COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

CHRISTOPHER BENEVENTO,
Appellant

v.

G1-14-88

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Christopher Benevento

Appearance for Respondent:

Maite Aponte Parsi, Esq.
City of Springfield
36 Court Street: Room 5
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

DECISION

On April 15, 2014, the Appellant, Christopher Benevento (Mr. Benevento), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Springfield Fire Department (City) to bypass Mr. Benevento for appointment as a permanent full-time firefighter in the Springfield Fire Department (SFD)[1]. A pre-hearing conference was held on May 28, 2014 at the Springfield State Building in Springfield. A full hearing was held at the same location on September 10, 2014.[2] The full hearing was digitally recorded.[3] Both parties submitted post-hearing briefs.

[1] As noted later in the decision, the state's Human Resources Division (HRD) subsequently approved the City's decision to bypass Mr. Benevento.
[2] The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

FINDINGS OF FACT:

Nineteen (19) exhibits were entered into evidence at the hearing. Based on those exhibits, the stipulated facts, the testimony of:

Called by the City:

- Joseph Conant, Commissioner, Springfield Fire Department;

Called by Mr. Benevento:

- Christopher Benevento;

and taking administrative notice of all matters filed in the case[4], including a Commission decision related to a 2011 Commission investigation of the Springfield Fire Department, (Investigation Re: 2010 / 2011 Review and Selection of Firefighters in the City of Springfield, CSC Tracking No. I-11-208) (Investigation) and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

2011 Investigation Findings and Conclusions / City's Procurement of Consultant

1. In 2011, the Commission, pursuant to G.L. c. 31, § 2(a), conducted an investigation regarding the review and selection of firefighters in the City of Springfield. (Investigation)[5]
2. As part of that investigation, the Commission concluded that the 2010 / 2011 appointment process was compromised by the involvement of a Deputy Fire Chief whose son was appointed as a firefighter during that hiring cycle. (Investigation)

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[3] 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 he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this DVD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

[4] I have also taken administrative notice of any testimony and documents received as part of two (2) other related appeals, for which decisions are being issued the same day of this decision and relate to appointments made by the Springfield Fire Department from Certification No. 01272: Shelton v. Springfield Fire Department, CSC Case No. G1-14-97 & Reyes v. Springfield Fire Department, CSC Case No. G1-14-193.

[5] The Commission initiated the investigation after Mr. Benevento filed a bypass appeal contesting his non-selection in the prior hiring cycle and brought to the Commission's attention that the Deputy Fire Chief's son, who was ranked lower than Mr. Benevento, was selected for appointment.

3. Specifically, the Commission concluded that improprieties in the process tipped the scales in favor of appointing the Deputy Fire Chief's son over other higher-ranked candidates. (Investigation)
4. As a result, the Commission issued a series of remedial orders, including, but not limited to, requiring the City to reconsider several candidates, including Mr. Benevento, who were bypassed for appointment during the 2010 / 2011 appointment process. This reconsideration was to occur as part of the City's next hiring cycle for firefighters. (Investigation)
5. Further, to ensure a fair, objective review of the candidates, the Commission ordered that the next hiring cycle include an outside review panel that would interview the candidates and make recommendations to the Fire Commissioner. (Investigation)
6. In compliance with the Commission's order, the City, after issuing a Request for Quotation (RFQ), selected a consulting firm (consultant) with prior experience in assisting communities with the appointment and promotion of public safety employees. (Exhibit 1)
7. As part of the proposal, the consultant agreed to assemble an interview panel of subject experts, interview the candidates and "prepare a ranking of candidates and comments on candidate performance, as necessary." (Exhibit 1, Page 11, Bullet # 9)
8. According to the consultant's written proposal, the evaluation process would include: "a systematic process for recording candidate actions and behaviors … includ[ing] the use of observation scales, behavioral (action taken) check lists and handwritten notes"; a "consensus evaluation process"; and a "rating scale". (Exhibit 1, Page 11)
9. Springfield Fire Commissioner Joseph Conant met with the consultant to review the logistics of the interview process. He was not involved in the formulation of the questions

or any other substantive part of the interview process. (Testimony of Commissioner Conant)

Facts Related to Mr. Benevento and the Current Hiring Cycle

10. Commissioner Conant is the Appointing Authority for the Springfield Fire Department. He has been employed by the SFD for twenty-seven (27) years. In January 2012, he was appointed as the Interim Fire Commissioner. His appointment was made permanent by the City's Mayor in January 2013. Commissioner Conant oversees a department of two hundred twenty (220) uniformed officers. He was not the Commissioner in 2010 / 2011 and had no involvement in the hiring process that was the subject of the Commission's 2011 investigation. (Testimony of Commissioner Conant)
11. Mr. Benevento is fifty-two (52) years old. He has resided in Springfield for the past fifteen (15) to twenty (20) years. He has been employed by the City's School Department for the past twenty-two (22) years and currently serves as a Senior Custodian. (Testimony of Mr. Benevento)
12. Mr. Benevento was enlisted in the United States Navy from 1980 to 1986, during which time he served as a Fire Damage Control Officer. (Testimony of Mr. Benevento)
13. On September 20 and 25, 2013, HRD sent the City Certification No. 01272 from which the City could appoint ten (10) firefighters. (HRD Packet) Several names, including that of Mr. Benevento, appeared at or near the top of that Certification based on relief granted as part of the Commission's 2011 investigation and their individual bypass appeals. The rank order of the names was also based, in part, on the terms of a consent decree still in place in Springfield to ensure parity regarding the hiring of minority candidates.

14. Mr. Benevento was ranked 2nd among those candidates willing to accept appointment. Ultimately, the City appointed ten (10) candidates to the position of firefighter, all of whom were ranked below Mr. Benevento. (Stipulated Facts) Thus, the non-selection of Mr. Benevento constituted a "bypass" under civil service law and rules.
15. In January 2014, Mr. Benevento received a "Firefighter Candidate Information Guide" from the consultant providing him with the date and time of the interview, the interview process, the criteria that would be used to evaluate candidates and other logistical information. (Testimony of Mr. Benevento, Exhibits 3 – 5)
16. In January 2014, Mr. Benevento appeared before an interview panel. He was designated as candidate "B1". He appeared wearing a green sweatshirt with the word "Timberland" across the front. (DVD of Interview)
17. According to the documentation provided by the consultant to the City, the panelists included subject matter experts who hold various positions including: Fire Chief, Assistant Chief of Planning and Assistant Chief of Operations in various fire departments. (Exhibit 1)[6]
18. Mr. Benevento was asked ten (10) questions by the interview panel. (DVD of interviews)[7] His responses, all taken from my review of the DVD, are below.

Question 1

19. Mr. Benevento was asked why he wanted to be a firefighter and what he had done to prepare for the position.

[6] The City did not call any of the interview panelists to testify as witnesses before the Commission.
[7] At my request, the City provided a DVD containing the video / audio recording of all candidates interviewed, including Mr. Benevento.

20. In response, Mr. Benevento stated that it has been a lifelong dream to be a firefighter. To prepare for the position, he stated that he had stayed fit, stayed active in the community and became knowledgeable about fire codes and regulations.

Question 2

21. Mr. Benevento was asked why he thought he would do well as a firefighter.
22. In response, Mr. Benevento cited his experience as part of the fire brigade in the U.S. Navy where he was a team player who was able to adapt to the safety aspects of the job and follow directions.

Question 3

23. Mr. Benevento was asked about his experience working with teams.
24. In response, Mr. Benevento cited his work as a senior custodian in the City's School Department in a school building of 300 students and 50-60 staff members. He stated that he works well with others and adapts to change easily.

Question 4

25. Mr. Benevento was asked about developing effective working relationships.
26. In response, Mr. Benevento stated that he has had the same job for over twenty (20) years, that he always gets along well with co-workers, vendors and contractors that visit the school. He described himself as "people-friendly" and well-organized.

Question 5

27. Mr. Benevento was asked how he'd respond to a hypothetical scenario in which he observes a fellow firefighter take property from a fire scene.
28. In response, Mr. Benevento stated that he couldn't answer the question because he wasn't familiar with the rules and regulations of the Fire Department. He then stated that he

would report the matter to a supervisor and said it was important to have trust in fellow firefighters.

Question 6

29. Mr. Benevento was asked a question about adapting to change.
30. In response, Mr. Benevento stated that he has an "eager mind to learn"; that he always tries to do his best and adapt to new technology.

Question 7

31. Mr. Benevento was asked how he'd respond if he observed that a fellow firefighter was impaired.
32. In response, Mr. Benevento stated that he would recommend that the firefighter go home and also seek assistance through the Employee Assistance Program. Mr. Benevento also stated that he would notify a supervisor.

Question 8

33. Mr. Benevento was asked how he'd respond if he was assigned more work than his co-workers.
34. In response, Mr. Benevento stated that he would complete the tasks assigned; not complain and be grateful that he had a job. He also stated that the supervisor may be assigning him extra work because he was an employee that could be counted on.

Question 9

35. Mr. Benevento was asked how he would respond to a personality clash with another firefighter.

36. In response, Mr. Benevento stated that he would talk to his supervisor and ask that they be separated. If that was not possible, Mr. Benevento stated that he would act professionally in his interactions with the individual.

Question 10

37. Mr. Benevento was asked what he thought the job of a firefighter was like.
38. In response, Mr. Benevento stated that it was a challenging and difficult job; that he didn't know all aspects of the job, but that it requires knowledge of things such as equipment, the City, mapping and trucks.
39. On January 29, 2014, Commissioner Conant received an eight-page document from the consultant. The correspondence stated that twenty-two (22) candidates were interviewed for the position of firefighter by a team of five consultants: a panel of three professional fire and rescue executives that conducted the interviews; and two additional consultants that were on-hand to manage the applicant pool. The correspondence also stated that a staff member from the City's Human Resources and Labor Relations Department observed the interview process. (Exhibit 5)
40. The January 29, 2014 correspondence from the consultant stated that a series of criteria (competencies) were selected to be used to assess the candidates' performance including: adaptability / flexibility; communication, decision-making; human relations and interpersonal skills; and teamwork. According to the correspondence, the selection of competencies was based on a review of information provided by the SFD; a review of state position analysis documents; a review of literature; and National Fire Protection (NFPA) information. (Exhibit 5)

41. The January 29, 2014 correspondence also stated that, in addition to the interview process, the consultant evaluated the "credentials" of the candidates including: general education, directly related education, directly related training, firefighter experience and emergency service provider / responder experience[8]. (Exhibit 5)
42. According to the January 29, 2014 correspondence, the panel took notes and made observations. (Exhibit 5; Page 2; Bullet 3)
43. According to the January 29, 2014 correspondence, the panel members evaluated each candidate's response to each question. When the interview was concluded: the panel members discussed the candidate's performance; the interview coordinator reviewed each interview evaluation criteria with the panel members; and then, the panel members were required to reach a consensus on the actual point score for each competency. The "consensus evaluation score" was recorded on one evaluation form for signature by each panel member. (Exhibit 5, Page 2, Bullets 4-7)
44. According to the January 29, 2014 correspondence, each of the five (5) interview competencies was assigned the value of 10 points for a total maximum point score of 50. The actual interview score for each candidate was determined by dividing the points received by 50, which results in a percentage (i.e. 40 divided by 50 = 80%). (Exhibit 5, Pages 3 – 4)
45. According to the January 29, 2014 correspondence, twenty-one (21) candidates (based on the interview evaluation), were ranked above Mr. Benevento. (Exhibit 5, Page 4)

[8] Commissioner Conant was not initially aware that additional points would be awarded for credentials. However, based on a review of the documents, the list of who would be recommended as the top ten candidates would not have changed if no additional points were awarded. For these reasons, I disregarded the assignment of points related to "credentials."

46. Mr. Benevento was the only candidate that the interview panel provided written comments for, stating, "poor image portrayed, not properly attired for interview."
47. The consultant also provided Commissioner Conant with a DVD containing the video / audio recording of all of the interviews. (Testimony of Commissioner Conant)
48. Commissioner Conant reviewed the January 29, 2014 correspondence from the consultant and reviewed the interviews on the DVD. (Testimony of Commissioner Conant)
49. Given the orders from the Commission's 2011 investigation, Commissioner Conant was inclined to accept the rankings of the consultant. Further, after reviewing the recorded interviews, Commissioner Conant saw no reason not to make ten (10) appointments based on the rankings of the consultant. (Testimony of Commissioner Conant)
50. On March 5, 2014, Commissioner Conant asked HRD to extend the time for processing candidates from Certification No. 01272. (Exhibit 15)
51. On March 6, 2014, HRD approved Commissioner Conant's request to extend the Certification, but asked him to submit for review to HRD the information on those candidates who had been bypassed. (Exhibit 15)
52. On March 7, 2014, Commissioner Conant provided HRD (via email) with a copy of the Commission's orders from the 2011 investigation and the January 29, 2014 correspondence from the consultant. (Exhibit 15)
53. On April 24, 2014, Commissioner Conant penned a letter to HRD which stated in relevant part:

> "In 2011, the Civil Service Commission ordered the Springfield Fire Department to follow several requirements for the next appointment of firefighters. One of those orders was to hire an independent firm to conduct the interview process which the department complied with … [the consultant] interviewed all of the candidates and graded them on several competencies, then ranked them in order from one to twenty-two. The Springfield Fire Department accepted the opinion of

[the consultant] (see attached documents) and has made offers to the top ten ranked candidates …" (Exhibit 16)

54. On June 3, 2014, HRD responded to Commissioner Conant's letter stating in relevant part:

"Please be informed that as of the date of this letter this Agency has not received from the City the negative information on the individuals bypassed as required by the Federal Consent Decree NAACP vs. Beecher. Please note that the bypass information to be submitted for review and approval of HRD must be specific, factual and detailed on every bypassed individual." (Exhibit 17)

55. Commissioner Conant subsequently learned via counsel for the City that no additional information (i.e. – notes, written comments) were available from the consultant. (Testimony of Commissioner Conant)

56. On June 12, 2014, Commissioner Conant sent another letter to HRD which provided another summary of the Commission's 2011 orders and a summary of the evaluation process used by the consultant. Also, in regard to the information provided by the consultant, Commissioner Conant stated, "Only one unique negative comment was included in the evaluation of a candidate [Mr. Benevento], as further described below." (Exhibit 6)

57. In regard to Mr. Benevento, Commissioner Conant's June 12, 2014 letter stated:

"Mr. Benevento ranked last of all twenty-two candidates based on the aforementioned criteria. Twenty-one (21) other candidates were deemed to have more skills in the various categories. With respect to each criterion, he scored as follows: Communication, 6.9, Teamwork, 7.0, Decision-making, 6.9, Human Relations / Interpersonal Skills 6.9, adaptability / flexibility 6.9. In addition to the scores, the interviewers added this comment: Poor image portrayed, not properly attired for interview." Mr. Benevento wore a sweatshirt for the interview. (Exhibit 6)

58. On June 18, 2014, HRD responded to Commissioner Conant's letter stating in relevant part:

"Thank you for the detailed statistical analysis the City used in ranking candidates for the Firefighter position with the Springfield Fire Department. While I am sure the City put a great deal of effort into the preparation of the analysis submitted, it would be cumbersome

for anyone who was not part of the selection panel to understand what these figures mean. Please translate the information you gained from your background investigation and interview process into a comprehensive statement for each individual who was bypassed.

The City must be in compliance with the NAACP v. Beecher consent decree. To ensure compliance, bypass information to be submitted for review and approval of the Human Resources Division (HRD) must be specific, factual and detailed on each candidate." (Exhibit 7)

59. After receiving HRD's June 18, 2014 correspondence, Commissioner Conant reviewed the candidates' recorded interviews again. (Testimony of Commissioner Conant)

60. On June 30, 2014, Commissioner Conant sent another letter to HRD. This letter once again summarized the Commission's orders from the 2011 investigation; provided a summary of the consultant's evaluation process and the same "statistical analysis" referenced in HRD's June 18th letter. However, based on his personal (re) review of the candidates' recorded interviews, Commissioner Conant added additional information regarding the interview performance of the bypassed candidates, including Mr. Benevento. (Exhibit 8)

61. In regard to Mr. Benevento, Commissioner Conant wrote:

"Mr. Benevento's interview was punctuated by non sequiturs and unintelligible responses to some of the questions posed to him. For instance, in his response to a question about team work and relationship with coworker, he talked about irrelevant matters. He likewise did not describe whether and how he has worked as a team member. He did not explain whether he is able to adapt to change. He did not display commitment to action in any matter involving decision-making, opting solely for escalating matters. In response to a hypothetical about an alcohol and drug impaired firefighter; he did not mention informing his superiors about that firefighter's lack of fitness for duty and the danger he or she would pose." (Exhibit 8)

62. On July 8, 2014, HRD forwarded another letter to Commissioner Conant stating in relevant part:

"The information received has been reviewed and it has been determined that the bypass information submitted is not specific, factual and detailed. Please provide bypass information on the following individuals [including Mr. Benevento] and relate the information to the position." (Exhibit 9)

63. On July 15, 2014, Commissioner Conant signed a letter to HRD that was drafted by counsel for the City. In summary, the letter outlines why the City believed the information already submitted to HRD was sufficient to justify the bypass of Mr. Benevento and the other bypassed candidates. The last sentence of this letter stated:

> "I respectfully submit that the information provided is specific, factual and detailed, complying both with pertinent Civil Service law and the mandate of the Beecher consent decree." (Exhibit 10)

64. On July 17, 2014, Commissioner Conant forwarded another letter to HRD. The first paragraph of this letter stated:

> "I write in response to your telephone conversation with Attorney Maite Aponte Parsi of the City of Springfield's Human Resources and Labor Relations Department. You indicated that the Human Resources Division would process five of the bypasses and that you needed more details about two others [not including Mr. Benevento]. (Exhibit 11) I infer from this document that HRD had now decided that it did not need any further information regarding Mr. Benevento. (Exhibit 11)

65. Commissioner Conant's July 17, 2014 letter to HRD provided additional information about the two (2) other candidates. (Exhibit 11)

66. On July 17, 2014, HRD forwarded correspondence to the Commission stating that the City's bypass reasons had been approved. (Exhibit 14)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel

administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Beverly citing Cambridge at 305, and cases cited. "It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree." Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

Analysis

Commissioner Conant, a twenty-seven (27) year veteran of the Springfield Fire Department, has been leading the City's Fire Department since January 2012. In September 2013,

Commissioner Conant initiated the process for appointing ten (10) new firefighters, the first time that original appointments would be made during his tenure as Appointing Authority.

In addition to the normal challenges surrounding the appointment process, Commissioner Conant was required to comply with a series of orders issued by this Commission as part of an investigation completed in 2011, prior to his tenure as Fire Commissioner. Those orders were issued after the Commission determined that the 2010 / 2011 review and selection process was compromised by the involvement of a Deputy Fire Chief whose son was a candidate for appointment. The Commission ultimately granted relief to several individuals and, to ensure a fair and impartial review of those candidates, ordered the City to use an outside review panel as part of the next hiring cycle.

The SFD complied with all aspects of the Commission's orders, including, but not limited to, procuring the services of a consultant to interview and evaluate all candidates and pass on their recommendation to the Fire Commissioner. Importantly, nothing in the Commission's orders prohibited Commissioner Conant from playing a role in this review process, which he ultimately did.

While he was not prohibited from playing a role in the review process, Commissioner Conant was inclined to defer to the recommendations of the consultant, partly to eliminate even the appearance of any bias or pre-disposition regarding those candidates who were granted relief by the Commission in 2011. At the outset, Commissioner Conant limited his involvement to logistical issues, including, but not limited to, providing the consultant with all of the information required to conduct the interviews.

Twenty-two (22) candidates, all of whom successfully passed background investigations, were interviewed by the consultant's review panel. None of the panelists were employed by the

Springfield Fire Department and, based on a review of the documents submitted, the panelists were well-qualified to evaluate the candidates and make recommendations.

In January 2014, Commissioner Conant received the candidate rankings from the consultant along with supporting documentation that explained how the interviews were conducted and the scoring system used to establish the rankings. Among the ten (10) highest-ranked candidates were individuals who had been granted relief by the Commission, including one candidate who was ranked first by the outside review panel. Mr. Benevento was not among the ten highest-ranked candidates.

After personally reviewing the videotaped interviews, Commissioner Conant decided to make appointments consistent with the rankings of the outside review panel, choosing the nine (9) highest-ranked candidates and another candidate who was tied for tenth. It is noteworthy that, in choosing the tenth candidate from the tied group, Commissioner Conant appointed a candidate who had been granted relief by the Commission. To me, that confirmed that Commissioner Conant was genuinely attempting to ensure a fair process and rectify the problems that occurred prior to his appointment as Commissioner. Accepting the recommendations of the outside review panel resulted in the bypass of certain candidates on Certification No. 01272.

As a consent decree community, Springfield, unlike other cities and towns who have been delegated certain responsibilities by HRD, is required to provide HRD with the reasons for bypassing candidates in favor of candidates ranked lower on the Certification. To that end, Commissioner Conant provided HRD with a copy of the Commission's 2011 orders, along with the documentation from the consultant regarding the review, evaluation and ranking of the candidates.

Over a series of weeks, via mail, email and phone calls, HRD informed the City that more detailed information would be required to justify the bypass decisions, at one point referring to the documentation submitted as a "statistical analysis" that would be "cumbersome for anyone who was not part of the selection panel to understand …".

That presented Commissioner Conant with a dilemma. To this point, he had purposely kept an arms-length distance from the substantive review and selection process, including not attending or participating in the interview process. While he had reviewed the recorded interviews, he had effectively deferred to the recommendations of the outside review panel. He subsequently learned that no further information (i.e. – additional written notes, comments) was available from the outside review panel.

In order to move forward with the appointment process, and respond to HRD, Commissioner Conant decided to personally review the recorded interviews again (some multiple times) and, with the rankings and competencies of the outside review panel in mind, compile his own written comments regarding the performance of the bypassed candidates (including Mr. Benevento). Those comments were subsequently submitted to HRD, which reviewed and eventually accepted them as sufficient to justify the decision to bypass Mr. Benevento and other candidates.

To the bypassed candidates, including Mr. Benevento, this step could understandably be viewed as nothing more than an ex post facto attempt by the City to provide detailed reasons (for the bypasses) that never existed to begin with. Based on a review of the record and, importantly, the testimony of Commissioner Conant, I have concluded otherwise for the reasons below.

First, as noted previously, Commissioner Conant was never prohibited from participating in this review and selection process. In fact, as the Appointing Authority, it was always anticipated by the Commission that he would make the final decision regarding these appointments. Further,

Commissioner Conant had no role in the compromised review and selection process in 2010 / 2011.

Second, as also noted previously, Commissioner Conant had already reviewed the recorded interviews prior to making his appointment decisions, and had concurred with the recommendations of the outside review panel. While he did not commit his thoughts to paper at the time, I accept his testimony that he did review the recorded interviews at the time. Even if he hadn't, I see nothing inappropriate in Commissioner Conant, as the Appointing Authority, upon being asked for more detailed information, reviewing the recorded interviews and responding to said request.

Third, and more generally, this was the only reasonable, practical (and rationale) approach for Commissioner Conant to take. The detailed written explanation that HRD was seeking did not exist, and, based on a review of the entire record of this matter, it is clear that Commissioner Conant was the only person that could (or would) produce them.

Based on Commissioner Conant's testimony, I accept that he carefully reviewed the recorded interviews multiple times and tried to offer his own independent thoughts regarding the candidates' performance while still being cognizant of the rankings of the outside review panel.

Thus, the final, and most important, issue here is whether Commissioner Conant's written comments, coupled with the rankings of the outside review panel, provided sufficient reasons for bypassing Mr. Benevento. HRD, after what appears to be a relatively intensive review here, ultimately concluded that these reasons were sufficient to bypass Mr. Benevento. After a de novo review, I have reached the same conclusion.

With certain exceptions, Commissioner Conant's written comments and concerns regarding Mr. Benevento's interview performance were: supported by the interview recording and the

Commissioner's credible testimony before the Commission; and were sufficiently related to the job duties and responsibilities of a firefighter to justify the bypass of Mr. Benevento. Even given the subjective nature of interviews, and the divergent conclusions that can be reached about them by different individuals, there is nothing in Mr. Benevento's interview which shows that he opted "solely for escalating matters" or that Mr. Benevento failed to mention the need to notify a superior if he encountered a firefighter under the influence. In fact, Mr. Benevento explicitly stated that he would notify a supervisor in both hypothetical scenarios posed to him.

However, a broader look at the entire interview could support Commissioner Conant's observations that Mr. Benevento did not perform well, including Mr. Benevento's inability to offer more in-depth answers that would better demonstrate his understanding of the role and responsibilities of a firefighter. For example, when first asked how he'd respond if he suspected a fellow firefighter of stealing property from a fire scene, he stated at first that he didn't know what the Department's rules and regulations require in such matters. Further, despite being informed (via an information packet) to appear in business attire, Mr. Benevento inexplicably appeared for the interview in a sweatshirt, calling into question how serious he actually is about being appointed as a firefighter.

Mr. Benevento's poor interview performance, along with Commissioner Conant's conclusion that the ten (10) highest-ranked candidates performed better during the interview performance than Mr. Benevento, provided the City with reasonable justification to bypass Mr. Benevento for appointment as a firefighter.

Conclusion

For all of the reasons stated above, Mr. Benevento's appeal under Docket No. G1-14-88 is hereby ***denied.***

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on January 8, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:
Christopher Benevento (Appellant)
Maite Aponte Parsi, Esq. (for Respondent)
John Marra, Esq. (HRD)