

NORRIS, MURRAY & PELOQUIN, LLC

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Firm News

Congratulations to NMP law clerk **Antoine Fares**, who graduated from Suffolk Law School in December 2018, and was awarded the Fuchs Award at the 45th Annual Fuchs Labor Law Conference on January 17. The award is given in recognition of outstanding performance in a MBA labor law class at Suffolk Law.

Antoine will join NMP as an Associate in March, 2019.



CHAMPIONS!

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Civil Service Overturns “Bizarre” Bypass And All But Orders Appellant Promoted

In an extraordinarily harsh decision, the Civil Service Commission not only lambasted the Appointing Authority, but practically ordered the promotion of the Appellant Fire Lieutenant to the next opening for Captain in Smith v. Town of Billerica, G2-18-079 (December 20, 2018). The Town is appealing the decision. The Commission called the Town Manager’s bypass reasons “bizarre,” based on “head scratching assumptions and conclusions,” and said it appeared he had “let his imagination get the best of him.”

The Appellant was bypassed for failing to report that he had been told that several firefighters, some married, were having sex with a female dispatcher on and off duty. An investigation resulted in discipline to several employees, including demotions. The Appellant was not a subject of the investigation and only had a platonic relationship with the dispatcher. At the time he learned of the sexual relations the department did not have an anti-fraternization policy and there was no indication they were not consensual. The bypass decision stated: “It is simply not enough to be first on the list. You must demonstrate an understanding of leadership positions and the accountability that goes with it.”

The Commission ruled the Appellant had done nothing wrong, crediting the Appellant’s testimony that he had not reported the situation because he was not certain the encounters had occurred, and he did not want to spread rumors. The Commission noted that the Town did not have an anti-fraternization policy when the scandal occurred and that the Lieutenant had no knowledge that the sexual encounters were adversely impacting the Department.

The Commission’s tolerance of the failure to report arguably substitutes its judgment for that of the employer. (Since when is an anti-fraternization policy necessary to hold employees accountable for such sexual misconduct?) However, one of the Commission’s reasons does make sense. The successful candidate for whom Appellant was bypassed also knew of the sexual encounters and failed to report them. Yet, the Town Manager wrote of the successful candidate that he had “continually demonstrated he understands the responsibilities and role of a commanding officer.”

After asserting that vacating the promotion would have been warranted, the Commission imposed a multi-faceted and unusual remedy that essentially insured the future promotion of the Appellant. It ordered: (1) No new Captain’s list can be established until Appellant is promoted; (2) Appellant remains at the top of any Captain certification until promoted; (3) Town cannot use any bypass reasons that it knew of at the time of the current bypass; (4) No Captain appointment bypassing Appellant can take effect until the Appellant has an opportunity to appeal and the Commission issues a ruling on the subsequent bypass.

IG: Methuen Police Superiors Contract Is Invalid

A February 1, 2019 letter from the Office of the Inspector General finds several procedural and substantive problems with the most recent Methuen Police Superiors collective bargaining agreement and recommends that it be rescinded. The agreement had become notorious for its lavish raises that would have Captains earning \$432,295 annually – far in excess of what top police commissioners around the nation are earning. The IG pointed to violations of City ordinances requiring multiple readings of contracts on different days and preparation of a financial impact statement, among other irregularities. Substantively the IG termed the contract a waste of public funds.