

December 13, 2010

2010 DEC 16 A 9 36

The Honorable, the Board of Aldermen
City Hall
Somerville, MA 02143

CITY CLERK'S OFFICE
SOMERVILLE, MA

DELIVERED BY-HAND

RE: Sean P. O'Brien,
Bypass for Appointment

Ladies and Gentlemen:

At your regular meeting of Thursday, December 9, 2010 you received from the mayor the names of six individuals for appointment to the reserve fire force. Conspicuous in its absence from that list, but not unexpected, was the name of Sean P. O'Brien ("O'Brien"), whose name appears at the top of certification #207184, as a result of the decision of the Civil Service Commission in Case No. E-10-139.

As you will recall, I appeared before your committee on confirmation of appointments on the evening of February 24, 2010 and urged the committee and the entire BOA, to take no action to confirm the pending nomination of the ten individuals whom the mayor had submitted to the Board of Aldermen ("BOA") for appointment to the reserve fire force. I informed the committee – and the Curtatone Administration's representatives did not dispute - that O'Brien was number one on the civil service eligible list for appointment to the Somerville fire department.

To counter my argument for deferral of action on the pending nominations the mayor sent assistant city solicitor and former acting personnel director, Matthew Buckley ("Buckley"), as well as personnel director, Jessie Baker ("Baker"), to make the case why you should approve his nominations that evening. Baker and Buckley asserted that the City had a legal obligation to follow through with the appointments because conditional offers of employment had been made to the pending nominees. Although I strongly disagreed with that assertion, as I made clear to you, I did not wish to engage in a protracted discussion on a legal issue so I therefore demurred. Your committee then voted (Alderman Trane absent) to recommend confirmation of the appointments and the full BOA agreed at its next meeting.

On November 9, 2010 I appeared before the BOA and presented clear, convincing and indisputable documentary evidence that disclosed the knowing and intentional violation of O'Brien's civil service rights by the Curtatone Administration. Despite efforts by Buckley and Baker that evening to explain away their intentional withholding from the BOA of a critical memorandum from Luz Henriquez of the Human Resources Division ("HRD") directing that O'Brien's name be added at the top of the pending certification #290651, the October 27, 2010 letter from Henriquez, which they offered to mitigate their failure to provide the BOA with this critical memorandum, instead confirmed that Henriquez did not okay the extension of the certification until the day after your committee's meeting. Moreover, it further confirmed that Henriquez never expressly rescinded her directive of February 24th regarding the addition of O'Brien's name.

The September 14, 2010 decision of Civil Service Commission ("CSC") Chairman Christopher Bowman, which was later ratified by the full CSC by a vote of 5-0, confirms that the Curtatone Administration and HRD violated the civil service law and Personnel Administration Rules ("PAR") by failing to include O'Brien at the top of certification #290651. This decision was reached without my having to call a single witness to testify or to formally introduce one piece of documentary evidence. The mere existence of certification #290651 with but twenty-four (24) signatures on it and the February 24, 2010 letter of the mayor admitting that he made conditional offers of employment to twelve (12) candidates, all of which were made after O'Brien was placed fourth on the eligible list and in the case of the O'Hearn, after O'Brien was at the top of the eligible list, established beyond dispute that both the City and HRD violated Chapter 31 and the 2n+1 rule set out in PAR.09.

The result of the CSC decision was but a pyrrhic victory for O'Brien. The CSC ordered that O'Brien's name be placed at the top of the next certification for consideration for appointment and that, if bypassed, O'Brien could appeal. But the mayor, Baker and labor counsel, Robert Collins ("Collins") knew at the time, that the worst that could befall them if they intentionally violated O'Brien's rights and the best that he could obtain as a result of an appeal to the CSC, was precisely what he received: his placement at the top of the next certification, which is where he should have been in the first place.

In April 2010 the mayor requisitioned HRD for a certification for the purpose of appointing six permanent, reserve firefighters. O'Brien's name appears at the top of that certification, #207184. During the pendency of this certification, I filed the O'Brien appeal to the CSC. On July 1, 2010 I met with Baker and Collins, in

Baker's offices at City Hall, for the express purpose of discussing the possible settlement of the O'Brien appeal. At that meeting I presented Collins and Baker with documentary evidence, in the form of copies of city and town street listings for 2007 and 2008 (and in one case going as far back as 2004), which cast serious doubt on the claims of residency preference made by certain reserve firefighters. I made an offer of settlement to Collins and Baker but I withdrew that offer the next day. (See Exhibits A and B annexed hereto.)

Before I withdrew the July 1st offer I made it clear to Collins that, in my opinion, if the materials I presented proved accurate, then it was entirely possible, if not likely, that federal mail fraud and conspiracy laws may have been violated. Although I did not state it in my e-mail to Collins, I subsequently made it clear to both him and Baker that, if it was proven that one or more reserve firefighters fraudulently claimed Somerville residence in order to gain preference, since every appointee must sign a form under the penalties of perjury entitled, "Verification of Residency Preference," prior to their being hired by the City, it was also likely that such candidate(s) committed perjury under Massachusetts law.

Instead of taking my documentary materials seriously and directing his staff in the personnel and law departments to immediately commence a thorough and exhaustive investigation of the residency preference claims upon which my materials cast doubt the mayor's response was to commence an effort to contrive a basis he could use to bypass O'Brien for appointment to the fire department. This was the mayor's way of gaining his retribution for O'Brien's public questioning of the reserve firefighter appointments process.

In September 2009, after returning from his second tour of duty in Iraq, O'Brien, my daughter, Sarah, and their one year-old daughter, Maeve, lived briefly with my wife and me at our home, 158 Powder House Boulevard. Sarah and Maeve had come to live with us while her husband was in Iraq in 2008 and 2009. Shortly after he took the firefighter entrance exam, Sean O'Brien and my daughter, Sarah, temporarily moved to Woburn. In June 2010 they returned to Somerville. They rented the first-floor apartment at 141 North Street, in the two-family home at 141-143 North Street where I was born and raised. They had made plans to move to 141 North Street once my sister, Loretta McLaughlin, moved out of North Street and into her new apartment at the Capen Court Senior Housing Development.

In his effort to "get" Sean O'Brien the mayor, either directly or through his advisors, sent a police officer by the name of Sheehan to the Kilby Street, Woburn apartment at around six p.m. on the Friday evening prior to the Fourth of July, as

O'Brien and my daughter, Sarah, were attempting to finish packing their personal effects to complete their the move to 141 North Street. Sheehan was rude, abrupt and disinterested in anything O'Brien or my daughter had to say and he declined an invitation to come into their apartment to talk. It was clear to them that Sheehan had gone to Woburn with an agenda and he wasn't interested in talking to O'Brien or my daughter, as any reasonable and skilled investigator would have been inclined to do.

On July 7, 2010 O'Brien sent a letter to Baker fully and completely explaining his temporary residence in Woburn. (See Exhibit C annexed hereto.) Under M.G.L. c. 31, s. 58, no candidate for appointment to a fire or police department is required to be a resident of that community at the time of his or her appointment. Thus, O'Brien's temporary residence in Woburn was perfectly lawful and cannot, pursuant to current statutory and CSC decisional or case law, be used as a basis for disqualifying him for appointment.

On July 23, 2010 I sent a letter to Baker in response to her demand that O'Brien appear at her offices for what she described as an "interview" as part of the selection process for those candidates who appeared on certification #207184. (See Exhibit D annexed hereto.) Consistent with my letter, I declined to make O'Brien available for "interview" until the CSC appeal was decided. Subsequently, Baker sent a second letter to O'Brien affording him what she described as a "second opportunity" to undergo an interview. In further response, I sent Baker a letter on August 9, 2010 outlining my position regarding the purported "interview" the City wished to conduct. (See Exhibit E annexed hereto.) In my letter I made it clear I would make an issue, at the CSC, of the questionable residency preference claims of certain reserve firefighters for whom I had provided Baker and Collins with copies of street listings which cast doubt on such claims. At the anticipated full CSC hearing, I intended to seek subpoenas for the production of certain tax, banking, rent and other records from and for the compelled testimony of the witnesses named in my Pre-Hearing Submission, which I provided to you on November 9th. Among the witnesses I intended to call were five members of this Board. I copied this letter to the mayor, by certified return -receipt.

The purported second opportunity for the O'Brien "interview" turned out to be little more than an "inquisition," as I stated at the BOA meeting of November 9th. The "inquisitors" were Baker, Collins and fire chief Kelliher. They did not ask a single question about O'Brien's interest in becoming a firefighter, or his military training, or what duties he performed in the Marine Corps., or what his

assignments were while stationed in Iraq or anything about his family background, his education or upbringing in Somerville, or his prior employment history. Instead, they badgered him about his temporary and completely lawful residence in Woburn. Indeed when O'Brien asked to excuse himself from the room to consult with me - something every witness before a federal grand jury is allowed to do - Baker threatened him by telling him he had to stay seated or she would terminate the interview. And when he asked if he could leave the room to get a drink of water, Baker refused to allow him to do so. Words cannot adequately display how contemptible was the conduct of Baker, Collins and chief Kelliher that August evening.

Now we come to the mayor's current nominations for appointment to the reserve fire force. Once again the mayor has passed over Sean O'Brien. I have no doubt he will use Sean's inadvertent mistake in not including his temporary Woburn residence on his application as the pretext for bypass. Of course O'Brien will appeal to the CSC. But the mayor and his advisors, particularly Baker and Collins, know that even if O'Brien prevails at the CSC - for a second time - the best outcome he can expect is placement - for a third time - at the top of the next certification. But by that time all the available vacancies in the fire department will have been filled. Obfuscation and delay are the City's obvious and best allies.

Among the names submitted to you for appointment is Daniel Costa. This is the same Daniel Costa, I assume, the City failed to appointment off certification #290651 last February. If he was deemed not qualified for appointment then, what has changed in eight months?

Standing in stark contrast to these nominations and now raising more serious and as yet unanswered questions, with potentially explosive answers about the entire reserve firefighter appointments process, are the recent actions taken by the City to terminate Ryan and Sean Layton as members of the fire department. Apparently, these terminations were made on October 24, 2010. The Laytons have appealed to the CSC, as is their right. CSC Chairman Bowman, who decided the O'Brien appeal, has assigned the case to himself for hearing. In a most unusual action, Chairman Bowman has scheduled the hearing on the City's motion to dismiss the appeal, for February 7, 2011 at Somerville City Hall, not at the CSC third floor offices at the McCormack State Office Building in Boston, as would normally be the case. In his Notice and Procedural Order, Chairman Bowman states that he made this unusual move in the interests of "transparency" and he has directed that the proceeding be open to the public. (See Exhibit F annexed hereto.)

By the City's actions terminating the Laytons the mayor is admitting, contrary to his assertions at the BOA meetings of February 25, 2010 where he attacked Alderman Gewirtz for questioning the reserve fire force appointments process, that the background investigations conducted by his personnel department were neither "exhaustive" nor "rigorous" nor "intensive," as he claimed. They either were substantially flawed or performed in an incompetent manner or they were intentionally inadequate and incomplete. In any case, the City's actions in the Layton cases cast a pall over every background investigation conducted by the City on fire and police candidates.

But the Layton claims of residency preference are not the only ones that are seriously suspect. There are at least four other cases of residency preference fraud that I am confident, based upon evidence I have amassed over the past ten months, I can and will prove at the CSC, if necessary. And every one of these cases involves a candidate whose relatives are or were at one time, on the City payroll. Indeed a number of these relatives are people who have been appointed to their positions and, in several instances promoted to better positions, by this mayor. In several cases there are "multiple" relatives who have obtained City positions from this mayor and then showered campaign contributions upon him and members of this BOA. Sean O'Brien has no political connections to anyone in this city government. He has never made a campaign contribution.

If the CSC affirms the Layton terminations (and one should have grave doubts the Curtatone Administration intends to vigorously and seriously defend its actions based upon the text of Chairman Bowman's Notice and Procedural Order outlining the paucity of additional background investigation, information and materials the City uncovered and utilized to support its termination actions) this will inevitably raise questions that will require investigation of the type this BOA has shown no proclivity to undertake on any issue advanced by the Curtatone Administration. Moreover, the real possibility that federal and state crimes may have been committed by certain reserve firefighters and others, in concert, should make it clear beyond peradventure that, in order to protect the public interest, this BOA should request a thorough and far-reaching inquiry of the entire reserve firefighter appointment process by investigative and prosecutorial authorities, including the F.B.I., the U.S. Attorney, the State Police and the Attorney General.

In these circumstances, it is inconceivable that the BOA could contemplate confirming any additional members to the reserve fire force while the Laytons' CSC appeal is pending. The implications of this case reach well beyond the

Laytons or these pending nominees. The fact that it took the mayor over one year after his personnel department commenced the background investigation of the Laytons and the other appointees from certification #290651, before he could determine that the Laytons' residency preference claims were invalid should itself cast doubt on the quality and effectiveness of his administration's background investigation procedure for reserve firefighters. Moreover, it is clear that he was incapable of making this determination, despite the substantial investigative resources at his disposal, until *prima facie* evidence casting doubt on the preference claim(s) was provided to his personnel director and labor counsel by me last July 2nd.

I am quite certain the mayor will tell you that the BOA's failure to confirm the six pending firefighter nominees will doom them because the eligible list has expired. This is patently false. Indeed the mayor's nomination and the BOA's confirmation of Jason Ruf as a reserve firefighter in November 2009 put the lie to any such claim.

Jason Ruf took the firefighter entrance exam in April 2006. His name placed him fifty-second on the Somerville eligible list. So that he could reach Ruf at number fifty-two (52), the mayor requested from HRD a supplement to certification #280460, something he was unwilling to do in order to appoint Sean O'Brien, who was first on the eligible list and should have been first on certification #290651, if the mayor and HRD had acted lawfully.

Curiously, the mayor gave HRD two different appointment dates for Ruf, the first was November 2008, just prior to the expiration of the eligible list and the second was February 26, 2009, the date on which he submitted Ruf's name to the BOA for confirmation. But the BOA did not confirm Ruf until November 12, 2009, some ten months after his nomination was submitted to the BOA and one year after the eligible list had expired. HRD accepted the Ruf appointment. So it should be clear that lack of confirmation of these pending reserve firefighter nominees, at this time, will in no way jeopardize their candidacies. But it will prevent Sean O'Brien from being unfairly and unlawfully victimized by this city government for a second time in less than one year.

Further, I have filed a Request for Action with the HRD Personnel Administrator, Paul Dietl, asking that he disapprove of the City's bypass of Sean O'Brien. The mayor is anticipating that his allies on this BOA will, for a second time, ignore the facts and "ram" through the pending nominations, just as you did for him on

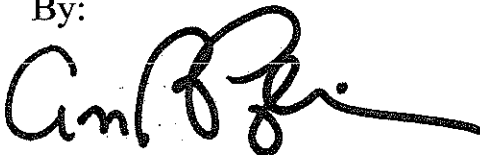
February 25, 2010. And you now know that your action that evening violated Sean O'Brien's rights under the civil service law, as the CSC decision confirms. The mayor fully realizes, however, that once you confirm these nominees you will have ensured that Sean O'Brien, even if he succeeds in a second appeal at the CSC, will be left with no effective remedy for this wrong. You cannot, in good conscience, allow this to happen.

When I appeared before you back on February 24th and again on November 9th, I made a point to refer to Sean O'Brien's sacrifice in volunteering for the Marine Corps. at the age of twenty-nine because he wanted to serve his community and his country. He did so with the full knowledge he would be heading for combat in the very dangerous Middle Eastern counties of Iraq or Afghanistan. Sean O'Brien did his duty without fanfare and he did not ask for special treatment from anyone when he returned to America and to his wife and daughter. All he asked for was to be treated fairly and in accordance with the law, just as every other American expects to be treated.

In 2008 and 2009, while the mayor, each of you and the vast majority of the reserve firefighters appointed since November 2008, was sitting comfortably in your offices or at your desks, or relaxing in the comfort of your homes, or going on your vacations, or sitting in some college or other classroom my son-in-law, Sean O'Brien, was risking his life for his country – and for every one of you - while serving in Iraq. Whatever action you may take in this matter, when you march in the 2011 Memorial Day Parade or attend Veterans Day services in November making self-congratulatory remarks about how much this city government has done to honor its veterans, I want you to remember this fact and think carefully about how this city government has egregiously wronged at least one Iraq War veteran.

Sincerely,
Sean P. O'Brien

By:

A handwritten signature in black ink, appearing to read "Andrew R. Puglia". The signature is fluid and cursive, with a long horizontal stroke at the end.

ANDREW R. PUGLIA
His Authorized Representative
158 Powder House Boulevard
Somerville, MA 02144

FW: Sean P. O'Brien CCC Appeal No. E-10-139

From: **Andrew Puglia** (arpuglia@hotmail.com)
Sent: Fri 7/02/10 6:39 AM
To: sarahwobrien@gmail.com (sarahwobrien@gmail.com)

Good Morning:
Thought you would enjoy reading this email I just sent to the city solicitor and his cohort.

Dad

From: arpuglia@hotmail.com
To: law@somerville.ma.gov
Subject: Sean P. O'Brien CCC Appeal No. E-10-139
Date: Fri, 2 Jul 2010 06:36:42 -0400

CONFIDENTIAL COMMUNICATION

To: Robert Collins, Esq., Labor Counsel and
Francis X. Wright, City Solicitor

With respect to the allegations of false and fraudulent residency preference claims by certain recently-appointed firefighters and the involvement of certain other current and former firefighters, city employees, member(s) of the police department and family members of these individuals; and my assertion that the use of federal stimulus funds gives the U.S. Attorney and the F.B.I. jurisdiction to investigate the possible commission of federal crimes, I would submit that the crimes which are potentially implicated are, at a minimum, mail fraud, 18 U.S.C. 1341 and conspiracy, 18 U.S.C. 1349.

Every time any article of mail was placed in the U.S. Mail by one or more of the principals/co-conspirators, it is a separate count of mail fraud. And I would be surprised if there are not one or more documents that were communicated to and from the personnel department and/or fire department by way of the U.S. Mail, in which the false and fraudulent Somerville addresses of the putative defendants were utilized.

I believe it is important for your decision-maker(s) to understand that I have thought this matter through quite carefully. So if I am compelled to make the trip down to One Center Plaza on July 6th, I will be prepared to lay out, in detail, my theory of the case to the Bureau and, if necessary, to Brian Kelley, Assistant U.S. Attorney in charge of the public corruption unit.

I sincerely hope we can arrive at a satisfactory solution of this matter and avoid what could prove to be a very costly, embarrassing and very damaging situation for the Somerville city government.

I will await your response. Otherwise, I will see you at the CCC offices on Tuesday, July 6 at 1PM.

Andrew R. Puglia
(857) 523-8227

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(No Subject)

From: **Andrew Puglia** (arpuglia@hotmail.com)
Sent: Sat 7/03/10 6:44 AM
To: law@somerville.ma.gov

****CONFIDENTIAL COMMUNICATION****

To: Robert Collins, Esq., Labor Counsel
and Francis X. Wright, City Solicitor

Please be advised that, the offer of settlement previously made to the city of Somerville in the matter of Sean P. O'Brien v. City of Somerville and HRD, Case No. E-10-139, is hereby withdrawn, effective immediately.

Sean P. O'Brien
By:

Andrew R. Puglia
(857) 523-8227

The New Busy is not the too busy. Combine all your e-mail accounts with Hotmail. [Get busy.](#)

July 7, 2010

Personnel Department
City Hall
93 Highland Avenue
Somerville, MA 02143

DELIVERED BY HAND

Attention: Jessie Baker,
Personnel Director

Dear Ms. Baker:

I am writing this letter to clarify what may have been a misunderstanding on my part as to the information that should have been included on my application for employment with the Somerville fire department.

When I took the civil service military makeup examination for firefighter, I claimed Somerville for residency preference. The city's election commission verified my claim. In August 2009, I returned from my second tour of duty in Iraq. My wife, Sarah, our daughter, Maeve and I came back to Somerville, from Jacksonville, North Carolina. We took up residence at the home of my wife's parents, Joan and Andrew Puglia, at 158 Powder House Boulevard, Somerville, where my wife and daughter had resided for the prior year during my active duty in Iraq.

Shortly before I took the civil service examination, my family and I temporarily relocated to Kilby Street, Woburn. However, I continued to maintain 158 Powder House Boulevard, as my primary residential address as it was to this location to which I maintained a present intention to permanently return. This was the case because my in-laws had stated their intention to sell their single-family home at 158 Powder House Boulevard, to my wife and I, contingent upon my being hired as a Somerville firefighter, which we fully expected to occur in the not-too-distant future.

Because I did not obtain employment as a Somerville firefighter, my and my wife's plans to acquire my in-laws home have been placed on hold. However, we have returned to Somerville from our temporary locale in Woburn. We have taken up residence at my father-in-law's family home at 141 North Street.

In filling out the employment application I neglected to indicate that I had temporarily been at Kilby Street, Woburn, because I understood the application to require me to provide information relating to my permanent residence. I apologize for my misinterpretation; and I wish to now correct the record.

In addition, it has come to my attention that a member of your staff has indicated that have I claimed Woburn for residency preference purposes. This is not correct. I have always claimed Somerville as my residency preference. A cursory review of the civil service exam results will readily confirm this fact. If I had claimed Woburn, I would have been at the top of their civil service eligible list, instead of placed considerably down their list. And I would have been one of the five candidates recently considered for appointment to their fire department, which I clearly was not.

I hope this clarifies these two issues.

Sincerely,

Sean P. O'Brien
141 North Street
Somerville, MA 02144

cc: Andrew R. Puglia

July 23, 2010

City of Somerville
City Hall
93 Highland Avenue
Somerville, MA 02143

CERTIFIED RETURN RECEIPT
7007 0220 0001 5404 9607

Attention: Jessie Baker,
 Personnel Director
Re: Sean P. O'Brien

Dear Ms. Baker:

As you are already well aware, I am the authorized representative for Sean P. O'Brien before the Massachusetts civil service commission, in the matter of **O'Brien v. Somerville, et al.**, Case No. E-10-139.

In view of the adversarial nature of this proceeding, I find your conduct in attempting to contact and question Mr. O'Brien, at this time, regarding his candidacy for appointment to the "reserve" fire force to be both unprofessional and a transparent attempt to engage in "gotcha" politics. Moreover, your attempt to manufacture an issue around Mr. O'Brien's residential address when you have failed to act upon credible documentary evidence I provided to you at our meeting of July 1, concerning the false and fraudulent residential preference claim(s) of firefighter(s) you and your investigator(s) have vetted, your mayor has nominated and your board of aldermen has confirmed, wreaks of political chicanery. It is, in a word, unseemly.

Let me be clear at this point. If you bypass Mr. O'Brien for appointment, as I fully anticipate you will do, I will make the background investigation procedure you utilized for all previous reserve firefighter appointees an issue at the civil service commission. I have no doubt I will be allowed wide latitude to obtain discovery and witness subpoenas to challenge this procedure as being intentionally sloppy and politically motivated.

I have sought to maintain restraint in this matter despite what I am quite confident is substantial evidence of potentially widespread criminal behavior in the reserve fire force appointment(s) process. It would appear,

however, that you are hell bent on testing my resolve to maintain this restraint. I assure you, if you persist in your charade, it will indeed end. A federal grand jury with subpoena power to compel testimony and the production of documents, under oath, e.g., tax returns, resumes, employer records, may well be left as the only objective arbiter of the facts to ascertain whether the information I unearthed is accurate.

Accordingly, please be advised that Mr. O' Brien will not meet with you or any other representative of the city of Somerville until the pending civil service commission case is concluded. Neither you nor anyone acting in behalf of the city of Somerville is to communicate with Mr. O'Brien, except through me. If you have any questions you wish to pose to him you may submit them to me, in advance and in writing, and I will see that he responds appropriately, also in writing.

Sincerely,
Sean P. Obrien
By:

ANDREW R. PUGLIA
158 Powder House Boulevard
Somerville, MA 02144
(857) 523-8227

August 9, 2010

Personnel Department
City Hall
93 Highland Avenue
Somerville, MA 02143

CERTIFIED RETURN RECEIPT
#7007 0220 0001 5405 5912

Attention: Jessie Baker,
 Personnel Director
Re: Sean P. O'Brien

Dear Ms. Baker:

I have received and reviewed your letter of July 28, 2010. In it, you imply that my acting as the personal representative of my son-in-law, Sean P. O'Brien, before the personnel department of the city of Somerville is somehow inappropriate. You also question the tone of my letter to you, dated July 23, 2010.

It has long been the custom and practice of municipal governments across this commonwealth, including the city of Somerville, to allow persons having business before them to have other(s) aid, assist or otherwise act in their behalf, in all manner of issues. Nowhere is this practice more commonly displayed than in those situations where the individual with business before the city exhibits difficulty communicating in the English language. However, this has not been the singular situation where non-legal assistance/representation has occurred. For decades, it has regularly occurred - and still occurs - before the Somerville board of aldermen, especially in situations where a petitioner seeks some type of license or permit.

The right of an individual to have counsel or a non-legal representative available to assist them in important personnel matters pending before a municipal government is well established, as I have no doubt you are or certainly should be, well aware. M.G.L. c. 39, s. 23B, the so-called "open meeting law" states, in relevant part:

“...Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified...at least forty-eight hours prior to the proposed executive session...If an executive session is held, such individual shall have the following rights:

(b) to have counsel **or a representative of his own choosing present and attending** for the purpose of advising said individual and not for the purpose of active participation in said executive session. (emphasis supplied)

In my son-in-law's case the city government, at least its legislative branch, has already recognized my non-legal, personal assistance and representation as being both appropriate and valid. As you may recall, especially since you were present and acting in behalf of the mayor, I appeared before the aldermen's committee on confirmation of appointments on Wednesday, February 24, 2010 and, with the committee's approbation, I was allowed to act in Sean O'Brien's behalf and present the reasons why he should not be left off the pending round of mayoral appointments to the reserve fire force.

Unless you can cite some decision of our Massachusetts courts or some provision of general or special law, including without limitation Chapter 240 of the Acts of 1899, the Somerville city charter, or some section of the Somerville code of ordinances, which specifically prohibits an individual with business before the city of Somerville from having a person act as their personal, non-legal representative, I submit to you that my doing so in behalf of Sean O'Brien is perfectly appropriate. Whether the mayor, acting by and through you, chooses to allow my son-in-law to exercise this right in the same manner and to the same extent as the board of aldermen as well as the open meeting law allows is an entirely different question yet to be answered. Moreover, since the Standard Rules of Adjudicatory Practice ("SRAP") specifically allow an appellant who challenges a state or local action under the civil service law, to have any individual act as their authorized representative before the civil service commission, I suggest to you that the logical extension of this rule leads to the conclusion that there is an implicit authorization for the same to occur before the appointing authority in any matter arising under Chapter 31.

As to the tone of my letter, I suggest that it was both civil and quite measured. What you likely found troubling was its content.

And well you should, as should the mayor and every member of the board of aldermen who voted to appoint the firefighter(s) whose residency preference claims I have called into question.

So that the public record is quite clear on this point, I have previously provided to you, at our meeting of July 1, 2010 in your offices, relevant copies of: 1.) the Woburn street listing books for 2006, 2007 and 2008 concerning Patrick A. Casey, appointed November 13, 2008, 2.) Medford city listing books for 2007 and 2008, concerning Jay W. McKenzie, appointed February 25, 2010, 3.) Wilmington town listing books for 2007 and 2008, concerning Sean Layton, appointed February 25, 2010, 4.) Wilmington town listing book for 2007, concerning Ryan Layton, appointed February 25, 2010.

It is my full intention to be present at your offices with my son-in-law, Sean O'Brien, when he appears to be interviewed by you at 6:30 P.M. on Thursday evening, August 12, 2010, to act as his representative and to advise him.

It is regrettable that a Marine Corps veteran who ably and honorably served his country in Iraq when duty called, not once but twice, should be so shabbily treated by his city government so that he has to battle to obtain a firefighter position to which he is entitled by having fairly competed in a civil service examination process which placed him at the very top of the eligible list. But being a Marine, Mr. O'Brien is invested with the strength of character that will see this matter through to its conclusion, of this you may be certain.

Sean P. O'Brien

By:

ANDREW R. PUGLIA
Authorized Representative
158 Powder House Boulevard

Somerville, MA 02144
Tel: (857) 523-8227
Fax: (978) 526-7098
Email: arpuglia@hotmail.com

cc: Sean O'Brien
Mayor J. Curtatone
Certified Return Receipt
#7007 0220 0001 5405 5905

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

SEAN LAYTON, <i>Appellant</i> v.	G1-10-293
CITY OF SOMERVILLE, <i>Respondent</i>	

RYAN LAYTON, <i>Appellant</i> v.	G1-10-292
CITY OF SOMERVILLE, <i>Respondent</i>	

PROCEDURAL ORDER

The Appellants (who are brothers) both filed individual appeals with the Civil Service Commission that are related to the same general issue.

Sean Layton and Ryan Layton took and passed a civil service examination for the position of firefighter that was administered by the state's Human Resources Division (HRD). Based on their assertions at the time of the examination that they satisfied the residency requirement (resided in Somerville at least one year prior to the date of the examination), HRD placed their names on an eligible list of candidates with a residency preference.

Both of the Appellants were then appointed as reserve firefighters after the City completed a background check that included an inquiry into whether they did indeed reside in Somerville at least one year prior to the date of the civil service examination. Although the investigator from the City's police department raised some questions regarding whether there was sufficient information to verify their residency at the time, the City, apparently satisfied that the requirement had been met, appointed both of them as reserve firefighters. Due to vacancies at the time, Sean Layton, whose name appeared higher than that of his brother Ryan, was almost simultaneously appointed as a permanent full-time firefighter by the City.

Several months later, while Sean Layton was still serving his probationary period as a permanent full-time firefighter, additional vacancies for permanent full-time positions became available and Ryan Layton was considered for appointment to a full-time position.

In the interim, another individual, Sean O'Brien, filed an appeal with the Commission, arguing that he was aggrieved because the City failed to consider him for appointment as a reserve firefighter immediately after he took and passed a military make-up examination after returning from active military duty in Iraq. For reasons stated in a decision regarding that

matter, the Commission ordered that Mr. O'Brien be given at least one consideration for the position of reserve firefighter. If not selected, he will have a further right of appeal to the Commission. As part of the O'Brien appeal (See Case No. E-10-139), the Appellant's advocate / representative, a former member of the Somerville City Council, indicated that allegations of nepotism would be part of any future bypass hearing (the father of Sean and Ryan Layton is a Somerville firefighter).

When considering whether to appoint Ryan Layton (who was then a reserve) as a permanent full-time firefighter, the City conducted another background investigation, including an inquiry into whether Ryan Layton had satisfied the residency requirement. A different investigator from the City's police department, based on what appears to be largely the same information that was considered and reviewed months earlier, concluded that neither Ryan Layton – or Sean Layton – had satisfied the residency requirement. Based on this conclusion, the City determined that Ryan Layton and Sean Layton should not have been listed as residents on the eligible list and should not have been considered for appointment. Thus, the City terminated Sean Layton from his position as a permanent firefighter, did not appoint Ryan Layton as a permanent firefighter and terminated him from his reserve firefighter position.

Both Ryan Layton and Sean Layton have now filed an appeal with the Commission, arguing that that the Commission should hear these appeals as timely "bypass appeals" as the City effectively re-opened the selection process, and, based on its further investigation, deemed that the Appellants should not be "selected" for appointment. Thus, the Appellants argue that they have been bypassed and, as they have filed an appeal with the Commission within the applicable 60-day time period, the Commission should hear and decide these appeals as bypass appeals.

The City argues that the Appellants were employees terminated prior to serving their statutorily-required probationary period and the Commission has no jurisdiction to hear a disciplinary appeal regarding these probationary employees.


As a threshold matter, the Commission must determine if it has jurisdiction to hear these appeals. As part of the November 30, 2010 pre-hearing conference, I ordered the City to file a Motion to Dismiss within 30 days and gave the Appellants 30 days thereafter to file a reply. Briefs should accompany both filings. Oral argument will be heard at a motion hearing.

It is the Commission's standard practice to conduct hearings that involve communities in the Greater Boston area at its offices in Boston. Here, in an effort to ensure the greatest level of transparency possible, this motion hearing will be held at Somerville City Hall as part of a hearing that is open to the public. This hearing, assuming that briefs are timely filed and that meeting space is available, will be conducted on February 7, 2011 at 10:00 A.M. at a meeting room to be determined by the parties within Somerville City Hall. In the event that briefs are submitted ahead of schedule, either party may request an expedited hearing schedule.

The Commission reserves the right to consider these appeals or any matters related to these appeals under G.L. c. 31, §2(a).

The City shall ensure that this procedural order is posted by the City Clerk and that it is also posted in a conspicuous location within the Somerville Fire Department headquarters.

Civil Service Commission



Christopher C. Bowman
Chairman

December 9, 2010

Notice to:
Paul Hynes, Esq. (for Appellants)
Robert V. Collins, Esq. (for City of Somerville)
John Marra, Esq. (HRD)

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Firefighters allege O'Brien controversy led to firings

by [Tom Nash](#) on December 15, 2010

Two brothers dismissed from the Somerville Fire Department are appealing to the state after what they say was a reaction by the city to a firefighter candidate's appeal that cast doubt on the legitimacy of the city's hiring process.

Ryan and Sean Layton both claimed "residency preference" when they took the state's civil service exam for firefighter positions in 2008, which gives an advantage over those who are not Somerville residents. After the city approved their status during its initial background check in 2009, a second look following candidate Sean O'Brien's controversial appeal led the city to fire both.

In a procedural order [issued](#) last week, state Civil Service Commissioner Chris Bowman said the motion hearing for the two Layton cases will be heard Feb. 7 at Somerville City Hall, "in an effort to ensure the greatest level of transparency possible."

'Allegations of nepotism'

O'Brien, a former Marine who served in Iraq, took the civil service test upon his return from duty in 2009. His Somerville residency and disabled veteran status, combined with his score, should have put him at the top position on the eligible list.

Instead, the city repeatedly requested a renewal of the list that did not include him in the top spot, [culminating](#) in a Feb. 24 Board of Aldermen Confirmation of Appointments Committee meeting that saw 10 candidates appointed without the members being informed the city had just minutes before successfully kept O'Brien and another candidate from being ordered into the No. 1 and No. 4 positions.

O'Brien filed an appeal with the state, and in September Bowman ordered O'Brien to be placed at the top of the list of candidates a second time – although he was not among the candidates selected by the city last week for Board of Aldermen approval.

O'Brien's father-in-law, former Ward 7 alderman Andrew Puglia, has managed O'Brien's case during

the appeal process. During an impassioned speech before the Board of Aldermen in November, Puglia alluded to political connections playing a role in the process.

Shortly after Puglia spoke, Mayor Joe Curtatone defended his administration's handling of O'Brien's candidacy.

"I challenge anyone ... to find something wrong with what we've done," Curtatone told the board.

In part of Puglia's correspondence with the city, contained in the Civil Service Commission's case file, he alleges a system of corruption that involves firefighter candidates lying about where they live with the help of fire department and city officials.

In an e-mail encouraging city attorneys to resolve O'Brien's appeal, Puglia wrote, "I sincerely hope we can arrive at a satisfactory resolution of this matter and avoid what could prove to be a very costly, embarrassing and very damaging situation for the Somerville city government."

The Layton brothers, who filed separate cases with the state Human Resources Division but are being represented by the same attorney, are alleging that renewed scrutiny in the wake of O'Brien's case has unfairly cost them their jobs.

According to a procedural order written by Bowman, who ruled that O'Brien deserved to remain at the top of the city's eligible list and was entitled to retroactive seniority, the Laytons are accusing the city of reacting to Puglia's "indication that allegations of nepotism would be part of any future bypass hearing" by firing them.

Their father, Stephen Layton, is a Somerville firefighter. According to Bowman, both Layton's sons initially passed residency checks, but a second review that occurred after the O'Brien controversy erupted determined "based on largely the same information" that neither had satisfied the one-year residency requirement.

Both brothers had listed 23 Lincoln St. as their Somerville address. They do not, however, appear in the 2007 city census data that would indicate they were living there a year prior to taking the April 2008 civil service exam. There is also a Wilmington address for which they are both listed as members of the household.

The Laytons' attorney, Paul Hynes, said neither he nor the family would comment on pending litigation. O'Brien and Somerville Fire Local 76 Union President Jay Colbert also declined comment.

Other discrepancies

A review of the state-issued list relating to O'Brien's and Laytons' complaints shows other discrepancies similar to the situation presented in the Laytons' case.

Four other current firefighters who appeared on that list gave Somerville addresses that do not match city census records for the time period required for residency preference status. At least three of those four current firefighters are listed at an address in nearby cities, including Medford and Woburn.

Mayoral spokesman Michael Meehan stressed city census data is only a "best-faith effort to keep tabs on that info."

"There are significant gaps," Meehan said. "It's not terribly surprising the city census wouldn't capture all that data."

'We took action'

City Personnel Director Jessie Baker said she relies on Somerville Police Department detectives to check the accuracy of candidates' residency claims. While she said city census data may not match what candidates listed as their addresses, the detectives scour a wide variety of sources.

In addition to census data, Baker said detectives check vehicle registrations, utility bills, other job applications and also venture into neighborhoods to verify addresses.

"Not only do we find out if the electricity bill is in [a candidate's] name, we look to see if the power is actually being used," she added.

In the wake of the O'Brien controversy, however, Baker said the city checked the candidates from the 2009 list again. The firing of Ryan and Sean Layton came shortly after, although she would not explain the decision.

"If we get new information, we take that into consideration," she said. "We took action and [the Laytons] are no longer employed by the city."

"Given the scrutiny, we are being diligent about any discrepancies," Meehan said. "[This group of candidates] has probably been scrutinized as much as anybody has in in this city."

Meehan maintains the city is confident that the Laytons are the only firefighters who did not stand up to that renewed scrutiny.

"No matter who you know, you have to be truthful on that application," he said. "If you weren't, that's the end of your employment with the City of Somerville."

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[Barry Rafkind](#) December 15, 2010 at 3:16 PM

Excellent piece of journalism, Tom!

It's hard to miss the contrast between the exceptional diligence the City claimed to have performed in firing the Layton brothers on the one hand... and on the other hand there's the alleged lack of diligence undertaken during their initial hiring process and in the handling of O'Brien. It sounds like due diligence is selectively employed only when it suits political aims.

If the City goes through the trouble of doing background checks on prospective fire-fighters, you'd think they would at least update their census records with the information collected.

It would be interesting to know whether the collected records are kept on file as evidence of the

background checks. Tom, have you looked? The City ought to explain why the problem with the Layton brothers' residencies weren't discovered during their background checks.

So will O'Brien be hired now that there are new vacancies in the fire department?

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