

BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE

In the Matter of the Appeal of)
ALAN BERNSTEIN)

) OPINION OF COMMISSIONER
) JAMES A. FOSSOS
)

I. INTRODUCTION

On November 17, 1999 and February 2, 2000 hearings were held by the Public Safety Civil Service Commission to hear the appeal of Alan Bernstein a Police Sergeant in the Seattle Police Department. Sergeant Bernstein contended that the Seattle Police Department violated "Section IV" (Presumably - Chapter 4.08 of the Seattle Municipal Code) by failing to promote him to Lieutenant, "disregarded the Public Safety Civil Service eligibility list and promoted a less qualified candidate."

1.1 APPEARANCES

1.1.1 Appellant: The appellant was represented by J. C. Becker, Attorney, The Law Offices of J.C.Becker, Inc. P.S.

1.1.2 Department: The Seattle Police Department was represented Leigh Ann Tift, Assistant City Attorney, City of Seattle Law Department.

1.1.3 Commission: James A. Fossos, Commissioner; Barbara Laners, Commissioner; and Noreen Skagen, Commission Chair; and Ruby Dell Harris, Secretary and Chief Examiner.

1.1.4 Witnesses: Police Chief Norm Stamper, Seattle Police Department; Janice Corbin, Director, Human Resources Division, Seattle Police Department; Dan Bryant, Assistant Chief, Seattle Police Department; Nancy McPherson, Director, Community and Information Services Bureau, Seattle Police Department; Mike Edwards, President, Seattle Police Officers Guild; and Alan Bernstein, Appellant.

1 eligible register shall remain in effect for more than two years.

2 4) Provide notice of the time and place and general scope of
3 every examination to be held by publication in the City official
4 newspaper not less than 10 days preceding such examinations and for
5 promotional exams by posting in the Commission office and in Police and
6 Fire Department offices for not less than ninety (90) days, and by
7 other notice deemed reasonable or necessary by the Commission.

8 5) Prepare a register for each class of positions in this system
9 from the returns or reports of the examiners of the persons whose
10 standing upon examination for such class is not less than the minimum
11 established by the Commission.

12 Persons, when graded, shall take rank upon the register as
13 candidates in the order of their relative excellence as determined by
14 competitive examination. Veteran's preference in examination and
15 appointment shall be granted as required by Federal and State law
16 including RCW 41.08.040 and RCW 41.12.040; provided, a person shall be
17 entitled to use such preference only once to successfully attain an
18 appointment or promotion to a position.

19 6) When a vacant position is to be filled, certify to the
20 appointing authority the names of the candidates in the top 25% of the
21 eligible register, or the top five (5) candidates, whichever number is
22 larger, subject to affirmative action requirements.

23 Where more than one position in a class is to be filled, certify one
24 additional name of the person standing next highest on the register for
25 each additional position. The appointing authority shall fill such
positions by appointment only from the persons certified by the
Commission.

1 These promotions are also governed by ordinance and in accordance with the
2 powers granted to the Commission by RCW 41.08,41.12,41.56 and the Seattle
3 Municipal Code.

4 1. GENERAL PROVISIONS, Page 1

5 1.1 AUTHORITY AND APPLICATION. These rules are promulgated pursuant to the
6 authority granted by the Charter of The City of Seattle, the 1978 City of
7 Seattle Public Safety Civil Service Ordinance (Ordinance 107791, as amended)
8 and the Administrative Code of The City of Seattle (Ordinance 102228, as
9 amended). These rules are applicable to the proceedings before the Public
10 Safety Civil Service Commission and should be read in conjunction with the
11 specific provisions of the City Charter and the Public Safety Civil Service
12 Ordinance.

13 1.3 SCOPE AND PURPOSE. These rules govern the continuing administration of
14 the public safety personnel system of The City of Seattle. The purpose of
15 these rules is to assure that the public safety personnel system in The City
16 of Seattle is administered in accordance with the Charter and ordinances of
17 The City of Seattle, and that all (proceedings before the Commission) are
18 conducted in an orderly, fair and timely manner.

19 In the Public Safety Civil Service Commission Rules of Practice and
20 Procedure, Page 54, Appendix A Ordinance 107791 establishes a Civil Service
21 System for Police and Fire of The City of Seattle, i.e., under
22 Section 2. PURPOSE: The general purpose of this Ordinance is to establish a
23 civil service system for employees in the Police and Fire Departments of The
24 City of Seattle, governing appointments, promotions, layoffs, recruitment,
25 retention, classifications, removals and discipline, pursuant to Charter
Article XVI*, all in substantial compliance with RCW Chapters
41.08,41.12,41.56. All appointments and promotions to Police and Fire

1 Department positions, retention therein and removal therefrom shall be made
2 on the basis and policies hereinafter specified as in said State Law.

3 On page 60, it reads:

4 Section 11. FILLING OF VACANCIES: PROBATIONARY PERIOD: Whenever a position
5 covered by this system becomes vacant, the appointing authority, if it
6 desires to fill the vacancy, shall make requisition upon the Commission for
7 the names and addresses of persons eligible for and willing and able to
8 accept said appointment. The appointing authority shall fill such vacancies
9 by appointment from the register of persons certified by the Commission
10 therefor. To facilitate the selection of appointees from the persons so
11 certified, the appointing authority may require such persons to come before
12 him/her and shall be entitled to inspect such persons' application and
13 examination papers, and may fill such positions by appointment from the
14 persons so certified without regard to their order of certification.

15 Simply said, the appointing authority in this instance, The Police Chief, can
16 examine the applications and exam papers.

17 In testimony given by Janice Corbin, Police Human Resources Director, she
18 described the SLT process that was used and said scores were destroyed;
19 charts with names were considered a working tool; and that the Seattle Police
20 Officers' Guild (SPOG) does not have an agreement with SPD on the SLT
21 process.

22 In Chief Stamper's testimony he stated that SPOG had contested the SLT
23 process but that there is an implicit agreement to use the system. (This will
24 become important later because the Guild President testified to the
25 contrary). The Chief also spoke to keeping scores on the candidates.

1 In Nancy McPherson's testimony, she stated that SLT would identify strengths
2 and weaknesses of candidates. She further stated she was very pleased with
3 Bernstein's work.

4
5 Mike Edwards, President of the Seattle Police Officers Guild was originally
6 called as a witness for Alan Bernstein, but, he was later dropped from the
7 list and was called by the City to testify. In his testimony, Mr. Edwards
8 stated that the promotional process was a mandatory collective bargaining
9 issue. He further gave testimony that would contradict statements of Chief
10 Stamper that there was an implied agreement with SPOG re: the promotional
11 process. Mr. Edwards stated that there was no implicit agreement. He went
12 on to say that there was a current lawsuit pending on the promotional process
13 and had been advised by the Guild Counsel not to discuss.

14 Alan Bernstein testified that he had served as an Acting Lieutenant for a
15 period of 3 years, cumulative over a nine/ten year period. (Much testimony
16 was given regarding Mr. Bernstein's very good work as an Acting Lieutenant).
17 He spoke to the fact that he was never told of any issues why he didn't get
18 promoted to lieutenant. He had many flattering commendations (Chief Stamper
19 included).

20 Finally, facts presented to the Commission showed that although the ultimate
21 decision to promote rests with the appointing authority, Chief Stamper
22 testified he relies on his SLT to reach a consensus on candidates.

23 III. CONCLUSION

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25 After careful and exhaustive review of all the evidence in this matter, I
find the following: That Alan Bernstein, appellant, was a candidate for

1 Police Lieutenant. He was not promoted because the Seattle Police Department
2 did not follow the City of Seattle Public Safety Civil Service Commission
3 Rules of Practice and Procedure, RCW 41.08, 41.012 and 41.56, Charter XVI*
4 City of Seattle and City Ordinances that govern promotions. Instead, and
5 without the expressed approval of this Commission, the Seattle Police
6 Department gave an unauthorized second test (SLT Test) that was scored and
7 candidates ranked by SLT members.

8 Promotions are to be made by the appointing authority and not other persons
9 in the chain of command. Further, as has been demonstrated earlier only the
10 commission can administer tests. Quite frankly, I am very alarmed by the
11 actions of the Police Department in this matter and believe based on the
12 facts that this practice (SLT Testing) violates the very essence of Civil
13 Service and the whole purpose of having the testing responsibility resting
14 with the Commission. Further testimony should be that Sergeant Bernstein's work
15 performance was well respected and that he had been put in a trusted capacity
16 as an Acting Lieutenant for a number of years. One must ask why was he not
17 promoted?

18 The Public Safety Civil Service Commission and Article XVI of the City's
19 Personnel System, Seattle Ordinance 107791 and all other references to the
20 powers of the Commission charge the Commission with the duty to ensure that
21 appointments in the police and fire civil service (PSCSC) are made using a
22 uniform procedure, free of political discrimination and a system based on
23 merit.
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3 It is crystal clear to me that all promotional testing of police and fire
4 persons must be done by Public Safety Civil Service Commission to insure that
5 the rules of this Commission are followed to the letter of the law. Our very
6 existence bears this out and should be noted. Based on the information
7 provided in this matter, I can only conclude that in the City's attempt to
8 justify its position it has misread the rules and has caused Alan Bernstein
9 irreparable harm.
10

11 Therefore, I find the following:

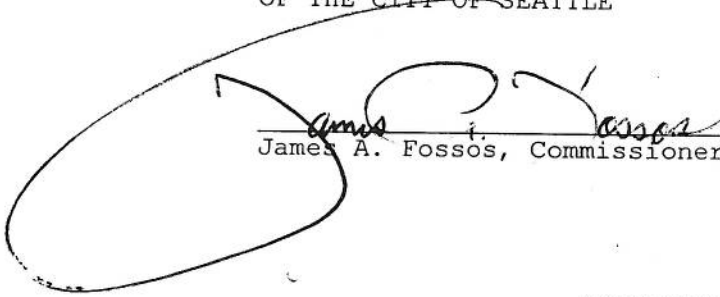
- 12
- 13 1) The Seattle Police Department has violated the rules and practice that
14 govern the promotions in the Seattle Police Department.
 - 15 2) Sergeant Alan Bernstein has been severely impacted by the action taken by
16 the Seattle Police Department and based on all of the evidence presented
17 in this case I find that Chief Stamper did knowingly violate the rules and
18 ordinances as set forth in this ruling and has caused harm to all those
19 who were impacted by said violations.
 - 20 3) Thus it is my ruling that Alan Bernstein, a Sergeant in the Seattle Police
21 Department, was wronged by the Seattle Police Department, specifically, by
22 not being promoted to Police Lieutenant by Chief Stamper. Accordingly, I
23 rule in favor of the appellant Alan Bernstein and order Sergeant Bernstein
24 to be promoted to Police Lieutenant with all back pay and allowances as
25 well as pension benefits, longevity and all other benefits that go with

1 the rank of Police Lieutenant, and further, that all probation time be
2 waived.

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4 4) This order to be implemented post haste.

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6 Signed at Seattle, Washington this 31st day of May, 2000.

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8 PUBLIC SAFETY CIVIL SERVICE COMMISSION
9 OF THE CITY OF SEATTLE

10 A large, handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read 'James A. Fossos'. A large, hand-drawn oval is drawn around the signature, extending from the left margin towards the center of the page.
11 James A. Fossos, Commissioner

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13 (Appeals/Bernstein-Dissent053000)