

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RE: Request for Investigation against the Springfield Fire Department
by Petitioner Randolph Blake

Tracking Number: I-17-208

Appearance for Petitioner:

Pro Se
Randolph Blake

Appearance for Springfield Fire Department:

Maite Parsi, Esq.
City of Springfield
55 Court Street: Room 5
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On October 6, 2017, the Petitioner, Randolph Blake (Mr. Blake), a lieutenant in the City of Springfield (City)'s Fire Department (SFD), filed a request for the Civil Service Commission (Commission) to conduct an investigation into the SFD's alleged failure to enforce the City's Residency Ordinance regarding the Fire Commissioner, the Deputy Fire Chief and six (6) District Chiefs.
2. On November 8, 2017, I held a show cause conference at the Springfield State Building in Springfield, MA to allow the Petitioner to show cause why the Commission should exercise its discretionary authority to initiate an investigation. The show cause conference was attended by Mr. Blake, the City's Fire Commissioner and counsel for the City.
3. This matter has been the subject of recent, ongoing litigation including orders issued by the Hampden Superior Court on February 14, 2017 and March 27, 2017 (Marc Savage and others v. City of Springfield and others and Local 648, IAFF, AFL-CIO, Springfield Association of Firefighters, Hampden Superior Court No. 16-364 (2017)).
4. In its February 14, 2017 decision, the Court was acting on motions to dismiss by the defendants and the intervener's motion for judgment on the pleadings. The underlying action related to a complaint by Marc Savage (a SFD Fire Captain) and 11 others seeking enforcement and a declaration of validity of a municipal ordinance requiring that Fire

Department employees be Springfield residents.

5. Ironically, the City, in that judicial action, argued that the plaintiffs' claim that the City has failed to enforce its ordinance should be brought to the Civil Service Commission, because Springfield Fire Department employees' promotions are subject to the civil service law.

6. In addressing that issue, the Court stated:

“The Civil Service Commission conducts investigations upon written request by an aggrieved person or by ten persons registered to vote in the Commonwealth, and hears and decides appeals by a person aggrieved by an administrator's (here the City's) failure to act. G.L. c. 31, § 2.

To have status as an aggrieved person, an employee must allege that the administrator's action or inaction violated G.L. c. 31 and thereby harmed the person's employment status. G.L. c. 31, § 2. The Civil Service Law does not recognize or impose upon administrators an obligation that fire fighters seeking a promotion reside in the municipality of employment. Instead, the Civil Service Law only requires that

‘any person who receives an [original] appointment to the ... fire force of a city ... shall within nine months after his appointment establish his residence within such city or town *or at any other place in the commonwealth that within ten miles of the perimeter of such city or town*; provided, however that a city or town may increase the 10 mile residency limit under a collective bargaining agreement negotiated under chapter 150E.’ G.L. c. 31, § 58 (*emphasis added*).

The residency requirement in G.L. c. 31, § 58, is not as strict as that in the Springfield ordinance, which requires fire department employees to live in the city, not within ten miles of it. Therefore, the amended complaint does not and cannot assert a violation of G.L. c. 31, and Savage does not qualify as an aggrieved person under the Civil Service Law so as to have an administrative remedy through Civil Service Commission proceedings. See G.L. c. 31, §§ 2, 58.”

7. In regard to the issue of enforcement, the Court, in its February 14, 2017 decision, concluded that G.L. c. 43A, § 14(2), nor G.L. c. 231A, § 2, relied on by the Petitioners, authorized orders compelling enforcement of an ordinance. In a footnote, however, the Court left open the possibility that enforcement could be ordered in the nature of a mandamus filing.

8. On March 1, 2017, the plaintiffs in the judicial appeal sought enforcement of the residency ordinance, in part, through a mandamus request. Specifically, the plaintiffs asked the Court to “remove from employment” eight (8) individuals who they claim are in violation of the residency ordinance, including the Fire Commissioner, the Deputy Fire Chief and six (6) District Fire Chiefs.

9. On March 27, 2017, the Court denied the plaintiffs' request, stating in relevant part:

“1) The plaintiff asks the court in its proposed amended complaint to remove Springfield individuals from their employment with the City. As a procedural matter, the specified individuals are not parties to this action. As a substantive matter, the Court cannot and will not supersede the authority and jurisdiction of the Civil Service Commission ...”

10. Several months prior, on December 9, 2016, the Fire Commissioner, acting as the civil service appointing authority, did conduct a hearing regarding whether the Deputy Fire Chief was violating the residency ordinance, and if so, what discipline was warranted.
11. At the December 9, 2016 local hearing, the Deputy Fire Chief argued that he is effectively grandfathered from the residency ordinance due to his date of hire. The Fire Commissioner, over the objection of the City’s attorney, concurred with the Deputy Fire Chief and declined to impose any discipline.

Applicable Laws and Rules

The Commission maintains authority under G.L. c. 31, § 2(a) to conduct investigations stating:

“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.”

This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007). See also Erickson v. Civ. Serv. Comm’n & others, No. 2013-00639-D, Suffolk Superior Court (2014). We exercise this discretion “sparingly”. See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011)

G.L. c. 31, s. 58 states in relevant part:

“...notwithstanding the provisions of any general or special law to the contrary, any person who receives an appointment to the police force or fire force of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town; provided, however, that a city or town may increase the 10 mile residency limit under a collective bargaining agreement negotiated under chapter 150E.”

G.L. c. 31, § 72 states:

“The commission or administrator [HRD], upon the request of an appointing authority, shall inquire into the efficiency and conduct of any employee in a civil service position who was appointed by such appointing authority. The commission or the administrator may also conduct such an inquiry at any time without such request by an appointing authority. After conducting an inquiry pursuant to this paragraph, the commission or

administrator may recommend to the appointing authority that such employee be removed or may make other appropriate recommendations.” (emphasis added)

G.L. c. 31, § 73 states:

“If, in the opinion of the administrator [HRD], a person is appointed or employed in a civil service position in violation of the civil service law and rules, the commission or the administrator shall mail a written notice of such violation to such person and to the appointing authority. The commission or the administrator shall then file a written notice of such violation with the treasurer, auditor or other officer whose duty it is to pay the salary or compensation of such person or to authorize the drawing, signing or issuing of any warrant for such payment. (emphasis added)

The payment of any salary or compensation to such person shall cease at the expiration of one week after the filing of such written notice with such treasurer, auditor or other officer. No such treasurer, auditor or other officer shall pay any salary or compensation to such person, or draw, sign or issue, or authorize the drawing, signing or issuing of any warrant for such payment, until the legality of the appointment or employment is duly established.

Any person found by the administrator [HRD] to be illegally appointed or employed may file a petition for a writ of mandamus in the supreme judicial court to compel the administrator to authorize such appointment or employment and the payment of compensation or salary. (emphasis added)

At any time after the filing of such petition, the court may order that the compensation accruing to such person for services actually rendered shall be paid to him until further order of the court, if the court is of the opinion that there is a reasonable doubt whether the appointment or employment of such person is in violation of the civil service law and rules.”

Analysis

There are multiple reasons why an investigation is not warranted here.

First, as stated by the Superior Court in the Savage et al appeal:

The residency requirement in G.L. c. 31, § 58, is not as strict as that in the Springfield ordinance, which requires fire department employees to live in the city, not within ten miles of it. Therefore, the amended complaint does not and cannot assert a violation of G.L. c. 31, and Savage does not qualify as an aggrieved person under the Civil Service Law so as to have an administrative remedy through Civil Service Commission proceedings. See G.L. c. 31, §§ 2, 58.” (emphasis added)

As stated in Section 73, any action by the Commission or the Administrator to remove a civil service employee from the Appointing Authority’s payroll can only occur if there has been a

violation *of the civil service law and rules*. Mr. Blake acknowledged during the show cause conference that all of the individuals in questions are in compliance with Section 58 of the civil service law, which requires them to live within ten (10) miles of Springfield, unless provisions of a collective bargaining agreement have increased the limit. At the show cause conference, Mr. Blake argued that purportedly failing to enforce a local residency ordinance is contrary to “basic merit principles” and, thus, a violation of civil service law. Given that the dispute here relates directly to a residency issue, I believe the controlling section here is Section 58 in regard to whether there is a violation of civil service law, not the broad definition of basic merit principles.¹

Second, even if there was a violation of civil service law or rules here, Section 73 explicitly states that the *Administrator (HRD)* (not the Commission) is granted the authority to determine if someone is employed in violation of the civil service law or rules.

Third, given that most of the employees here who are not Springfield residents are permanent civil service employees, any action to remove them from their positions would trigger appeal rights in which those employees would be able to file an appeal with the Commission under Sections 41-45. Effectively, Mr. Blake is asking the Commission to ultimately take an action (i.e. – remove a permanent civil service employee from their position) and then serve as the adjudicator regarding if there was just cause for said removal. Based on the circumstances here, including that this involves a dispute about a local residency ordinance, I do not believe the Commission should undertake an action that would arguably prevent it from performing one its core duties in the future: determining whether there was just cause for termination.

After considering all of the above information, I conclude that the Commission should not exercise its discretionary authority to initiate an investigation here.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 7, 2017.

Notice:
Randolph Blake (Petitioner)
Maite Parsi, Esq. (for Springfield Fire Department)

¹ The Commission has indeed investigated purported violations of Section 58 residency issues in the past.