

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION  
One Ashburton Place – Room 503  
Boston, MA 02108  
(617) 727-2293**

**RONALD BURNS,**

*Appellant*

**CASE NO. E-18-207**

v.

**TOWN OF NORTH ATTLEBOROUGH,**

*Respondent*

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

The Appellant, Ronald Burns, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest his non-selection by the Town of North Attleborough (North Attleborough) for appointment to the position of provisional Fire Captain in the North Attleborough Fire Department (NAFD).<sup>1</sup> The Commission held a pre-hearing conference on December 7, 2018 at the UMass School of Law at Dartmouth. On January 10, 2019, the Commission received the “Respondent Town of North Attleborough’s Motion to Dismiss/Motion for Summary Decision” (Respondent’s Motion). On February 18, 2019, the Appellant filed his “Opposition to Respondent’s Motion To Dismiss” (Appellant’s Opposition), which also requested that the Commission open an investigation pursuant to G.L.c.31,§2(a) into issues of alleged bias, nepotism and discrimination in the provisional promotion process. On

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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 G.L. c. 31, or any Commission rules, taking precedence.

February 22, 2019, I held a motion hearing at the UMass School of Law at Dartmouth and requested additional submissions from the parties. On March 22, 2019 I received the “Town of North Attleborough’s Response to Appellant’s Opposition Filing” (Town’s Response) and the Appellant’s “Supplement to Opposition to Respondent’s Motion to Dismiss” (Appellant’s Supplement).

For the reasons more fully explained below, I have concluded that the motion to dismiss should be allowed and the Appellant’s Section 2(b) appeal should be dismissed. The Appellant’s request for a Section 2(a) investigation is addressed separately.

**Findings of Fact**

Based on the submissions of the parties, viewing the evidence in the light most favorable to the Appellant, I find the following material facts are not disputed:

1. The Appellant, Ronald Burns, is employed as a Lieutenant with the NAFD. *(Respondent’s Motion; Appellant’s Opposition)*
2. The Appointing Authority for the NAFD is the North Attleborough Board of Selectmen (BOS). *(Respondent’s Motion; Appellant’s Opposition)*
3. Lt. Burns took the November 2016 Fire Captain’s promotional examination and his name appeared first on the NAFD Fire Captain’s eligible list established on March 21, 2017. *(Respondent’s Motion; Appellant’s Opposition)*
4. From the start, the 2017 NAFD Fire Captain’s eligible list actually contained only two names of candidates who would be willing to accept appointment, Lt. Burns and Lt. Christopher Colman, ranked third. The second ranked candidate was out of work on medical leave (from which he never returned) when the list was established. *(Respondent’s Motion; Appellant’s Opposition)*

5. On June 8, 2017 the BOS voted 3-0 (two absent) to provisionally promote Lt. Coleman to Captain. (*Respondent's Motion; Appellant's Opposition; Administrative Notice [BOS meeting video at 44:30-1:01:00, <https://northtvvideovault.viebit.com/>]*)

6. During the public comment period of the BOS meeting, Lt. Burns spoke briefly that he thought he was being “unjustly bypassed” and asked the BOS to “not only consider the Chief’s recommendation” but also “consider the marks” on the examination and table the appointment until the BOS conducts its own interviews of the two candidates. (*Respondent's Motion; Appellant's Opposition; Administrative Notice [BOS meeting video at 11:00-12:00, <https://northtvvideovault.viebit.com/>]*)

7. The June 2017 provisional Captain’s appointment (along with a provisional appointment of a Lieutenant to fill the Captain’s vacancy created by that appointment) was made after a 15-minute deliberation, based on the presentation of Fire Chief Brousseau, who explained that his recommendations were made after interviews of both candidates by a panel of NAFD personnel and outside Fire Chiefs which unanimously favored the selected candidate. Nothing negative about Lt. Burns was mentioned. (*Administrative Notice [BOS meeting video at 44:30-1:01:00, <https://northtvvideovault.viebit.com/>]*)

8. The following day, Lt. Burns spoke to Chief Brousseau by telephone and informed him that he was on his way to a medical facility where he was admitted. He remained out on sick leave for two weeks, after which he took three weeks of vacation leave, returning to duty on July 18, 2017. Chief Brousseau informed the North Attleborough Town Administrator of these developments and documented this information in a File Memo placed in a file kept in his office. (*Appellant's Opposition; Town's Response*)

9. In June 2018, Chief Brousseau informed the BOS that the NAFD needed to make another promotion to Captain to fill a vacancy due to an expected September 2018 retirement in September. He noted that only one candidate remained on the existing eligible list, he proposed filling the position provisionally and (due to the “short list”) opening up the provisional appointment to all eight NAFD Lieutenants, with the expectation that the position would be filled permanently after a new eligible list was established following the next promotional examination scheduled for November 2018. The BOS took no action on this request. *(Respondent’s Motion; Appellant’s Opposition)*

10. On or about September 6, 2018, Chief Brousseau met with Lt. Burns and Lt. McKinnon, the local firefighters’ union representative. *(Appellant’s Opposition)*

11. On September 7, 2018, Chief Brousseau circulated an internal e-mail that stated:

“At the direction of the Board of Selectmen:

“Lieut. Ron Burns will be promoted to Provisional Fire Prevention Captain at their next meeting on Sept. 20, 2018.

“The Civil Service exam for Fire Captain will be cancelled, and an Assessment Center will be conducted for all permanent Captain promotions. The assessment center will be scheduled and posted once the impact of the change to the Memorandum of Agreement is negotiated with Local 1992.”

*(Appellant’s Opposition)*

12. Upon learning that he would not be immediately promoted to Captain permanently, but only provisionally, Lt. Burns became upset and began to feel “extreme stress and anxiety” and “needed to leave” in the middle of his shift. *(Appellant’s Opposition)*

13. On September 12, 2018, Chief Brousseau circulated another internal e-mail stating:

“The below [September 7, 2018] email regarding Captain promotions is rescinded. I will advise you of the status of the Captain promotional process, once it is determined by the appointing authority.”

Lt. Burns contends this action was taken in direct retaliation for his use of sick leave.

*(Appellant’s Opposition; Appellant’s Supplement)*

14. At the October 11, 2018 BOS meeting, Chief Brousseau reported on plans to appoint a new Deputy Chief (through an assessment center) and one or two provisional Captains, that would be open to all lieutenants, pending the November 2018 Captain's Exam and establishment of a new eligible list for Captain from the results of that examination, expected in April 2019. The BOS approved that plan. *(Respondent's Motion; Appellant's Opposition; Town's Response)*

15. Chief Brousseau recused himself from the Deputy Chief's appointment process because his brother, Brian Brousseau had applied for that position. He continued to manage the provisional Captain's promotional process, however, sending out an internal email requesting interested candidates to submit an application by October 18, 2018, with a view to scheduling internal interviews by October 23, 2018 with recommendations to the BOS at their next meeting on October 25, 2018. *(Respondent's Motion; Appellant's Opposition; Town's Response)*

16. At the October 25, 2018 BOS Meeting, as it had become known that Chief Brousseau's brother (who didn't get the Deputy Chief's job) was going to apply for the provisional Captain's position(s) and on advice of Labor Counsel, the BOS ordered that Chief Brousseau also recuse himself from that process and assigned the future management of the Captain's promotion to the North Attleborough Town Administrator and the North Attleborough Town HR Director. *(Respondent's Motion; Appellant's Opposition)*

17. Under the direction of the Town Administrator, the Town HR director informed all potential candidates for the Captain position(s) that the internal interviews scheduled for October 25, 2018 were cancelled and they would be informed when a replacement process had been established. Thereafter, the HR director recruited three (3) municipal area Fire Chiefs to interview the candidates (the Portsmouth RI Fire Chief [formerly Brookline Fire Chief and Fall River Fire Chief], the Fall River Fire Chief and the Norton Fire Chief). *(Respondent's Motion)*

18. On October 25, 2018, Lt. Burns filed this appeal with the Commission. (*Claim of Appeal*)

19. By letter dated November 5, 2018, the Massachusetts Human Resources Division (HRD) informed North Attleborough that less than four applications were received from NAFD individuals eligible to take the HRD-administered written promotional examination for Fire Captain scheduled for November 17, 2018.<sup>2</sup> Therefore, as required by G.L.c.31,§59, the examination was postponed, to be rescheduled for a later date unless an alternative (i.e. Sole Assessment Center request) is received and approved. The next HRD departmental examination is now scheduled for November 2019. (*Town's Response*)

20. On November 13, 2018, the NAFD Provisional Captain(s) Chief's Panel (Chief's Panel) conducted a semi-structured interview, including a review of the candidate's education and experience, standard interview questions, role play scenario(s) and fire service related problems. A numerical scoring index was used, with the five candidates' scores in rank order: (1) Lt. Brousseau (75.67); (2) Lt. McKinnon (71.67); Lt. Bristol (63.67); Lt. A (61.33); Lt. Burns (50.67). (*Respondent's Motion*)

21. At the BOS Meeting held on November 15, 2018, the BOS voted 5-0 to provisionally appoint Lt. Brousseau and Lt. McKinnon to Captain, the two candidates ranked number one and two, respectively, by the Chief's Panel. (*Respondent's Motion*)<sup>3</sup>

22. At the BOS Meeting on January 31, 2019, on the recommendation of Chief Brousseau, the BOS voted to make a third provisional promotion to Captain, appointing Lt. Bristol, the next-

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<sup>2</sup> Lt. Burns did not sign up for the November 2018 examination. Had he done so, HRD would not have had to postpone the examination. (*Town's Response*)

<sup>3</sup> Prior to the vote, Chief Brousseau introduced Lt. McKinnon to the BOS and summarized his qualifications. The Chief's brother, Lt. Brousseau, was on vacation and Chief Brousseau made no comment about him other than his introductory remarks that the candidates being recommended were the two top ranked candidates as determined by the Chief's Panel. (*Administrative Notice[BOS meeting video at 7:30-13:00, <https://northtvvideovault.viebit.com/>]*)

highest ranked candidate as determined by the November 13, 2018 Chiefs Panel. (*Appellant's Opposition; Town's Response; Administrative Notice [BOS meeting video at 6:30-10:00, <https://northtvvideovault.viebit.com/>]*)

23. Later in the January 31, 2019 BOS Meeting, during the "Resident and Community Comment" period, Lt. Burns was recognized and he, along with his brother, addressed the BOS for approximately 15 minutes concerning his grievances about being rejected for promotion to Fire Captain for what he called "politics and nepotism". Lt. Burns suggested, in essence, that the BOS had not been fully informed and had allowed Chief Brousseau, either knowingly or unwittingly, to act on a bias against him for taking sick leave to deal with the stress of being bypassed and for speaking out at the BOS meeting two years earlier. (*Appellant's Opposition; Town's Response; Administrative Notice [BOS meeting video at 14:00-30:00, <https://northtvvideovault.viebit.com/>]*)

24. On February 5, 2019, Lt. Burns filed a complaint with the Massachusetts Commission against Discrimination, claiming that he was denied promotion in retaliation for stating his grievances and because Chief Brousseau "perceived" him as disabled. (*Town's Response*)

### **Applicable Legal Standard**

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "viewing the evidence in the light most favorable to the non-moving party", the undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547,

550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

### **Applicable Civil Service Law for Appeals**

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); MacHenry v. Civil Serv. Comm’n, 40 Mass.App.Ct. 632, 635 (1995), rev.den.,423 Mass.1106 (1996)

G.L.c.31,§2(b) authorizes appeals to the Commission by persons “aggrieved” by certain violations of civil service law by the Massachusetts Human Resources Division (HRD) and appointing authorities to whom HRD has delegated certain authority and provides:

*No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act [by HRD or a delegated appointing authority] was in violation of [civil service law], the rules or basic merit principles promulgated thereunder and said allegations shall show that such person’s rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person’s employment status.* Id. (*emphasis added*)

Chapter 310 of the Acts of 1993 provides discretionary authority to remediate such violations:

*If the rights of any person acquired under [civil service law] or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.* (*emphasis added*)

### **The Section 2(b) Appeal**

This appeal challenges the loss of an opportunity for a provisional promotion to Fire Captain, the second-level supervisory position in the civil service fire service. A provisional promotion is



permitted, under G.L.c.31, §15, as an exception to the general rule that fire service promotions must be made on a full-time, permanent basis after certification from an eligible list established after a competitive examination pursuant to G.L.c.31,§9 through §11 & §59. G.L.c.31,§15,¶1 provides:

*“An appointing authority may, with the approval of the administrator . . . make a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit . . . if there is no suitable eligible list, or if the list contains the names of less than three persons eligible for and willing to accept employment . . . . No provisional promotion shall be continued after a certification . . . of the names of three persons eligible for and willing to accept promotion to such position.” (emphasis added)*

Provisionally promoted employees continue to hold their permanency in their lower title. See G.L.c.31,§15,¶3. They have no civil service rights in the position to which they are provisionally promoted and may be disciplined or displaced by an appointing authority and/or returned to their tenured positions at any time without the benefit of notice, hearing and appeal rights that are afforded to persons holding permanent civil service appointments. See, e.g., LeFrancois v. Department of Revenue, 23 MCSR 639 (2010) and cases cited.

In particular, since a provisional promotion, by definition, is not made after certification from an eligible list, the selection process is not subject to the requirement that selection must be made from one of the top three candidates on the list (the so-called 2n+1 formula) or that non-selected candidates are entitled to be informed of the reasons for their non-selection and have the right to file a “bypass” appeal with the Commission to challenge the appointment of a lower ranked candidate on the list. See G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.08(4) & PAR.09.

The Commission has repeatedly held that, so long as an appointing authority follows the statutory requirements in making a provisional promotion of any “qualified” candidate in the next lower title, none of the other non-selected candidates have a right of appeal to the

Commission. The Commission has repeatedly held that Section 15 does not require that the appointing authority select the “most qualified” candidate or the one with the most seniority. See, e.g., Felder v. City of Boston, 29 MCSR 384 (2016); Shugrue v. Department of Correction, 28 MCSR 82 (2015); Allison v. City of Cambridge, 27 MCSR 379 (2014); Higgins v. Boston Public Schools, 25 MCSR 416 (2012); Sullivan v. City of Boston, 20 MCSR 11 (2007)

Although provisional promotions are not subject to the traditional rules governing bypass decisions and appeals to the Commission, they are not entirely without other safeguards embedded in the statutory scheme designed to ensure that an appointing authority does not compromise fundamental “basic merit principles” under Massachusetts civil service law, so that only persons who are qualified by training and experience are chosen for advancement, free of political influence or other unlawful personal bias. These safeguards include the fact that provisional promotions are meant to be short-term and require prompt scheduling of a competitive examination to make the promotion on a permanent basis, as well as the mandated preference for promoting persons from the “next lower title” over “skipping one or more grades” and requiring heightened scrutiny when promotions do skip one or more grades. See Kelleher v. Personnel Administrator, 421 Mass. 382, 386-390(1995) (The . . . . statutory scheme is to assure the competence of the civil service and to guard against favoritism and bias . . . . Where a vacancy is filled provisionally by promotion, there is a greater assurance that the person chosen will have demonstrated some [on-the job] competence and familiarity with the duties of the office.”)

Applying these applicable legal principles to the facts of this appeal, Lt. Burns failed to show that North Attleborough’s failure to select him for promotion to Fire Captain violated any of his civil service rights that would entitle him to relief from the Commission.

First, it is undisputed that, at the time North Attleborough decided to make provisional promotions to the position of Fire Captain in 2018, the eligible list contained only one name (Lt. Burns), and therefore, qualified as a “short list” which entitled North Attleborough to invoke the authority to make provisional promotions under civil service law.<sup>4</sup> Consistent with the requirements of the statute, a departmental promotional examination will be held later this year and the provisional promotions will come to an end. The selection of the permanent Fire Captains will be made from the eligible list, subject to all the safeguards imposed on those appointments under civil service law. Should a candidate who ranks below Lt. Burns on the eligible list be promoted to permanent Fire Captain, Lt. Burns will have a right to appeal his bypass for permanent appointment to the Commission and to present the evidence that he believes demonstrates why the Town did not have reasonable justification to bypass him.

Second, the selection process that North Attleborough used to make the provisional appointments was reasonably tailored to ensure a fair assessment of all five candidates through use of an outside panel of Fire Chiefs who employed a pre-designed, structured interview format and numerically scored each candidate’s performance. The candidates’ rating were the determining factor in choosing which candidates were offered promotion. The two candidates promoted in November 2018 scored 75.67 and 71.67 (out of a possible 100), putting them in the Excellent category. The candidate promoted in January 2019 scored 63.67, putting him in the Average category. Lt. Burns scored 50.67, also putting him in the Average Category, but last of all five candidates.

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<sup>4</sup> Lt. Burns did not appeal from the 2017 promotion of the candidate ranked below him on the list and the time to do so has long expired. Lt. Burns does not appear to argue here that North Attleborough should have made a permanent promotion in 2018 of the one remaining name (his) on the list and the law is well-established that such an argument would fail, as an appointing authority has broad discretion whether to promote from a short list, make a provisional promotion, or to make no promotion at all. See, e.g., Brackett v. Civil Service Comm’n, 447 Mass. 223, 252-53 (2006) (“The civil service system does not guarantee an applicant a promotion at a certain date or upon a specific event”); Bergeron v. Town of Falmouth, 29 MCSR 547 (2016) and cases cited.

Third, I realize that it would appear reasonable to infer that the panel of Fire Chiefs from nearby communities would have known that one candidate (Lt. Brousseau) was NAFD Fire Chief Brousseau's brother. In the absence of any allegation that the interviewing Fire Chiefs treated Lt. Brousseau any differently than the other four candidates, however, I cannot find any reasonable expectation that Lt. Burns would be able to prove that the familial connection was a factor in the panel members' honest evaluation of the five candidates on a basically level playing field. I note that the reason that the BOS ordered the Town Administrator to assemble the outside panel was to ensure, to the extent possible, that Chief Brousseau did not have any role in the evaluation of the candidates.

Fourth, the provisional promotions here are short-lived and will last only so long as it takes for HRD to administer the next HRD-administered written examination and issue a new eligible list from which permanent promotions to these Fire Captains' positions may be made.<sup>5</sup> Lt. Burns will have the opportunity to be appointed to the position after the eligible list was established consistent with civil service law and rules as determined by his place on that list.

Fifth, the circumstances presented in this appeal are quite different from those that the Commission found in Alston v. Town of Brookline, 32 MCSR 37 (2019) cited by the Appellant. The Alston appeal involved the discharge of a tenured firefighter after he failed to return to work following years of suffering from multiple incidents of harassment and retaliation at the hands of his fellow firefighters and superior officers that made it impossible for him to return to duty. Here, by contrast, construing the evidence most favorably to the Appellant, his claims consist of

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<sup>5</sup> This appeal is distinguishable from the line of Commission Decisions that express concern for the "plight of the provisional", namely, save for the fire service involved in this appeal and other public safety positions, civil service jobs in the official service in Massachusetts can only be filled provisionally because, for decades, there have been no eligible lists from which a certification of names can be made for permanent appointments or promotions due to the fact that HRD stopped administering civil service examinations used to establish such eligible lists for most civil service jobs. Thus, except for police, fire and correctional services, an appointment "which is provisional in form may be permanent in fact." Kelleher v. Personnel Administrator, 421 Mass. 382, 399 (1995). See also Phillips v. City of Cambridge, 29 MCSR 364 (2016); Felder v. City of Boston, 29 MCSR 384 (2016)

retaliation for having spoken to the BOS in June 2017 to advocate for his own promotion to Fire Captain, putting himself in the hospital after learning that he had been bypassed and, finally, when he learned in September 2018 that he would be provisionally promoted to Fire Captain but, because he had hoped to get promoted permanently, the news was so upsetting that he took sick time and went home early. These isolated incidents fall well short of establishing any reasonable expectation that Lt. Burns' civil service rights have been infringed by alleged violations of the discrimination laws or his First Amendment rights.

In sum, Lt. Burns has failed to establish any reasonable expectation that his non-selection for provisional appointment to the position of NAFD Fire Captain was made in violation of his civil service rights or that he is otherwise "aggrieved" and entitled to any equitable relief from the Commission.

### **The Section 2(a) Investigation Request**

G.L.c.31, §2(a) vests the Commission with independent statutory authority to conduct an investigation into any form of a violation of civil service law, on its own initiative or at the written request of "the governor, the executive council, the general court or either of its branches, the administrator [HRD], an aggrieved person, or by ten persons registered to vote in the commonwealth." Section 2(a) grants the Commission broad discretion to decide, if at all, what response and to what extent an investigation is appropriate. See, e.g., Dennehy v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00540 (2014) ("The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.") See also Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014); Boston Police Patrolmen's Association et al v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2006-

4617 (2007). The Commission's exercise of its power to investigate is not subject to the general rules for judicial review of administrative agency decisions under G.L.c.30A, but can be challenged solely for an "abuse of discretion". See Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014), citing Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321-22 (1991).

The Commission exercises its discretion to conduct an investigation only "sparingly" and, typically, when there is clear and convincing evidence of an irreparable political or personal bias that can be rectified only by the Commission's affirmative remedial intervention into the hiring process. See, e.g., Shugrue v. Department of Correction, 28 MCSR 82 (2015) (declining to investigate Department of Correction's provisional promotion to Captain). For example, after learning that the BPD had hired candidates and began placing them into the Police Academy without having informed numerous bypassed candidates of the right to challenge their non-selection by appeal to the Commission, the Commission recently did initiate a thorough review of the BPD's 2015 hiring cycle, which resulted in the entry of numerous orders to the BPD to implement changes, both retrospective and prospective, to rectify the violations found by the Commission with the BPD's bypass procedures, with which the BPD has complied. See Investigation Re: Boston Police Dep't and Due Process of Non-Selected Candidates, 29 MCSR 367, supplemental decision, 29 MCSR 297 (2016). See also In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield, 24 MCSR 627 (2011) (investigation into hiring spearheaded by Deputy Fire Chief which resulted in his son's appointment and required reconsideration of numerous candidates through a new hiring cycle conducted by outsiders not connected with the Springfield Fire Department); In Re: 2011 Review and Selection of Permanent Intermittent Police Officers By the Town of Oxford, CSC No. 1-11-280 (2011)

(investigation of alleged nepotism in hiring Selectmen's relatives required reconsideration of all 19 candidates through an new independent process); Dumont v. City of Methuen, 22 MCSR 391 (2009), findings and orders after investigation, CSC No. I-09-290 (2011) (rescinding hiring process and reconsideration of all candidates after Police Chief had participated in selection of her niece).

After careful consideration, I have determined that an investigation is not warranted here.

**Conclusion**

In sum, for the reasons stated herein, North Attleborough's Motion to Dismiss/Motion for Summary Decision is hereby ***granted*** and the Section 2(b) appeal of the Appellant, Ronald Burns, in Docket No. E-18-207, is ***dismissed***.

In response to the Appellant's request for an investigation under Section 2(a), the parties are informed that, after due consideration, the Commission will not take further action to open the requested investigation.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on April 11, 2019.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:  
Joseph Sulman, Esq. (for Appellant)

Wendy H. Chu, Esq. (for Respondent)