering their rank on a future Certification).
7. For this reason, I issued a Procedural Order on January 29, 2015 and ordered the Department to post the Procedural Order in the Natick Police Department for five (5) business days to allow any individuals to submit written objections to said agreement.
8. Four (4) Department employees in the next lower of title of Sergeant submitted written objections to all or part of the proposed relief.

Analysis

As stated in Geary v. Salem Police Department, CSC Case No. G-01-364 (2006):

“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.”

The same principles apply here. As part of the pre-hearing conference regarding this appeal, the Town outlined the process used to make the promotional appointment to lieutenant including administering a weighted examination that was based on an assessment center and a written test with training and experience credits then factored in. The Town then assembled an interview panel that included the Department’s Chief, other Town personnel and a Chief and retired Chief from other communities.

According to the Town, a set of questions was created based on a task analysis completed by other lieutenants. The Town stated that the panelists unanimously selected another candidate within the statutory “2N + 1” formula, concluding that he performed better and provided more in depth answers. Also according to the Town, the Chief considered that the other candidate had taken on several duties and responsibilities on his own initiative and considered the recommendations of other lieutenants.

At the pre-hearing conference, Sgt. Ingham questioned whether any interviews should have taken place at all since an assessment center was part of the examination and, even if interviews were permissible, suggested that the interviews were not objective and that a decision may have been pre-determined as the Department was looking for someone with more administrative experience than he has.

The contested issues presented here are precisely the type of issues that are resolved through a full evidentiary hearing. The Department has not, at any point, altered their position that there was reasonable justification to bypass Mr. Ingham for this promotional appointment. Rather, it appears that the sole reason for the joint request for Chapter 310 relief is a mutual desire to avoid litigation.

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 if the relief is granted, the Commission carefully reviews whether such relief is warranted. Here, it is not.

Put simply, the Commission, absent a full evidentiary hearing, will not grant a joint request for Chapter 310 Relief if the sole reason for such request is litigation avoidance. This does not prevent the Commission, when sufficient reasons are presented, from allowing a joint request for Chapter 310 Relief. Rather, the denial here simply protects: a) the rights of other individuals who would be impacted; and b) the integrity of the civil service system.

For these reasons, the parties' joint request for Chapter 310 relief is denied.

A full hearing will be held at the offices of the Commission on Thursday, June 4, 2015 at 9:30 A.M.

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 2, 2015.

Notice:

Jason Powalisz, Esq. (for Appellant)
Karis L. North, Esq. (for Respondent)