

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place - Room 503  
Boston, MA 02108  
(617) 727-2293**

**RE: JOINT REQUEST BY MASSACHUSETTS  
HUMAN RESOURCES DIVISION TO GRANT  
RELIEF TO TIMOTHY BERTHELETTE**

**CASE NO: E-15-69**

Appearances for Timothy Berthelette:

Pro Se

Appearance for City of Taunton

Jason D. Buffington, Esq.  
City Solicitor  
City Hall – 141 Oak Street  
Taunton, MA 02780

Appearance for HRD:

Patrick G. Butler, Esq.  
Human Resource Division - Legal  
One Ashburton Place  
Boston, MA 02108

Commissioner:

Paul M. Stein

**DECISION ON PETITION FOR CHAPTER 310 RELIEF**

The Massachusetts Human Resources Division (HRD), on behalf of Timothy Berthelette, filed a petition with the Civil Service Commission (Commission), seeking relief, pursuant to the Commission's equitable authority inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, relative to an error by HRD, which failed to place Mr. Berthelette, a disabled veteran, with the proper veteran's preference on a Certification for appointment to the position of Firefighter with the City of Taunton (Taunton), from which Taunton eventually hired three (3) firefighters. As a result of the error, Mr. Berthelette was not considered for appointment on that certification. HRD requests that Mr. Berthelette be placed at the top of all future

certifications issued to Taunton for so long as it takes to consider Mr. Berthelette for appointment as a Taunton firefighter.<sup>1</sup>

The Commission held a pre-hearing conference with the parties on May 8, 2015, at which time it appeared that certain facts bearing on the petition required clarification. As a result of the receipt of additional information from HRD and Taunton, the following facts are not in dispute:

1. On January 15, 2015, HRD issued Certification No. 02607 to Taunton for appointment of two (2) firefighters. This request was eventually modified to increase the hiring to a total of three (3) firefighters.

2. Certification No. 02607 included the names of sixteen (16) firefighters who had been laid off from their positions with the City of Fall River and appeared on the state reemployment list, which requires those candidates to be considered ahead of all others.

3. Overall, nine (9) of the candidates on the reemployment list signed willing to accept an appointment in Taunton, but, eventually, all but three (3) of those candidates withdrew from consideration.

4. Next below the reemployment list candidates, certification No. 02607 contained the names of two “402A” candidates (children of police officers or firefighters who died in the line of duty), neither of whom signed willing to accept.

5. Next below the 402A candidates, were two (2) Taunton residents with disabled veteran’s preference who signed willing to accept, and ten (10) Taunton residents with veteran’s preference who signed willing to accept. The last veteran candidate who signed willing to accept stood in the thirteenth (13<sup>th</sup>) position on the Certification.

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<sup>1</sup> In a companion petition (CSC No. E-15-69, HRD seeks to rectify a second error that caused another candidate, Ryan Fitzgerald, who should have been listed on the certification as a Taunton resident with veteran’s status but was also omitted by mistake.

6. Mr. Berthelette took and passed the entry level examination for Firefighter and duly claimed Taunton residency preference and statutory disabled veteran's status preference, neither of which are disputed.

7. By mistake, HRD failed to place Mr. Berthelette's name in the proper place on the eligible list as a Taunton resident with disabled veteran's preference, listing him only as a non-veteran resident.

8. But for the error, Mr. Berthelette's name would have appeared after the candidate ranked in the (7<sup>th</sup>) position on Certification No. 02607, among all candidates who signed willing to accept. Because his name did not appear, however, he was not considered for the appointment.

9. Under the so-called "2n+1" formula, Taunton was permitted to hire three firefighters from among the top seven (7) candidates willing to accept. Thus, Mr. Berthelette, even if properly placed would have been ranked below those top seven candidates and would not have been eligible for hire, and would not have been hired unless more highly ranked candidates withdrew or were bypassed.

10. Taunton hired one of the Fall River reemployment list candidates and the two disabled veterans, the latter being tied in the fifth (5<sup>th</sup>) position on the Certification of those willing to accept, all of whom were more highly-ranked than Mr. Berthelette would have been, had his name been included on the Certification in the current position.

The Commission supports the intent a request to remedy an error made by HRD in compiling the certification used by Taunton to hire firefighters on which Mr. Berthelette's name would have appeared for consideration but for the error. In this situation, however, Taunton hired three (3) firefighters from the list, all of whom were

ranked higher than Mr. Berthelette. Although Mr. Berthelette may well have been interviewed, as it turned out, Mr. Berthelette would not have been eligible to be hired, as Taunton chose not to reach far enough down the list to hire him.

In order for the Commission to exercise its discretion to grant equitable relief under Chapter 310, HRD's error must have caused some "harm" to Mr. Berthelette's civil service rights. As it turned out, even if his name had appeared on certification No. 20607, he would not have been hired in this cycle. His name now appears properly on the eligible list, fourth overall and the second-ranked disabled veteran. See [http://www.csexam.hrd.state.ma.us/eligiblelist/eligiblelist.aspx?ListId=2&Location\\_Id=309](http://www.csexam.hrd.state.ma.us/eligiblelist/eligiblelist.aspx?ListId=2&Location_Id=309)

Even without any relief from the Commission, Mr. Berthelette is already now situated high on the list of names likely to be included in any future certifications. Simply because HRD made a prior error, that does not warrant creating for Mr. Berthelette a priority in hiring by placing him above the two 402A candidates as well as the other Taunton disabled veteran now more highly ranked. To now place Mr. Berthelette ahead of these other candidates, in this situation, would amount to a windfall to him and would not be equitable to those other candidates.

Accordingly, there is no basis upon which to conclude that Mr. Berthelette's civil service rights have been harmed, which is a prerequisite to granting relief pursuant to Chapter 310. The Petition is hereby *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 28, 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)(1), 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 to:

Timothy Berthelette (Petitioner)

Patrick G. Butler, Esq. (HRD)

Jason D. Buffington, Esq. (Taunton)