

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

CHRISTOPHER ALLENDER &  
TODD CALDERWOOD,

*Appellants*

v.

CITY OF AMESBURY,

*Respondent*

Docket Numbers:

G2-23-236 (Allender)

G2-23-245 (Calderwood)

Appearance for Appellants:

*Pro Se*

Christopher Allender

Todd Calderwood

Appearance for Respondent:

Jared M. Collins, Esq.

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Commissioner:

Shawn C. Dooley

**SUMMARY OF INTERIM DECISION**

The Commission issued an interim decision, allowing the appeal of a firefighter who was bypassed for promotion for fire lieutenant after the City impermissibly supplanted an eligible list based on assessment center with a highly subjective and questionable interview process that was created after the eligible list was established. As the traditional relief of placing the candidate at the top of the next certification would likely delay any relief for years, the parties are being given the opportunity to confer and propose an order of relief before the Commission issues a final decision.

## **INTERIM DECISION**

On November 17, 2023 and December 6, 2023, the Appellants, Christopher Allender (Allender) and Todd Calderwood (Calderwood) (collectively referred to as the Appellants) appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, §2 (b), from their respective bypasses by the City of Amesbury (City) for promotional appointment to the position of fire lieutenant in the Amesbury Fire Department.<sup>1</sup> On January 9, 2024, the Commission held a remote pre-hearing conference regarding G2-23-236 (Allender). On January 16, 2024, the Commission held a remote pre-hearing conference regarding G2-23-245 (Calderwood). These matters were subsequently heard concurrently for the purposes of conducting a full hearing. On May 14, 2024, I held a full joint hearing at the offices of the Commission in Boston, MA. The hearing was recorded via Webex, and copies of the hearing were provided to the parties.<sup>2</sup> Both parties filed proposed decisions. For the reasons set forth below, the appeal of Allender is allowed and the appeal of Calderwood is dismissed as moot.

## **FINDINGS OF FACT**

Forty-six exhibits were introduced into evidence with the Respondent entering one (Resp Ex. 1), the Appellants entering 26 (App Ex. 1-26) and 19 Joint exhibits (Jt Ex. 1-19). Based on the exhibits entered into evidence and the testimony of the following witnesses:

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

*Called by the City:*

- Kassandra Gove, Mayor, City of Amesbury
- James Nolan, Fire Chief, City of Amesbury
- Robert Serino, Deputy Fire Chief, City of Amesbury
- Barry Salt, Acting Deputy Fire Chief, City of Newburyport

*Called by the Appellant:*

- Christopher Allender, Appellant
- Todd Calderwood, Appellant
- Kenneth Berkenbush, Former Fire Chief (Ret.), City of Amesbury
- John Kane, Lieutenant, Fire Department, City of Amesbury
- Mark Bruno, Lieutenant, Fire Department, City of Amesbury
- Paul Parisi, Fire Chief, Town of Ipswich
- Robert Valentine, Fire Chief, Town of Groveland

and taking administrative notice of all matters filed in the case, pertinent law, and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following findings of fact:

1. The Amesbury Fire Department (AFD) is a full time, professional fire department consisting of a chief, two deputy chiefs, eight lieutenants, and 32 firefighters. (*Testimony of Chief Nolan*)
2. Mayor Kassandra Gove is the appointing authority for positions in the Department. She was first elected to office in 2019 and sworn in in January 2020. (*Testimony of Mayor Gove*)
3. Fire Chief James Nolan is the Head of the Department and accordingly reports to the Mayor. He has been the Fire Chief since he was appointed Acting Chief in July of 2022. He was subsequently appointed to the permanent position in December of 2022. (*Testimony of Chief Nolan*)

4. Deputy Chief Serino has been a Deputy Chief since July 1, 2023, when he was appointed on a temporary basis. He was appointed in a permanent capacity on October 10, 2023.  
*(Testimony of Deputy Chief Serino)*
5. Firefighter Allender is presently a firefighter / paramedic, the Department's Emergency Medical Service (EMS) Coordinator, a member of the fire investigator team, and a member of the Department's Student Awareness of Fire Education (SAFE) team. He began working as an Amesbury firefighter in January 2016. *(Allender Testimony; App Ex 14,15,17)*
6. Firefighter Allender has worked on multiple occasions as a temporary or provisional lieutenant within the department and received a letter of commendation for his performance as a lieutenant. *(Allender Testimony; App Ex. 16)*
7. Firefighter Calderwood has been a firefighter / EMT with the Amesbury Fire Department since July 2004. Throughout his employment he has earned multiple letters of recognition and a regional EMS award. *(Testimony of Calderwood)*
8. Both Appellants have served at various times in the position of temporary or provisional Lieutenant. *(Testimony of Calderwood and Allender)*

#### ***2023 Lieutenant Hiring Process***

9. Several members of AFD partook in the statewide, HRD-administered November 2021 promotional written exam as part of a 40/40/20 weighted graded exam, with 3 individuals sitting for the position of Lieutenant and 6 sitting for the position of Captain. *(Testimony of Chief Nolan)*
10. In September 2022, Chief Nolan ended Allender's provisional appointment and provisionally appointed then-firefighter LeSage to lieutenant to provide him the same

opportunity that Appellants Allender and Calderwood had already had to perform in the lieutenant role. (*Testimony of Chief Nolan*)

11. Following a prolonged delay due to noted budgetary constraints, the second half of the promotional process (assessment center) was not initiated until November 2022, and then it was determined that it could not go forward due to the ruling of *Tatum et al. v.*

*Commonwealth of Massachusetts et al.* (*Testimony of Chief Nolan, Deputy Chief Serino, & Allender*)

12. Following the determination to not proceed with an assessment center in conjunction with the 2021 test, Chief Nolan began exploring options to expedite the promotional process as it was uncertain when the next testing cycle would take place. (*Testimony of Chief Nolan*)

13. Chief Nolan was appointed the permanent fire chief earlier in December of 2022, making this process the first over which he presided as chief. (*Testimony of Chief Nolan*)

14. After speaking with HRD regarding the options they had at their disposal, the City elected to hold a “100% Sole Assessment Center” examination in which the entire score is based on an assessment center conducted by an outside vendor contracted by the City. (*Testimony of Chief Nolan, Joint Ex 1, 2*)

15. The City entered into a delegation agreement with HRD. (*Testimony of Chief Nolan, Joint Ex 1, 2*)

16. The delegation agreement between the City of Amesbury and HRD stated that “the City of Amesbury Fire Department has chosen to utilize a delegated assessment Center for the selection process for Fire Lieutenant.” It further stated that “this delegated selection

process for Fire Lieutenant will be used as the sole basis for scoring and ranking candidates on an eligible list.” (*Joint Ex 1*)<sup>3</sup>

17. On November 18, 2022, the City of Amesbury entered into an agreement with John Parow Consulting & Associates (Parow) to conduct the Assessment Center in accordance with their agreement with HRD for the sum of \$5,250. (*Joint Ex. 2*)
18. On December 28, 2022, a meeting was held at the AFD Elm Street station as well as via teleconference with all impacted participants of the Lieutenant and Captains exams, Chief Nolan, Local 1783 President Carl Rizzo, and John Parow. During this meeting, several items were discussed regarding how the process was going to proceed forward and what the process may look like. (*Testimony of Allender, Calderwood, Bruno, Serino, & Kane, App Ex 8*)
19. Based on the presentation by John Parow, the Assessment Center results would be the sole decision-making factor in the promotional process. (*Testimony of Allender, Calderwood, Bruno, & Kane*)
20. Chief Nolan sought to limit eligibility for the February 2023 assessment center to members of the Department who had participated in the November 2021 exam, and no one else. Chief Nolan made his decision in an effort to be fair to the individuals who had prepared for the November 2021 exam and whose scores were effectively rendered unusable by the *Tatum* decision, through no fault of their own. (*Testimony of Chief Nolan; Joint Exhibit 9*)

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<sup>3</sup> A similar agreement was entered into for Fire Captain.

21. On February 6, 2023, all eligible parties for Lieutenant and Captain were notified of the exam process, dates, and position descriptions. The position descriptions utilized were unchanged from the previous exam process. (*Joint Exhs 3 & 10, App Exh 5*)
22. Both Appellants and then-firefighter Christopher LeSage submitted applications for the position of fire lieutenant and participated in the assessment center on February 16<sup>th</sup>, 2023. (*Joint Exhibits 9, 10*)
23. The assessment center was a full day in length and was comprised of scenario-based assessments including (but not limited to) in-basket, customer service, hazardous materials, structure fire, managerial day to day operations and firefighter disciplinary problems. (*Testimony of Allender and Nolan*)
24. Chief Nolan played no role in the development or the administration of the assessment center for the rank of Lieutenant; nor did he play any role in the selection of the assessment center evaluators. (*Testimony of Chief Nolan*)
25. On March 17, 2023, candidates who participated in the Lieutenant Assessment Center were notified via email of their individual final scores. Allender scored an 89 and Calderwood scored an 83. Firefighter LeSage's score was not shared with the Commission. (*App Exhs. 1 and 2*)
26. On April 15, 2023, HRD published the eligible list for Fire Lieutenant. Firefighter Allender was ranked first, Firefighter Calderwood was ranked second; and firefighter LeSage was ranked third. Thus, although LeSage's score was not made available to the Commission, the maximum he could have scored on the assessment center was an 82- since he was ranked below Firefighter Calderwood who scored an 83. (*Joint Exh. 11*)

27. At some point *after* the eligible list was established by HRD, Chief Nolan decided to conduct additional interviews.<sup>4</sup> (*Testimony of Chief Nolan*)
28. Chief Nolan did not contact HRD informing them of his decision to add an interview component into the lieutenant promotional process. (*Testimony of Chief Nolan*)
29. Chief Nolan asked Deputy Chief Serino, who was a lieutenant at the time, to assemble a three-member interview panel and to prepare interview questions for the panel to use with the lieutenant candidates. (*Testimony of Nolan*)
30. Lieutenant Serino obtained and revised questions from the Maplewood Minnesota Fire Department to conduct the oral interview. These questions were reviewed by Chief Nolan and by members of Local 1783, the Amesbury Firefighters Union. (*Testimony of Serino & Nolan*)
31. On June 13, 2023, Lt. Serino emailed the three firefighters who participated in the lieutenant assessment center examination that the department would be conducting interviews. These were scheduled to take place on June 21, 2023. (*Joint Exhibit 12*)
32. Three chief officers from other fire departments were brought in to conduct the post-assessment center interviews: Ipswich Fire Chief Parisi, Newburyport Provisional Deputy Chief Salt, and Groveland Fire Chief Valentine. (*Testimony of Nolan & Serino*)
33. Aside from being provided the questions and evaluation forms, the panelists were not provided instructions on how to conduct the interviews or how to score the candidates. The interviews were not audio or video recorded. (*Testimony of Deputy Chief Salt*)

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<sup>4</sup> Chief Nolan testified that one of the primary reasons for conducting the interviews was to provide an opportunity to assess experience, certification, training, & education that was initially intended to be included in the first weighted graded examination but was not included in the assessment center as that component was also under review at the time by HRD due to the Tatum decision. I do not find this argument to be compelling since there were no questions specific to ECT&E, nor were there any points given to ECT&E in the scoring of the interviews.



34. Appellant Calderwood had his interview first. The panel only reached 18 of the 20 questions in the time provided for the interview and had to end the interview to allow the other candidates to stay on schedule. Thereafter, the panel only asked Appellant Allender and Lieutenant LeSage the same 18 questions, so that no candidate would be asked / evaluated on any additional questions that had not been posed to the others. (*Testimony of Deputy Chief Salt*)
35. Each panelist scored interview responses and took notes contemporaneously with each respective candidate's treatment of the question before them. (*Testimony of Deputy Chief Salt*)
36. Scoring was subjective and based upon each interviewer's opinion of the answer. There were no specific questions addressing "ECT&E" nor were there any quantifiable points given for "ECT&E." (*Exhibits 14-17*)
37. When the interviews were completed, Chief Nolan collected the interview evaluation forms as well as reviewed the scores and comments provided by the panelists. (*Testimony of Chief Nolan*)
38. Out of a possible 270 points, FF LeSage received 213 points from the panelists (80+ 61 + 72); Appellant Allender received 205 points<sup>5</sup> (65 +77 +63); and Appellant Calderwood received 164 points (59 + 54 + 51). (*Joint Exhibits 15-17; Appellant Exhibit 21*)
39. In the overall impression section, all three panelists made a point to state that LeSage was the number one overall candidate and Allender was the number two candidate, despite

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<sup>5</sup> Chief Nolan initially calculated Allender's score as **200** and that was the score that was included in the bypass letter. In reviewing the scores, Allender's score should have been recorded as a **205**.

one of the panelists giving a significantly higher overall score to Allender.<sup>6</sup> (*Joint Exhibits 15-17*)

40. On October 11, 2023, Chief Nolan held individual meetings with the 3 candidates and officially notified them that he would be recommending the candidate ranked third on the civil service eligible list (Le Sage), bypassing the two highest ranked candidate on that list (Allender and Calderwood). (*Testimony of Allender & Nolan, Joint Exhibits 18 & 19*)
41. The bypass letter stated that the sole factor used in determining promotion was the results of the June 21<sup>st</sup> interview.
42. Mayor Gove, who is the Appointing Authority for Amesbury, signed the Appellants' bypass letters, writing that the sole factor used in determining the promotion was the results of the June 21<sup>st</sup> interview. These letters were prepared by the fire department and given to the Mayor's office. The Mayor followed the recommendation of Chief Nolan and had minimal involvement in the process. (Testimony of Mayor Gove)
43. Mayor Gove was aware that an assessment center occurred and that this was done to comply with the Civil Service process. She was not aware that interviews took place until she signed the letter. She did not know that the decision to hold interviews was not determined until after the list had been established by HRD. (*Testimony of Mayor Gove*)

## **APPLICABLE CIVIL SERVICE LAW**

The core mission of the Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified

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<sup>6</sup> Chief Valentine gave Allender an overall score of 77 with 5 questions being scored as a 5 (exceptional) and 13 scored as a 4 (above average). Chief Valentine gave LeSage a *lower* score of 61 with 7 questions being scored a 4 (above average) and 11 questions scored as a 3 (average).

applicants for initial appointment” and ensuring that “all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1.

The principal mechanism to ensure adherence to the principles in hiring and promotion are the regular competitive qualifying examinations administered by HRD, open to all qualified applicants, from which “eligible lists” of successful applicants are established, ranking them in order of their exam scores, along with certain statutory credits and preferences. The eligible list is then used to create a “Certification” (containing the names of at least three candidates for each open position – known as the “2n+1” formula – also listing the names in the same rank order as they appear on the eligible list, from which an appointing authority must select the candidate(s) for civil service appointment. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules (PAR), PAR. 09.

An Assessment Center Examination is one form of competitive examination, often used by appointing authorities (sometimes in conjunction with the more traditional form of written examination as well) to establish lists for promotional appointments (as opposed to original appointments for which a written examination alone is more typical.) An Assessment Center Examination usually involves a day-long examination process designed by an expert in public safety testing approved by HRD, during which candidates are required to prepare written and/or oral responses to hypothetical scenarios that test their technical competence and management abilities, which are observed and scored by a panel of expert evaluators in an anonymous fashion, applying pre-determined objective criteria. *See, e.g., Wilbanks v. Human Resources Div.*, 30 MCSR 316 (2017); *Clark v. Human Resources Div.*, 29 MSCR 1 (2016); *Daley v. Town*

*of Wilmington*, 28 MCSR 460 (2015), *Town of Wilmington v. Civil Service Comm'n*, Suffolk Sup. Ct. C.A. 2015CV2963 (2016).

In order to deviate from the rank order of preferred hiring and appoint a person below the “person whose name appears highest” on a civil service eligible list, an appointing authority must provide a specific, written statement of all the reasons – positive or negative, or both – consistent with basic merit principles, for bypassing the higher-ranked candidate. G.L. c. 31. §§1 and 27; PAR.08(4). “Such Statement shall indicate all ... reasons for bypass on which the appointing authority intends to rely or might, in the future, rely to justify the bypass.... No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed ... shall later be admissible as reasons for selection or bypass in any proceeding before the ... Civil Service Commission.” An appointing authority’s discretion to pick among qualified candidates for civil service appointments who have met the requirements for the position by taking and passing a civil service competitive examination is not absolute and is subject to review by the Commission. *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997) (burden of proving reasonable justification for a bypass lies with the appointing authority).

## **ANALYSIS**

The City of Amesbury has failed to establish by a preponderance of credible evidence that it had reasonable justification to bypass Firefighter Allender, the first ranked candidate on the civil service eligible list, for promotion to fire lieutenant. Rather, the evidence shows that the Fire Chief, after the establishment of the civil service eligible list, which ranked Allender first, decided to disregard the civil service rankings altogether and supplant the sole assessment center with newly announced interviews. The fact that the interview portion of this hiring process was

not determined to be needed until the eligible list was released is very troubling. This change of procedure after the fact calls into question the motive behind the change and introduces questions surrounding the entire promotional process.

There had been a very clear procedure set in place to determine the ranking of the three candidates and that procedure was changed at the sole discretion of Chief Nolan. This change was initiated after the results of the Assessment Center were processed and the eligible list was established. What further complicates this scenario is that the Chief decided to nullify the Assessment Center and HRD's ranking by making the interview the *only* component to be considered in determining who would be promoted.

The Fire Chief was unable to explain why, after going through all the steps to obtain an eligible list, first by reaching out to HRD to inquire as to how to move forward with promotions, then entering into an Delegation Agreement with HRD to have an Assessment Center, followed by hiring a consultant to run and manage the assessment center, all of which resulted in HRD producing a ranked list for promotion, he then decided to completely ignore all of this work and base the promotional appointment on a 45 minute interview. As referenced above, what is more concerning and calls into question this entire process, is that Chief Nolan did not decide to conduct any interviews until well after the Lieutenant promotional list was established by HRD.

I do not credit the Chief's testimony that he was "thinking" about having interviews before the list came out as, not only was this not shared with the candidates, but one can only assume that his thoughts were dependent on whether he agreed with the candidate ranking on the list established by HRD based upon the Assessment Center. Otherwise, why would he not announce and/or conduct the interviews for four months after the Assessment Center and two months after the promotional list was established. Chief Nolan changed his position regarding his

decision-making process several times, first stating in the pre-hearing conference that he decided to hold interviews after the eligible list was established, then during the hearing he stated that he decided to do it before. When Chief Nolan was cross examined and shown the video of the pre-hearing, he again changed his recollection and said that what he meant was that he had been thinking about it beforehand but did not actually decide to do the interviews until after the eligible list was published.

During the hearing, the Chief also stated that he decided to accept the rankings by the interviewers as the sole determining factor and promote whoever scored highest with no input from him so not to be accused of favoritism (which he has been accused of many times per his testimony). However, when asked if the top candidate had been someone that he believed could not do the job, would he have still promoted him, he responded, “I might not have, it’s situational at the time.” In expressing this scenario, Chief Nolan directly contradicted his previous statements.

I also do not credit Chief Nolan’s testimony that he used the Assessment Center solely to reduce the field of candidates to three, when the fact of the matter is that only three candidates participated in the Assessment Center and all three of those candidates were interviewed. Even if true, however, Chief Nolan’s actions would be contrary to the civil service law and rules. Competitive examinations are not administered for the purpose of narrowing down the field of candidates to three from which the Appointing Authority can appoint any of the three candidates for any reasons. Rather, examinations, including sole assessment centers, are used to establish a list in *rank order*, from which the Appointing Authority can only deviate with reasonable justification. Here, the overwhelming evidence shows that there was not reasonable justification

to bypass the first ranked candidate in favor of the third ranked candidate, for which there was at least a 7-point differential in scores.

Further, the interview process used to supplant the civil service rankings was problematic. In the interview process, three Chiefs from neighboring communities asked 18 questions that were based on questions a lieutenant (now Deputy Chief) got from a colleague at a small Fire Department in Minnesota. These questions were very generic, and the scoring of the responses was very subjective as opposed to quantifiable. The questions did not address any fire scene related scenarios or Lieutenant responsibilities at a fire nor was there an availability for the interviewers to give specific weight to education, experience, certifications, or training – which the Chief stated as one of his primary reasons for conducting interviews. The fact that these questions were developed internally by a member of the Union’s Executive Board when a member of the E-Board (LeSage) was one of the three candidates for promotion also raises some concern.

To highlight the subjectivity of the scoring of the questions, Chief Valentine gave Firefighter Allender a score of 77 out of a possible 90 points or 86%. Whereas he gave Firefighter LeSage a score of 61 out of a possible 90 points or 68%. When one delves deeper into this analysis of the 18 questions that he asked Firefighter Allender, he scored 5 of Allender’s responses as exceptional and the other 13 responses as above average. In contrast, Chief Valentine determined that none of Firefighter LeSage’s answers were exceptional, 7 responses were above average, and the remaining 11 he determined to be average. What raises a red flag as to the impartiality of this process is that in the end, despite determining that Firefighter Allender had a better response on 14 of the 18 questions and scored equivalently on the other 4, Chief Valentine inexplicably then wrote that Firefighter LeSage was his preferred candidate. To an

outside observer, that might that signal collusion or some other level of outside influence – but at the very least, it shows the flawed nature of this interview process. In addition, there was an equally lopsided score in Firefighter LeSage’s favor when Provisional Deputy Chief Salt gave LeSage an 80 and Allender a 65. The fact that Chief Nolan then combined these highly subjective and disparate scores to create a score that he used as the sole determining factor for promotion is not reasonable and most certainly does not qualify as a proper rationale to bypass a higher ranked candidate.

Public safety agencies are properly entitled to, and often do, conduct interviews of potential candidates as part of the hiring process, especially in the case of promotional appointments of superior officers. In an appropriate case, a properly documented interview performance objectively ascertainable as subpar may justify bypassing the highest-ranked candidate for one deemed more qualified as the result of the latter’s objectively superior interview presentation. See, e.g., *Dorney v. Wakefield Police Dep’t.*, 29 MCSR 405 (2016); *Cardona v. City of Holyoke*, 28 MCSR 365 (2015).

However, the Commission gives especially heightened scrutiny to subjective interviews when it appears they have become a means to nullify the results of a duly administered, independent Assessment Center form of examination. See *Daley v. Town of Wilmington*, 28 MCSR 15 (2015), *aff’d sub nom., Town of Wilmington v. Civil Service Comm’n*, Suffolk Sup. Ct. C.A. 2015CV2963 (2016). That is the case in this matter.

What is more telling is that the top two candidates coming out of the interview were extremely close with scores of 205 and 213 out of 270 points. This equates to a percentage of 76% and 79% for the two top candidates. When viewed in the light of this being a subjective rating, this is an extremely narrow margin and certainly not a compelling argument for ignoring



the results of the Assessment Center where Firefighter Allender had a score of 89 and Firefighter LeSage scored lower than an 83. If you were to average out the two scores and assigned FF Lesage scores of 82 (his actual score may have been lower) and 79, FF Allender (with a total of 165 points) would have still remained as number one on the promotional list.<sup>7</sup>

### ***Remedy***

The remedy typically ordered by the Commission when it has determined that a candidate for appointment or promotion has been unlawfully bypassed in violation of civil service law and rules is to require that the candidate be placed at the top of the current and all future certifications for the position so that the candidate receives at least one opportunity for future selection consistent with basic merit principles of civil service law. In an extraordinary case, however, the Commission has broad discretion to fashion a unique remedy when necessary to ensure that the civil service rights of a tenured employee aggrieved by an unlawful bypass are fully restored. *Mulhern v. Civ. Serv. Comm'n*, 57 Mass. App. Ct. 920, 920 (2003) (“The remedy to be accorded a plaintiff is a matter within the commission's discretion and will rarely be overturned.”), citing *Bielawski v. Personnel Administrator of Div. of Personnel Admn.*, 422 Mass. 459, 464 n.11, 465 (1996). This appeal is a case that calls for such extraordinary relief due to the fact that all Lieutenant positions are currently filled and there are no retirements anticipated in the foreseeable future. Since there is not expected to be any Lieutenant positions available, granting typical relief would not create an equitable solution. For that reason, the Commission is inclined to consider granting relief beyond placing Allender at the top of the next certification to ensure one additional opportunity for promotion.

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<sup>7</sup> FF Calderwood scored 164 or 61% in the interview portion, which is significantly below the other two. If there were this level of disparity between the other candidates, the City would have had a much stronger argument for a bypass.

However, the Commission will first offer the parties the option of negotiating a mutually agreeable form of relief to be presented to the Commission. In order to give the parties time to negotiate such a potential resolution of this matter, the parties will have 30 days to reach a negotiated settlement for consideration by the Commission. The Commission directs the parties to report back to the undersigned Commissioner within two weeks to schedule a status conference for the week of December 2, 2024, to receive a status update on this matter.

Finally, as the Commission has found that the first ranked candidate (Allender) was bypassed without reasonable justification, and there was only one vacancy, the appeal of the second-ranked candidate (Calderwood) is moot and will be dismissed upon the issuance of a final decision regarding these two appeals.

Civil Service Commission

/s/ Shawn C. Dooley  
Shawn C. Dooley  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, and Stein, Commissioners [Markey – Absent]) on October 17, 2024.

Notice to:  
Christopher Allender (Appellant)  
Todd Calderwood (Appellant)  
Jared M. Collins, Esq. (for Respondent)