

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

CIVIL SERVICE COMMISSION

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

BARRY GAYNOR & SEVEN OTHERS,
Appellants

v.

Docket Nos.: (See Below)

BOSTON FIRE DEPARTMENT &
HUMAN RESOURCES DIVISION,
Respondent

<u>CSC Case No.</u>	<u>Appellant</u>	<u>Disabled Veteran / Veteran?</u>
I-11-103	Barry Gaynor	Disabled Veteran
I-11-104	Robert Walsh	Disabled Veteran
I-11-105	Michael McDonagh	Disabled Veteran
I-11-106	Dave Dyer	Disabled Veteran
I-11-107	Nicholas Andrasy	Disabled Veteran
I-11-108	Conor Byrne	Disabled Veteran
I-11-109	Ryan Kelly	Veteran
I-11-110	Stephen Hodges	Veteran

PROCEDURAL ORDER

On March 28, 2011, the Appellants, all firefighter candidates for the Boston Fire Department (BFD), filed a request for investigation pursuant to G.L. c. 31, § 2(a) with the Civil Service Commission (Commission). A pre-hearing conference was held at the offices of the Commission on April 26, 2011 for the purpose of determining whether an investigation is appropriate. Counsel for the Appellants, the state's Human Resources Division (HRD) and the BFD were present along with most of the Appellants. The Appellants and the BFD each submitted a pre-hearing memorandum and HRD submitted copies of all information in its possession as it relates to this request. I also heard oral argument from counsel for the Appellants and the BFD. I requested additional information

from the BFD which was received by the Commission, with copies to the Appellants and HRD, on May 3, 2011.

Based on the information submitted by the parties and HRD and the statements made at the pre-hearing conference, the following appears to be undisputed:

1. On April 24, 2010, the Appellants took and passed the examination for Firefighter, Announcement number 4813.
2. On December 1, 2010, HRD established the eligible list for Firefighter.
3. On January 5, 2011, the BFD requested a Certification from HRD to fill 50 Firefighter vacancies.
4. On January 22, 2011, HRD forward Certification No. 203549 to the BFD, containing a sufficient number of names to generate enough candidates willing to accept appointment to meet the statutory "2N + 1" formula which, in this case, would be 101 candidates.
5. On January 23, 2011, the BFD returned Certification No. 203549 to HRD without taking any action on it.
6. On February 10, 2011, the BFD requested a Certification from HRD to appoint ten (10) Spanish-speaking Firefighters, pursuant to PAR.08(6).
7. PAR.08(6) provides, "[if] a requisition is made calling for persons having special qualifications in addition to the general qualifications tested by an examination, the administrator may issue a selective certification of the names of such persons from the appropriate eligible list."
8. On February 15, 2011, the Boston Fire Commissioner, who is the Appointing Authority, testified before the Boston City Council Committee on Post Audit and Oversight. As part of a colloquy with the Chairman of that committee regarding diversity in the BFD, the Fire Commissioner stated that he had recently requested a Certification to hire Spanish-speaking Firefighters.
9. On February 18, 2011, HRD denied the BFD's February 10, 2011 request due to a lack of supporting documentation.
10. On February 24, 2011, the BFD resubmitted a PAR.08 requisition to appoint ten (10) Spanish-speaking Firefighters.
11. On March 15, 2011, the BFD submitted additional information to support a request to increase its requisition from ten (10) Spanish-speaking Firefighters to fifteen (15) Spanish-speaking Firefighters.

12. On March 18, 2011, HRD issued Certification No. 204542 to the BFD for fifteen (15) Spanish-speaking Firefighters.
13. On March 28, 2011, the Appellants submitted a request for the Commission to conduct an investigation, pursuant to G.L. c. 31, § 2(a), regarding the BFD's request for, and HRD's approval of, the Certification for fifteen (15) Spanish-speaking Firefighters.
14. On March 30, 2011, the BFD requested a Certification from HRD to appoint 35 Firefighters.
15. On March 31, 2011, HRD issued Certification No. 204795 to the BFD for thirty-five (35) Firefighters. The names of all eight (8) Appellants appears on this Certification. Up to fifteen (15) candidates previously listed on Certification No. 203549 (the "general" Certification to fill fifty (50) vacancies) will not be considered as part of the current hiring cycle. Up to fifteen (15) candidates on the Spanish-speaking Certification were not listed on Certification No. 203549 and, hence, would not have been considered, had the BFD not requested a special Spanish-speaking Certification from HRD.
16. On April 26, 2011, a pre-hearing conference was held at the offices of the Commission.
17. The Appellants argued that the BFD was improperly using the PAR.08 special certification process to promote diversity among the ranks of Boston firefighters, rather than using other appropriate recruitment efforts, citing in part the above-referenced comments of the Fire Commissioner at a public meeting.
18. The Appellants asked that the Commission prevent the processing of the Spanish-speaking Certification until such time as an investigation was initiated and concluded by the Commission regarding the request and issuance of that Certification.
19. The BFD argued that it has demonstrated a need for Spanish-speaking Firefighters, that the Appellants are not aggrieved, and that there is no evidence that the special Spanish-speaking Certification should not have been requested or issued.

INTERIM ORDERS

The full Commission carefully reviewed all of the documents submitted and the arguments of the parties. As a result of that review, the following interim orders are issued:

- I. The Appellants' request to prevent the processing of the Spanish-speaking Certification is denied at this time.
- II. The Commission will convene a hearing on Wednesday, September 21, 2011 at 9:30 A.M. at the offices of the Commission to hear testimony and receive further

evidence regarding the BFD's request and HRD's approval of the Spanish-speaking Certification.

- III. All discovery requests should be completed 30 days prior to the September 21st hearing.
- IV. As part of the September 21st hearing, the Commission anticipates that the Fire Commissioner will attend and give testimony about issues including, but not limited to: 1) the justification for requesting the Spanish-speaking Certification; 2) a detailed explanation of any implementation plans that show how the individuals hired from the Spanish-speaking Certification will be utilized to meet the needs articulated in the requisition submitted to HRD.
- V. The Commission also anticipates that the appropriate HRD witnesses will attend the September 21st hearing and give testimony related to HRD's decision to approve the Spanish-speaking Certification.
- VI. All of the twenty-five (25) individuals on the Spanish-speaking Certification (Certification No. 204542) who indicated a willingness to accept employment if appointed are hereby joined as parties to CSC Case No. I-11-103 through I-11-111. The parties and HRD are responsible for providing copies of all correspondence (including documents already submitted to the Commission) to these twenty-five (25) individuals (listed below).

Civil Service Commission



Christopher C. Bowman
Chairman
June 1, 2011

Notice to:
Timothy Belcher, Esq. (for Appellants)
Robert Boyle, Esq. (for BFD)
Martha O'Connor, Esq. (for HRD)

Twenty-five (25) individuals on Certification No. 204542 willing to accept employment if appointed:

Douglas Felton
Arturo Perez
Justinian Plaza
Jorge Diaz
Margaret Connolly
Rafael Hernandez
Keith McNair
James Walsh
John Amado

Jeremy Mejia
Elbert Pereira
Giovanni Arroyo
Emanuel Brandao
Bryan Denehy
Tony Docantq
Rogelio Juarez
Fidia Pina
Makeurys Baez
Chris Castillo
Gregory D'Antona
Sean Ferguson
Nathalie Fontanez
Sergio Garcia
Ritchie Melo
Samuel Perez-Rosado