

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

REQUEST FOR INVESTIGATION BY PAUL RICHARDSON RE:

CHELMSFORD POLICE DEPARTMENT'S CREATION OF TWO (2) NEW LIEUTENANT POSITIONS

Tracking No. I-15-228

Appearance for Petitioner:

Pro Se
Paul Richardson

Appearance for Town of Chelmsford:

Brian Maser, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

Procedural Information

On December 7, 2015, the Petitioner, Paul Richardson (Mr. Richardson), filed a request with the Civil Service Commission (Commission), asking the Commission to initiate an investigation regarding the decision of the Chelmsford Police Department (Town) to create two (2) new lieutenant positions, which, according to Mr. Richardson, adversely impacts his opportunity for promotion from police officer to sergeant.

On December 22, 2015, I held a show cause conference to allow Mr. Richardson to show why the Commission should initiate an investigation. The conference was attended by Mr. Richardson, counsel for the Town and the Town's Police Chief. At the conclusion of the

conference, I asked the Town to provide certain additional information, which they have now done. Mr. Richardson submitted a response to the documents provided by the Town.

Background

Based on the statements made at the show cause conference and the documents submitted, the following appears to be undisputed, unless otherwise noted:

1. On April 25, 2014, Mr. Richardson's name appeared on the promotional eligible list for police sergeant in Chelmsford, as a result of passing a promotional examination.
2. The eligible list is scheduled to expire in April 2016.
3. Mr. Richardson's name appeared third on the eligible list.
4. Since the eligible list for sergeant was established, the two (2) highest ranked candidates on the list were promoted to sergeant, resulting in Mr. Richardson's name now appearing first on this eligible list.
5. In July 2015, a Chelmsford police sergeant retired.
6. Instead of filling that police sergeant vacancy, the Town's Police Chief, with the approval of the Town Manager, appointed two (2) new Lieutenants.
7. One (1) of the individuals promoted to lieutenant was the brother of the Town's Deputy Police Chief, whose name appeared tied for first on the eligible list for lieutenant.

Position of the Petitioner and the Town

Mr. Richardson argues that the Police Chief's decision to appoint two (2) new lieutenants, as opposed to filling the sergeant vacancy, was made in part because one (1) of the eligible candidates for promotion to lieutenant is the brother of the Deputy Police Chief and the other is a personal friend of the Police Chief.

To support his argument, Mr. Richardson seeks to show that it makes no sense to have seven (7) lieutenants and seven (7) sergeants in one department. He also argues that the two (2) promoted lieutenants continue to perform the duties of police sergeant.

Mr. Richardson argues that, but for these lieutenant promotions, he would have been promoted to the vacant position of sergeant, an opportunity that will not present itself many more times given his long tenure in the Police Department.

At the conference, the Police Chief, who was promoted from Deputy Police Chief to Police Chief in September 2014, and who has served the Police Department for over twenty (20) years, vehemently denied that the decision to appoint two (2) new lieutenants was the result of any personal bias. Rather, according to the Police Chief, he long ago concluded that the Department needed a re-organization to ensure that there was a lieutenant assigned to each shift. When the sergeant vacancy occurred, he decided to use savings from not filling that vacancy, to create two (2) new lieutenant positions. This, according to the Police Chief, would allow for a lieutenant to be assigned to each shift, as opposed to some shifts being covered only by two (2) sergeants.

At the conference, the Police Chief indicated that he vetted his proposal with the Town Manager as soon as the funding (from the vacancy) occurred; that the Deputy Police Chief, other than concurring that the re-organization would be a better set-up, played no role in the proposed re-organization; and that the placement of the two (2) individuals on the eligible list for lieutenant, one (1) of whom is the brother of the Deputy Police Chief, played no role in his decision.

At the conclusion of the December 22nd conference, I asked the Police Chief to provide me with any written re-organization proposal that he presented to the Town Manager, including any revised job descriptions, modified organization charts, etc. In response, I was provided with a

December 22nd email communication from the Town Manager to counsel for the Town recounting the Town Manager's recollection of a meeting he had with the Police Chief several months earlier, on August 5, 2015. The Town also provided other documentation including a memorandum that, according to the Town, the Police Chief prepared in preparation for his August 5th meeting with the Town Manager, that outlined the benefits of the re-organization.

Commission Response

G.L. c. 31, § 2 states in relevant part:

“In addition to its other powers and duties, the commission shall have the following powers and duties:

- (a) 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 Dennehy v. Civ. Serv. Comm'n, No. 2013-00540, Suffolk Superior Court (2014) (“The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.”))

G.L. c. 31, § 72 states in part:

“The commission or the administrator 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.

...

The commission or the administrator or any authorized representatives of either, may summon witnesses, administer oaths and take testimony for any hearing, investigation or inquiry conducted pursuant to the civil service law and rules. Fees for such witnesses shall be the same as for witnesses before the courts in civil actions and shall be paid from the appropriation for incidental expenses.”

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.

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.

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.”

Hiring and promotional decisions involving the direct family members of existing employees require Appointing Authorities to take additional steps to ensure that such decisions are in compliance with the civil service law, the cornerstone of which is a merit-based system free of personal or political bias; as well as the state ethics law.

Here, adoption of the Police Chief’s re-organization proposal would result in an almost certain financial benefit to the Deputy Police Chief’s brother, who was next in line for a lieutenant vacancy. I was disappointed to see that the Town did not take more substantive, concrete steps to document this potential conflict, at the time, and to ensure that the Deputy

Police Chief played no role in this proposed re-organization, including expressing his approval of the plan on a formal or informal basis. Also, it appears, based on the statements at the show cause conference, that the Town does not have any plan in place to avoid a potential conflict in which a lieutenant reports directly to a Deputy Police Chief who is his brother. (See G.L. c. 268A, s. 23 and State Ethics Commission Advisory 86-02, which generally prohibit a public employee from supervising an immediate family member on a day-to-day basis and/or conducting performance evaluations of an immediate family member.)

Notwithstanding these concerns, I do not believe that the impetus of the Police Chief's re-organization proposal here was a desire to promote the Deputy Police Chief's brother. The Police Chief made a compelling case regarding the merits of the proposed re-organization at the show cause conference and persuaded me that he has been a proponent of these changes for many years, even before he was promoted to Police Chief. In short, I am persuaded that the Police Chief would have proposed this re-organization regardless of whether it resulted in the promotion of the Deputy Police Chief's brother.

In regard to the other candidate promoted, it appears (very) clear to me that the Chief has nothing more than a professional friendship with this person beyond the normal friendship and comradery that develops among co-workers over a period of years.

I understand and respect Mr. Richardson's frustration here. After studying for and taking many promotional examinations over his career, he believed that he was on the cusp of being promoted to sergeant when a vacancy developed and his name appeared first on the eligible list. Absent a showing that the decision not to fill that vacancy was the result of personal or political bias, however, the Police Chief's decision here does not result in Mr. Richardson being an aggrieved person who warrants relief from the Commission.

More broadly, the information presented to the Commission at this time does not warrant a decision by the Commission to conduct an investigation beyond the steps already taken here. I would, however, urge the Town to, forthwith, consult with the State Ethics Commission to ensure that the current reporting relationships are in conformance with the state's ethics law.

For the above stated reasons, the Petitioner's request for the Civil Service Commission to initiate an investigation is denied and this matter, under Tracking No. I-15-228 is *closed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a 3-2 vote of the Civil Service Commission (Bowman; Chairman – Yes; Camuso, Commissioner – No*; Ittleman, Commissioner – Yes; Stein, Commissioner –Yes; and Tivnan, Commissioner – No*) on February 4, 2016.

*Commissioners Camuso and Tivnan voted no as they believe that there is sufficient information to warrant the initiation of a further investigation.

Notice:
Paul Richardson (Petitioner)
Brian Maser, Esq. (for Town of Chelmsford)