



Cotuit firefighter loses discrimination lawsuit

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The 1st U.S. Circuit Court of Appeals in Boston has affirmed a lower court's finding that claims by a former Cotuit fire captain of discrimination, retaliation and interference by other fire district officials are unfounded.

The decision, issued Tuesday, is the latest chapter in a long-running feud over professional, personal and political relationships in the department.

"In the decade leading up to the fall of 2009, the Cotuit Fire Department was the home of some fairly complicated personal histories," according to the 21-page Appeals Court decision, which outlined marriages and former marriages between several members of the department.

Testimony indicated a pattern of intradepartmental relationships that made Cotuit "the subject of mockery among neighboring departments," according to the finding.

In 2010, then-Cotuit fire Capt. David Pierce, who was married to Cotuit firefighter Jayne Pierce, sued Fire Chief Christopher Olsen, the department, the Board of Fire Commissioners and the individual commissioners for political discrimination, retaliation and interference with contractual relations.

Pierce argued that his decision to back a challenger in the 2009 election for a seat on the board prompted Olsen to take away his office, cellphone and to renege on a promise to promote Pierce to deputy chief.

In addition, the 30-year veteran of the department contended that Olsen and the board suspended him in retaliation for his support of the challenger, who failed to win the election. Pierce was fired in April 2011, but has since returned to the department as a full-time firefighter after an agreement was reached with the Fire Department's union. He is currently out on disability.

In his lawsuit, Pierce contended that the board's initiation of an ethics investigation against him and his firing violated the state's so-called "whistleblower act" because those actions were prompted either by letters he sent to the board objecting to alleged harassment by Olsen or by a letter to the State Ethics Commission objecting to the board not granting him an exemption from ethics rules in connection with his professional relationship with his wife.

Olsen and the board, however, identified legitimate reasons for their actions, including concerns about possible ethics violations related to Pierce directly supervising his wife at times, according to the Appeals Court ruling.

David Pierce and his attorney did not return messages seeking comment.

"I would say it was an affirmation of the position that the Cotuit Fire District has taken all along," said lawyer Marielise Kelly, who represented Olsen, the board and the district.

There was always an ethical problem with the Pierces working together, and it needed to be dealt with, Kelly said.

"I think we now have a result that reflects their good intentions and not the malicious intentions suggested by the other side," she said about Olsen and the board.

The chairman of the Board of Fire Commissioners, Ronald Mycock, said the district was gratified that the court determined Olsen and the board were just doing their jobs.

"The district is relieved to be done with this part," he said.

A lawsuit filed by Jayne Pierce against the district in Barnstable Superior Court alleging sexual discrimination is still pending.

Another complaint filed by the Pierces with the Massachusetts Commission Against Discrimination claiming age discrimination is also still pending.

Cotuit is one of five distinct fire and water districts in the town of Barnstable, each with its own board of commissioners.

The department has 12 full-time firefighters and 10 volunteer firefighters.

Timeline

Fall 2008: Capt. David Pierce advises Chief Christopher Olsen on several issues that directly affect Pierce's wife, a full-time firefighter with the department.

April 2009: David Pierce assists in disciplinary investigation involving Jayne Pierce. He recommends she receive counseling, but Olsen decides to demote her from lieutenant to firefighter. Fire Commissioner Donald Campbell's seat comes up for re-election. David Pierce encourages William Wool to run as a write-in candidate.

- May 2009: After the election, which Campbell wins, Olsen reportedly tells David Pierce he is unhappy with him campaigning for Wool.
- August 2009: In response to Jayne Pierce's objections to her demotion from lieutenant, Olsen initiates investigation into an allegedly "hostile work environment" at the department.
- Oct. 2, 2009: David Pierce sends a letter to the Board of Fire Commissioners saying Olsen retaliated against him because of his support for Wool, as well as reneging on a promise to make him deputy chief, taking away his office and making him return his department-issued cellphone. Olsen later contends the office was repurposed because of space constraints in the department and that the cellphone was changed to a departmentwide phone for on-duty officers because it was more efficient. The board replies that the letter does not conform to the grievance process and suggests David Pierce contact the State Ethics Commission to receive an advisory opinion about his professional relationship with his wife.
- Nov. 20, 2009: The board asks the Ethics Commission to perform its own evaluation of the potential conflict of interest in the Pierces' professional relationship. Pierce writes to the board to request a formal exemption for the couple's employment at the department. The board declines to do so while waiting for a response from the Ethics Commission.
- June 17, 2010: The Ethics Commission sends David Pierce a confidential letter saying it appears he is in violation of state ethics rules.
- June 18, 2010: Olsen notifies David Pierce of his decision to suspend him with pay because of an independent conclusion from the board's counsel that he was violating the state ethics law.
- Nov. 29, 2010: After a hearing, Olsen suspends Pierce without pay.
- Dec. 3, 2010: Pierce sues the department, the board, fire chief and commissioners in U.S. District Court.
- Jan. 11, 2011: The Ethics Commission sends David Pierce another confidential letter saying the commission believes he is violating the ethics law. Two weeks later the commission responds to the board's Nov. 20, 2009, letter saying that the matter "does not warrant further investigation or the imposition of formal sanctions at this time."
- April 2011: The board fires David Pierce.
- May 8, 2011: The board enters an agreement with the firefighters union allowing Pierce to return to work as a full-time firefighter.
- March 20, 2013: U.S. District Judge Douglas P. Woodlock issues a summary judgment in favor of the district and other defendants, which David Pierce appeals.
- Jan. 28, 2014: A 1st U.S. Circuit Court of Appeals decision affirms the district court finding.

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