

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 727-2293

ALONZO HARDNETT,

Appellant

v.

G1-11-128

CITY OF SPRINGFIELD,

Respondent

Appearance for Appellant (Pro Se):

Alonzo Hardnett

Appearance for Respondent:

Peter P. Fenton, Esq.

City of Springfield

30 Court Street

Springfield, MA 01103

Commissioner:

Cynthia Ittleman

DECISION

Alonzo Hardnett (hereinafter “Mr. Hardnett” or “Appellant”), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (hereinafter “Commission”) on April 19, 2011 seeking review of the decision of the City of Springfield (hereinafter “City”), acting by and through its Fire Department as Appointing Authority, to bypass the Appellant for an original appointment to the position of Firefighter during the 2010/2011 review and selection process.

Two other candidates in the 2010/2011 review and selection process also filed appeals concerning their non-selection. At the pre-hearing conference in one of these other appeals, the appellant in that case questioned, “ ... whether the involvement of Deputy Fire Chief Prendergast compromised the review and selection process since Deputy Prendergast’s son was one of the candidates selected for appointment.” 2010/2011 Review and Selection of Firefighters in the

City of Springfield, Docket No. I-11-208 (December 15, 2011)(hereinafter “Investigation”), Findings, Conclusions and Orders (hereinafter “Orders”), p. 2. Thereafter, the Commission held this bypass appeal (along with the bypass appeals of two other candidates) in abeyance and conducted the Investigation pursuant to G.L. c. 31, § 2(a). The Commission held a hearing on July 27, 2011 during the Investigation and the Fire Department was ordered to produce pertinent documents. As a result of the Investigation hearing and the documents produced, the Commission found that, “Deputy Chief Prendergast’s direct involvement in the review and selection process compromised the Fire Department’s ability to ensure open consideration of all candidates for the position of firefighter[]” and ordered the Fire Department to take certain actions. (Orders, p. 13; *see* pp. 17 and 18).

Thereafter, a hearing was held in the instant appeal on May 9, 2012 at the Springfield State Building in Springfield. The hearing was digitally recorded and copies of the recording were sent to the parties. The witnesses were not sequestered as Deputy Prendergast attended as a representative of the Fire Department and Lieutenant Blake, in addition to testifying, accompanied and assisted Mr. Hardnett at the hearing. At this hearing, the parties were advised that the Commission would take administrative notice of the Investigation and Orders and that each bypass appeal of the Fire Commissioner’s 2010/2011 review and selection process in this regard would be decided on its own merits. Neither party filed a post-hearing brief.

Also at the hearing in this case, the pro se Appellant requested the production of documents relating to the selection of candidates in the 2010/2011 review and selection process. Attorney Fenton, for the Fire Department, asked that the Appellant submit his document request in writing. On May 11, 2012, the Appellant submitted his document request in writing, requesting documents “ ... used during the hiring process to qualify or disqualify myself and all

of the other candidates ...” for all of the bypassed candidates and the candidates who were appointed. (Appellant’s May 11, 2012 electronic mail message to me and Attorney Fenton). Also on May 11, 2012, I informed the parties that the deadline for the Fire Department’s response to the document request was June 8, 2012. On June 29, 2012, not having received a response from the Fire Department concerning the Appellant’s document request, I emailed the parties again inquiring about the status of the Fire Department’s response. On July 17, 2012, the Appellant emailed that he had not received any documents he requested from the Fire Department. By email to the parties on August 23, 2012, I indicated to the parties that I deemed the pro se Appellant’s report of the Fire Department’s failure to produce the documents requested the equivalent of a motion to compel production of the documents pursuant to 801 CMR 1.01(8)(i), giving the Fire Department seven days to submit an opposition to the request to compel discovery or to produce the documents requested. The rule at 801 CMR 1.01(8)(i) provides,

- (i) Motion for Order Compelling Discovery. A party may file with the Presiding Officer, subject to 801 CMR 1.01(7)(a), a motion to compel discovery if a discovery request is not honored, or only partially honored, or interrogatories or questions at deposition are not fully answered. If the motion is granted and the other Party fails without good cause to obey an order to provide or permit discovery, the Presiding Officer before whom the action is pending may make orders in regard to the failure as are just, including one or more of the following:
 - 1. An order that designated facts shall be established adversely to the Party failing to comply with the order; or
 - 2. An order refusing to allow the disobedient Party to support or oppose designated claims or defenses, or prohibiting him or her from introducing evidence on designated matters.

801CMR 1.01(8)(i). On September 4, 2012, the Fire Department having failed to respond to the motion to compel discovery or to submit the documents requested, I allowed the motion to compel discovery, requiring the Fire Department to produce the documents requested by

September 18, 2012. The Fire Department failed to produce the documents requested by September 18 or thereafter.

Since the hearing in this case has already been conducted and the Fire Department has introduced evidence into the record, an order issued pursuant to the rule at 801 CMR 1.01(8)(i) prohibiting it from introducing evidence on designated matters would be moot. Instead, certain facts shall be established adversely to the Appointing Authority. The Fire Department bypassed the Appellant based on two job references. Therefore, the following facts are established adverse to the Appointing Authority (hereinafter “Adverse Ruling”) in this case in this regard:

- 1) the Fire Department did not produce to the Appellant any evidence that the selected candidates had superior employment references to those of the Appellant;
- 2) the Fire Department failed and/or refused to produce documents sought by the Appellant and that the Commission ordered to be produced;
- 3) the Appellant filed with his application the positive employment references from National Ambulance in Springfield contained in Exhibit 5, which the Appellant testified he included in the information he submitted with his employment application to the Fire Department and were not included in the copy of the Applicant’s employment application produced by the City as Exhibit 1 at the Commission hearing. The Appellant is hereby deemed to have submitted the positive references from National Ambulance with his employment application;
- 4) significant weight is given to the positive employment reference letters from National Ambulance contained in Exhibit 5;
- 5) the one negative phone employment reference provided to the Fire Department by Director of Operations of National Ambulance and relied upon by the Fire Department in part to bypass the Appellant is given little weight because it appears that the Appellant left the employ of National Ambulance to work for Am B Care Ambulance in Springfield, which is a competitor of National Ambulance, and because Exhibit 5 contains three (3) positive references from National Ambulance personnel who directly supervised the Appellant or worked him and a letter from the Director of Operations who thanked him for his service and wished him well;
- 6) the Fire Department failed to obtain an employment reference from Am B Care Ambulance, the Appellant’s employer at the time of his application to the Fire Department, even though the Appellant listed an individual at Am B Care as a reference in the References section of the Firefighter application; and

- 7) there is no evidence that the Fire Department contacted the three references in the Appellant's application.

For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT:

At the full hearing, five (5) exhibits were entered into evidence by the parties; exhibits 1 – 3 were offered into evidence by the City; Exhibits 4, 5 were offered into evidence by the Appellant. Based on these exhibits and the testimony of the following witnesses, according to the credibility determined herein, by:

For the Appointing Authority:

- Jerrold E. Prendergast, Deputy Fire Chief, City of Springfield (hereinafter "Deputy Prendergast")

For the Appellant:

- Randolph S. Blake, Lieutenant, City of Springfield Fire Department (hereinafter "Lt. Blake")
- Alonzo Hardnett (Appellant)

as well as the Investigation Orders, all matters filed in this case, and all relevant statutes, caselaw, regulations and policies, a preponderance of the evidence and reasonable inferences therefrom, and the Adverse Ruling above, establishes the following facts:

1. Mr. Hardnett was born in New York in 1973. (Exhibit 1) He graduated from Amherst Regional High School in 1991 and subsequently took college courses at Holyoke Community College and Springfield College. He attended the Massachusetts Firefighting Academy and graduated in 2004. He has also taken Emergency Medical Technical training and he has received certifications for emergency medical services,

National Fire Protection Association Standards, and for a course on Basic Wildland Fire Suppression. (Ex. 4)

2. Mr. Hardnett worked at the Granby Fire Department from December 2004 to April 2007 and worked as a per diem Firefighter in Granby from July 2004 to December 2004 and as a call Firefighter in Granby from November 2001 to July 2004.¹ In addition, Mr. Hardnett worked at National Ambulance in Springfield as a paramedic from September 2008 to July 2009. At the time of the Commission's hearing in this case, Mr. Hardnett was employed as a paramedic at Am B Care Ambulance in Springfield, where he started working in September 2009. Mr. Hardnett speaks Spanish fluently. (Exs. 1, 4) He bought a home in Springfield in order to be eligible for the residence preference to be a Springfield Firefighter. (Hardnett Testimony)
3. In 2008, the state Human Resources Division (hereinafter "HRD") administered an examination for the position of Springfield firefighter. (Investigation – Uncontested).
4. Individuals who took and passed the examination were placed on an eligible list of candidates established by HRD in December 2008. The Appellant and Zachary Prendergast, Deputy Prendergast's son, took and passed the exam and were on the eligible list. The eligible list was valid until November 30, 2010. (Investigation – Uncontested)
5. At all pertinent times, the Appointing Authority for the Fire Department was Springfield Fire Commissioner Gary Cassanelli.² (Investigation; Prendergast Testimony here)
6. At the Investigation hearing, Commissioner Cassanelli testified that Deputy Prendergast told him "early on" that his (Prendergast's) son was among the candidates on the eligible

¹ Granby was not a civil service community and, therefore, was not subject to the just cause requirement in civil service communities regarding disciplinary matters.

² Commissioner Cassinelli retired after he selected Firefighters from the 2010-2011 selection and review process.

list. Commissioner Cassanelli stated further that he told Deputy Prendergast that he would need to recuse himself from the selection process if his son became a “viable candidate.” Commissioner Cassanelli also testified that his definition of “viable candidate” was someone who was among the first “2n+1” candidates that could be considered for appointment. Since Commissioner Cassanelli did not consider Zachary Prendergast a “viable candidate” early in the process, he saw no need for Deputy Prendergast to recuse himself at that point. (Investigation - Cassanelli Testimony)

Deputy Prendergast conducted the background investigation of his son. (Investigation Orders)

7. At different times in 2010, the Fire Department submitted requisitions to the state Human Resources Division (hereinafter “HRD”) requesting certifications with the names of eligible candidates who had taken and passed the 2008 Firefighter exam and may be considered for employment. At first, the Fire Department was authorized to fill six (6) positions but the authorization later grew to twenty (20)³, necessitating the additional certification. HRD subsequently issued certifications to the Fire Department with the number 206437 on different dates. (Investigation Orders)
8. Mr. Hardnett’s name appeared on the page 2 of 5 of the first certification #206437 issued by HRD to the Fire Department on April 12, 2010. Mr. Hardnett signed the certification indicating he was willing to accept employment. (Investigation - documents produced)
9. On May 25, 2010, Mr. Hardnett completed a Recruit Candidate Information Form. (hereinafter “application”) (Ex. 1) On the application, Mr. Hardnett stated that the reason he had left the Granby Fire Department was “political” and he checked “yes” in

³ The Investigation indicates that there appears to have been some confusion about the exact number of vacancies the Fire Department was authorized to fill but ultimately it appears that twenty (20) positions were filled.

response to the question, “Have you ever been dismissed or asked to resign form (sic) any employment or position you have held?” (Ex. 1, p. 4)

10. On the application, Mr. Hardnett provided the names of three references: one from a retired Amherst Fire Captain and EMS Educator, whom he had then known for five years; the Vice President of Marketing of Am B Care Ambulance, whom Mr. Hardnett had then known for one year; and an Agawam Firefighter/Paramedic, whom Mr. Hardnett had then known for ten or more years. (Ex. 1; Ex. 4, p. 5) There is no evidence that the Fire Department contacted the three references supplied by Mr. Hardnett in his application. (Adverse Ruling)
11. Following the Fire Department’s receipt of completed applications from candidates on certification number 206437 who indicated they would accept employment, Deputy Prendergast conducted background investigations of the candidates, including that of the Appellant and Zachery Prendergast. (Prendergast Testimony here; Investigation – Prendergast Testimony)
12. The Fire Department did not obtain a reference for Mr. Hardnett from Am B Care Ambulance. (Adverse Ruling) The Fire Department called National Ambulance for a reference and the Director of Operations gave stated that Mr. Hardnett performed below average and that he would not rehire him even though Mr. Hardnett submitted with his application positive reference letters from others at National Ambulance who either directly supervised Mr. Hardnett or worked directly with him and included a letter from the Director of Operations who thanked Mr. Hardnett for his service and wished him well. (Exs. 1, 2, 3, and 5; Prendergast Testimony here; Adverse Ruling) National Ambulance is a competitor of Am B Care Ambulance, Mr. Hardnett’s current employer.

(Hardnett Testimony) For these reasons, I give the one negative reference from National Ambulance little weight and the positive reference letters from National Ambulance significant weight.

13. The Fire Department contacted the Granby Fire Department to obtain a reference for the Appellant and was referred to a law firm and advised that it would not comment in this regard. (Ex. 1; Prendergast Testimony here)

14. During the 2010-2011 selection and review process, the Fire Department invited the Appellant to an interview. (Prendergast Testimony; Harnett Testimony) In the course of Mr. Hardnett's interview, he was asked the reason he left the employ of the Granby Fire Department. (Prendergast Testimony here) He responded that, in the interest of professionalism, he did not want to disparage the Granby Fire Department and he stated that the reason was "political." (Hardnett Testimony)

15. By letter dated September 1, 2010, Fire Commissioner Cassanelli wrote to HRD requesting the bypass of Mr. Hardnett stating as reason therefor that he,

"... stated that he was dismissed from the Granby Fire Department ... for 'political' reasons and he left National Ambulance to assist in a family business and for an opportunity with a busier company.

During an employment check of candidate Hardnett the Granby Fire Department would not provide any information regarding his employment and stated that upon advice of counsel they could not provide any information. National Ambulance stated that his performance compared with others doing the same work was below average. They would not provide a reason as to why he left and stated that they would not rehire him.

Based on the less than positive employment references provided by Candidate Hardnett it is my opinion that he be bypassed. ..."

(Exhibit 2)

16. By letter dated December 22, 2010, Deputy Prendergast advised Mr. Hardnett that he had been bypassed, stating, "Enclosed please find a copy of the correspondence submitted by the Springfield Fire Department to the Human Resources Division that includes reason

for not selecting you” (Ex. 3) Mr. Hardnett received the December 22, 2010 letter but it did not include a copy of the September 1, 2010 bypass letter to HRD; Mr. Hardnett did not receive the September 1, 2010 bypass letter sent to HRD until he requested it in the course of this appeal. (Hardnett Testimony)

17. On April 19, 2011, Mr. Hardnett filed the instant appeal. (Administrative Notice)⁴

18. Having taken and passed the 2008 Firefighter exam, Zachary Prendergast’s name appeared on the eligible list and, subsequently, it appeared on the additional certification #206437 that was issued on April 28, 2010, on page 3 of 7. Specifically, Zachary Prendergast was listed among a group of “C-Tied” candidates on the April 28, 2010 certification, indicating that he was a minority candidate (Springfield is among the few cities and towns in Massachusetts still subject to a federal consent decree regarding minority hiring). (Investigation – Uncontested)

19. Zachary Prendergast filled out an application for the Firefighter position. The “Employment” section of the application is blank. Further information accompanying the application indicates Zachary Prendergast graduated from high school in 2007, attended college 2007-2010, and was expected to graduate from college in 2011. The “References” section of the application requires candidates to provide three references but there is only one reference to “Oliver”, providing no last name or address.⁵ However, Zachary Prendergast’s application includes a positive reference letter from Oliver H.

Layne, the Registrar at American International College, who taught a class that Zachary

⁴ The appeal indicates that the Appellant did not receive the Fire Department’s reasons for bypassing him until December 22, 2011. Thereafter, the Appellant, acting pro se, attempted to file the appeal at HRD by mistake but in a timely manner and, upon learning of the error, correctly filed the appeal at the Commission. (Administrative Notice)

⁵ Other items in Zachary Prendergast’s application are also blank: a form in the application requiring the applicant’s notarized signature, the question “Do you use tobacco products?”, the question “Have you ever used an illegal drug?”, and the question, “Have you ever been dismissed or asked to resign form (sic) any employment or position you have held?”. (Investigation – documents produced)

Prendergast took and who offered him a “position in his office.” There is no other employment information in Zachary Prendergast’s application. There is a positive reference letter with the application from someone who has known and coached the candidate for “many years.” (Investigation – documents produced)

20. Fifty-eight (58) individuals, including Zachary Prendergast, signed the 4/28/10 additional certification indicating their willingness to accept appointment. Fourteen (14) minority candidates, including Zachary Prendergast, were listed as tied on this certification and ten (10) non-minority candidates were listed as tied. (Investigation - Uncontested)

21. Deputy Prendergast testified at the Investigation hearing that, based on his review, his son was still not among the “2n+1” candidates that could be considered for appointment. Thus, he saw no need to recuse himself from the selection process at that time. (Investigation – Prendergast Testimony)

22. At the Investigation hearing, Deputy Prendergast testified that sometime in “late November” of 2010, two (2) candidates who had been offered conditional offers of employment contacted him to say that they were withdrawing from consideration. (Investigation – Prendergast Testimony) Deputy Prendergast testified at the Investigation hearing that after the two individuals withdrew from consideration, he notified Commissioner Cassanelli that: 1) the Fire Department would need to consider fourteen (14) additional candidates, all tied in the next position on the Certification at the time to fill the two slots now available; and 2) his son was among the tied candidates to be considered. (Investigation – Prendergast and Cassanelli Testimony)

23. Commissioner Cassanelli testified at the Investigation hearing that the process was supposed to go forward with Deputy Prendergast doing only what he could do objectively

and then turning it over to him for a final decision. (Investigation – Cassanelli Testimony)

24. Deputy Prendergast testified that he then proceeded to complete background checks for all fourteen (14) candidates, including his son, and that he asked Deputy Fire Chief John O'Shea⁶ to conduct the interviews and that Fire Captain David Rivera also participated in the interviews. (Investigation – Prendergast Testimony)
25. Deputy Prendergast testified at the Investigation hearing that, based on the background check he completed, only seven (7) of the fourteen (14) candidates at the time should be interviewed, including his son. (Investigation – Prendergast Testimony)
26. At the Investigation hearing, Deputy Prendergast further testified that, at some point prior to the interviews, he realized that two (2) of the seven (7) candidates had already been interviewed a few months earlier by mistake. Deputy Prendergast had participated in those interviews and did not recommend those two (2) candidates for appointment. Thus, only five (5) candidates would be interviewed for the two (2) remaining slots. (Investigation – Prendergast Testimony)
27. Zachary Prendergast was interviewed on November 30, 2010, the last day before the eligible list would expire. (Investigation – Prendergast Testimony)
28. Deputy O'Shea interviewed the pertinent candidates but did not make any recommendations. He handed the folders with the applicants' information to Deputy Prendergast, telling him his son did a good job during the interview. (Investigation – O'Shea Testimony)

⁶ Deputy O'Shea has retired. (Investigation)

29. Captain Rivera interviewed some but not all five of the pertinent candidates on or around November 30, 2010 and neither he nor Deputy O'Shea made any recommendations.
(Investigation – Rivera Testimony)
30. Deputy Prendergast testified at the Investigation that he put the folders for the pertinent remaining candidates in Commissioner Cassanelli's office and had no communication with the Commissioner regarding the candidates at that time. (Investigation – Prendergast Testimony)
31. Commissioner Cassanelli testified at the Investigation that he received the folders for the remaining candidates on November 30, 2010 and decided to appoint Zachery Prendergast and one other candidate to fill the remaining two positions. (Investigation – Cassanelli Testimony)
32. Lt. Randolph Blake, of the Springfield Fire Department, has known Mr. Hardnett as a Firefighter and otherwise for a long time and believes that he has a high character and is an excellent, serious candidate. Lt. Blake attended the Commission's Investigation hearing regarding the Springfield Fire Department. As a member of the Springfield Fire Department, Lt. Blake knows the Fire Department looks for good candidates who are highly qualified who can fit into the system and the Appellant has these qualifications. He has worked with some of the newly hired Firefighters and believes they are qualified.
(Blake Testimony)
33. In the course of the instant appeal, the Fire Department failed and/or refused to produce documents indicating that the selected candidates had superior employment references to those of the Appellant. (Adverse Ruling)

34. Mr. Hardnett appeared at the hearing as a professional man, respectful at all times (including his cross-examination of Deputy Prendergast), who is keenly committed to becoming a Firefighter in the Springfield Fire Department. Being pro se, Mr. Hardnett inquired about the hearing process to ensure that he was conducting himself accordingly. He testified sincerely and earnestly that he provided all the information requested of him by the Fire Department.⁷ He disclosed in his application that he had been dismissed or asked to resign from Granby Fire Department and stated the reason he is no longer employed there as “political,” and saying little more about it in the interest of professionalism. His suggestion that the negative reference provided by the Director of Operations of National Ambulance, his former employer, that Mr. Hardnett left National Ambulance to work at a competing ambulance company, both of which are in Springfield was plausible, if not likely. I find Mr. Hardnett’s testimony credible. (Hardnett Testimony and Demeanor)
35. Lt. Blake testified in support of Mr. Hardnett. Lt. Blake was professional in his appearance and testimony. He testified that he has known Mr. Hardnett personally and as a Firefighter for a long time and believes the Mr. Hardnett has “high character” and he is a serious candidate for the Firefighter position. As a member of the Springfield Fire Department, Lt. Blake testified that he knows the Fire Department looks for good candidates with high qualification that can fit in and Mr. Hardnett has these qualifications. When he was asked if there are any reasons that Mr. Hardnett would not be selected for the position, Lt. Blake testified candidly that he is not qualified to answer but he can speak to Mr. Hardnett’s abilities and that he is an excellent candidate. Asked

⁷ The Fire Department did not cross-examine Mr. Hardnett.

to comment on the quality of the new hires from the 2010-2011 review and selection, Lt. Blake testified that he has worked with some of them and acknowledged that they are qualified. By testifying in support of Mr. Hardnett, Lt. Blake put himself in an uncomfortable position with respect to his employer, indicating the strength of his convictions. Therefore, I find Lt. Blake's testimony credible. (Blake Testimony and Demeanor)

36. Deputy Prendergast testified for the Fire Department. In doing so, Deputy Prendergast appeared professionally as he recalled certain details of the 2010-2011 review and selection process. Specifically, Deputy Prendergast testified that he reviewed the background of all of the applicants and he remembered reviewing Mr. Hardnett's application and that Mr. Hardnett was interviewed for the Firefighter job. Deputy Prendergast was supposed to recuse himself from the selection process if his son became a "viable candidate" and yet he conducted the background investigation of his son. He testified that he was informed Mr. Hardnett's work history was below average compared to that of other applicants, although there was no evidence to support this testimony and the Fire Department failed and/or refused to produce such evidence to Mr. Hardnett when he asked or the Fire Department was ordered to do so. Deputy Prendergast also testified that it was not he who decided whom to hire, that he compiled the candidates' information and gave the information to Commissioner Cassanelli to decide whom to hire. However, Deputy Prendergast was involved in activities in the process that resulted in certain candidates moving forward in the 2010 – 2011 review and selection process while others were not (such as Mr. Hardnett), his son's name was on the certification and he was ultimately hired, giving the appearance of impropriety, even if there was no

impropriety in fact. Deputy Prendergast testified that in the course of the background check on Mr. Hardnett, he looked into Mr. Hardnett's departure from Granby Fire Department and National Ambulance, as the circumstances warranted. However, there is no indication that Deputy Prendergast reviewed the positive references for Mr. Hardnett from National Ambulance submitted with his application, that he contacted the three references that Mr. Hardnett listed in his application, or that he asked Mr. Hardnett's then current employer for a reference. With respect to employment, Zachary Prendergast's application listed no employers, although it included a positive reference letter from a college Registrar regarding a course he taught that Zachary Prendergast had taken and that Zachary Prendergast had worked in this office. In the end, Zachary Prendergast was hired by the Fire Department and Mr. Hardnett was not, even though Mr. Hardnett was higher on the certification. For these reasons, I find Deputy Prendergast's testimony less credible than that of Lt. Blake and Mr. Hardnett. (Prendergast Testimony and Demeanor here)

DISCUSSION

Upon an appeal, the appointing authority has the burden of proving by a preponderance of the evidence that the reasons stated for the bypass are justified. Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 241 (2006). Reasonable justification is established when such an action is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law." Comm'rs of Civil Serv. v. Municipal Ct., 359 Mass. 211, 214 (1971) (*quoting* Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. *See City of Beverly v. Civil Serv. Comm’n*, 78 Mass.App.Ct. 182, 189 (2010). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *City of Beverly*, 78 Mass.App.Ct. at 187 (*quoting City of Leominster v. Stratton*, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the town, but rather decides whether 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.” *Id.* at 824 (*quoting Watertown v. Arria*, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification” shown. *City of Beverly*, 78 Mass.App.Ct. at 188. “In making that analysis, the commission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions” *City of Cambridge v. Civil Serv. Comm’n*, 43 Mass.App.Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997) (*citing Murray v. Second Dist. Court of E. Middlesex*, 389 Mass. 508, 514 (1983); *Kelleher v. Personnel Adm’r. of the Dept. of Personnel Admin.*, 421 Mass. 382, 387 (1995); *Police Comm’r. of Bos. v. Civil Serv. Comm’n*, 22 Mass.App.Ct. 364, 370, *rev. den.*, 398 Mass. 1103 (1986)). The Commission is charged with ensuring that the system operates on “[b]asic merit principles.” *Mass. Assn. of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, at 259 (2001). “When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.”

City of Cambridge, 43 Mass.App.Ct. at 304. “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. (citing Sch. Comm’n. of Salem v. Civil Serv. Comm’n., 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r. of Health & Hosps. of Bos. v. Civil Serv. Comm’n., 23 Mass.App.Ct. 410, 413 (1987)).

The Respondent’s Argument

The Fire Department argues that Mr. Hardnett’s bypass was a valid exercise of discretion based on the negative employment reference from National Ambulance and because the Granby Fire Department would not disclose the reason the Appellant left employment there. The Springfield Fire Department infers from the Appellant’s departure from the Granby Fire Department and from the Granby Fire Department’s refusal to comment on the Appellant’s departure that the Appellant’s employment was terminated by the Granby Fire Department. Further, the Fire Department averred, it costs a lot of money to train a Firefighter so towns do not terminate a Firefighter on a whim. As a result, it was reasonable for the Springfield Fire Department to be concerned about an applicant who has been terminated from a previous job. Moreover, the Fire Department submitted to HRD its reasons for bypassing the Appellant, which apparently was approved.

The Appellant’s Argument

Mr. Hardnett stated at the hearing that all he wanted is to be a Springfield Firefighter, that he believed he did everything that was needed for his application and answered every question posed to him for the job. He argued that the Fire Department failed to consider the positive employment references from National Ambulance that he submitted with his application and failed to consider that his then current employer was a direct competitor with National Ambulance, which explain the one negative reference the Fire Department received from National Ambulance. In addition, Mr. Hardnett averred that the reason he left Granby Fire Department was related to union activity in which he was involved there, although there was no evidence adduced in support of his testimony in

this regard. Finally, Mr. Hardnett stated that he believes his application was negatively affected by the fact that Zachary Prendergast was also being considered for appointment and that Deputy Prendergast was involved in the selection and review process. Specifically, Mr. Hardnett questioned whether Deputy Prendergast's involvement led to the non-selection of candidates so that his son would be selected.

Analysis

There is no question that an appointing authority's decision to bypass a candidate will survive an appeal if it proves by a preponderance of evidence that there was reasonable justification to do so. There is also no question that it is the Commission's charge to ensure that the system operates on basic merit principles. Here, the Fire Department based its bypass of Mr. Hardnett on a negative reference from National Ambulance, a former employer, as well as Mr. Hardnett's departure from Granby Fire Department, about which it was unable to obtain information from Granby. The Appellant's departure from Granby Fire Department certainly raises a concern. However, it is important to note that Mr. Hardnett fully disclosed it in his application and responded to questions about it in his interview, while not wanting to cast aspersions on Granby Fire Department in the interview because he did not want to appear to be unprofessional.

The Fire Department's reliance upon the negative reference from National Ambulance is questionable under the circumstances of this case. It ignores the fact that the negative reference from National Ambulance was given over the phone by the Director of Operations who had also written a letter, albeit perfunctory, thanking the Appellant for his service and wishing him well. It also ignores the three positive references that direct supervisors and a colleague at National Ambulance had written and were submitted with Mr. Hardnett's application. In addition, the Fire Department did not obtain a reference from Mr. Hardnett's then current employer, even though Mr. Hardnett listed a contact there on the list of references in his application. Nor is there any evidence that the Fire Department contacted the two other references Mr. Hardnett provided in his application.

Further undermining the Fire Department's decision to bypass Mr. Hardnett based on the one negative reference from National Ambulance and Mr. Hardnett's departure from Granby Fire Department was the lack of documentation concerning the manner in which the Springfield Fire Department assessed other candidates. Mr. Hardnett, pro se, requested that the Fire Department produce documentation relating to the candidates who were selected and those who were not selected to determine if he was treated fairly. The Fire Department failed and/or refused to respond to the Appellant's request, either by producing the documents to him or objecting to their production. Similarly, the Fire Department failed and/or refused to produce the documents to the Appellant or object to their production when ordered by the Commission to produce them. For these reasons, the Commission makes the Adverse Ruling noted above. In any event, as a result of the Fire Department's failure and/or refusal to produce the documentation sought by Mr. Hardnett, Mr. Hardnett was unable, for example, to learn what the employment references were for the candidates who were selected.

Finally, the Fire Department's decision to bypass Mr. Hardnett is undermined by Commission's Investigation Orders. Specifically, the Investigation of this appointment process revealed that Deputy Chief Prendergast's participation compromised the Fire Department's ability to ensure open and fair consideration of all candidates for the position of Firefighter.

CONCLUSION

For the reasons stated herein, the Fire Department did not establish, by a preponderance of the evidence, that it had reasonable justification to bypass Mr. Hardnett and the appeal is hereby ***allowed***. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993 and consistent with the Investigation Orders, the Commission orders the following:

- HRD shall place the name of Mr. Alonzo Hardnett at the top of any future certifications for the position of permanent full-time Firefighter in the City of Springfield until such time as he is appointed or bypassed.

- Deputy Prendergast shall play no role in the background check and/or interview of Mr. Hardnett and, in regard to the next hiring cycle, and candidates for original appointment to the position of Firefighter.

- With regard to the next hiring cycle in which Mr. Hardnett is considered for appointment: (a) candidate interviews must be conducted by a panel to be selected and arranged by an independent outside individual or firm that has experience in the review and selection of public safety personnel in Massachusetts; (b) neither the outside firm, nor any member of the interview panel, shall have any present or prior contractual, employment, or familial relationship to employees of the Springfield Fire Department or to any of the candidates; (c) the candidates will be provided, reasonably in advance of the interview, a description of the criteria by which their credentials and their interview performance will be evaluated; (d) the evaluation criteria shall be established by the independent individual or firm selected to arrange the interviews and shall contain such procedures and criteria that the outside individual or firm deems appropriate in consideration of a candidate for firefighter, provided that the Fire Commissioner may contribute by giving his opinion to the independent individual or firm as to any aspect of the interview process, including evaluation criteria, as he deems appropriate; (e) the interview panel shall render a written report of the interviews to the Fire Commissioner; and (f), the written report shall include a specific rating of each candidate's performance in each component or question during the interview, an overall ranking of the candidates, and a description of any unique positive and/or negative qualities or experience noted about any of the candidates.

Civil Service Commission

Cynthia A. Ittleman, Esq.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, and Stein, Commissioners [McDowell-Absent]) on February 7, 2013.

A true record. Attest:

Christopher C. Bowman
Chairman

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:

Alonzo Hardnett (Appellant)
Peter Fenton, Esq. (for the Fire Department)
John Marra, Esq. (HRD)