

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

**IN RE: HOLYOKE RESIDENCY
INVESTIGATION**

CSC Tracking No. I-19-137

Appearance for City of Holyoke:

Russell J. Dupere, Esq.
Dupere Law Offices
94 North Elm Street – Suite 307
Westfield, MA 01085

Appearance for Firefighter S and
Local 1683 IAAF :

Patrick Bryant, Esq.
Pyle, Rome, Ehrenberg, P.C.
2 Liberty Square -10th Floor
Boston, MA 02109

Commissioner:

Paul M. Stein

INTERIM FINDINGS AND CONCLUSION OF INVESTIGATION

Background

On December 19, 2019, as result of information provided to the Civil Service Commission (Commission) in Bacon v. City of Holyoke, 32 MCSR 219 (2019) [*Bacon*], and after a show cause conference held on December 11, 2019, the Commission voted 5-0 to initiate this investigation pursuant to G.L.c.31, §2(a) and §72. The purpose of the investigation was to make inquiry into whether a 2017 appointment by the City of Holyoke of a certain Firefighter (Firefighter S)¹ to a permanent, full-time position in the Holyoke Fire Department (HFD) was made in violation of civil service law, namely, whether or not Firefighter S had resided continuously in Holyoke for the one-year period preceding the April 2016 civil service examination so as to be entitled to claim a statutory residency preference on the certification from which candidates who passed that examination were appointed,

¹ This is a pseudonym.

without which preference Firefighter S would not have been eligible to be considered for such appointment.

On June 24, 2020, the Commission conducted a remote video investigative conference in this matter (via Webex). Holyoke and Firefighter S appeared and were represented by counsel. Eleven (11) Exhibits were introduced in evidence and testimony was received from the following four witnesses:

Called by the City of Holyoke:

- HFD Fire Chief Jeff Przekopowski
- HFD Fire Lt. Michael Boucher
- HFD Fire Lt. Raymond Ortiz

Called by Firefighter S

- HFD Firefighter S

Findings

1. In January 2017, Holyoke appointed ten (10) candidates to the position of permanent, full-time HFD Firefighter from Certification No. 04132, issued by the Massachusetts Human Resources Division (HRD) from the eligible list of candidates who took and passed the civil service examination for Firefighter administered by HRD on April 16, 2016. (Bacon; *Administrative Notice [HRD Form 14 dated 3/13/17 & 3/20/17]*)

2. Pursuant to G.L.c.31, §58, candidates on the eligible list “who have resided in [Holyoke] for one year immediately prior to the date of the examination” are placed on a certification “ahead of the name of any person who has not so resided . . . “ (Bacon)

3. All of the candidates considered and appointed in January 2017 claimed to be Holyoke residents during the one year prior to the April 2016 examination (i.e. April 16, 2015 to April 15, 2016), entitled to the Section 58 residency preference. (Bacon)

4. As part of the routine background investigation of the candidates, HFD assigned Fire Lieutenant Boucher to verify the candidate's residence. For the most part, Lt. Boucher's investigation focused primarily on confirming that a candidate was a current resident of Holyoke but a candidate's prior residence history and qualification for residency preference was not verified unless some specific information came to the investigator's attention during the investigation that raised a "red flag" about the candidate's residency preference. (*Bacon; Testimony of Boucher*)

5. In the case of Candidate Bacon, Lt. Boucher did find real "red flags" which caused him to question whether Candidate Bacon was then a current Holyoke resident. Given the discrepancies revealed by Lt. Boucher's initial investigation, he asked Candidate Bacon for documentation that established his Holyoke residency. (*Bacon; Testimony of Boucher*).

6. Candidate Bacon provided his motor vehicle registration that showed he registered his car in Holyoke in November 2016, and a voter record that showed he switched his voting registration from Belchertown to Longmeadow in November 2015 and then changed it an address in Holyoke on April 13, 2016, three days before the April 16, 2016 Firefighters' examination. (*Bacon*)

7. Candidate Bacon was asked about the discrepancies in the evidence of his Holyoke residency when he appeared for an interview before the Holyoke Board of Fire Commissioners (Board).² He asserted that he, his wife and stepson, did live in Holyoke with his sister, but provided no documentary evidence to support that statement. The Board decided that Candidate Bacon should not be selected for appointment because he could not verify that he met the requirements for Holyoke residency preference, i.e., resided in Holyoke from April 16, 2015 through April 15, 2016. (*Bacon*)

² In Holyoke, a three (3) member Board of Fire Commissioners serves as the Appointing Authority responsible for appointing HFD Firefighters. (*Bacon*)

8. In addition to Candidate Bacon, two of the other five candidates rejected for appointment, were also rejected because they could not verify their Holyoke residency for the year prior to the April 16, 2016 Firefighters' examination. (*Bacon*)

9. Candidate Bacon appealed his non-selection to the Commission. After a full evidentiary hearing, the Commission denied Candidate Bacon's appeal, concurring with Holyoke's conclusion that Candidate Bacon had not established by a preponderance of evidence that he resided in Holyoke for the year prior to the April 2016 Firefighters' examination. (*Bacon*)

10. In support of his appeal to the Commission, Candidate Bacon asserted that Holyoke had not treated him fairly, as there was another candidate (Firefighter S) who was appointed despite his questionable claim to residency preference that Holyoke had not investigated.

11. Firefighter S claimed that he resided in Holyoke in a residence owned by an HFD Firefighter (Firefighter D). Firefighter D did not fill out and return the landlord verification form sent to him. Lt. Boucher (accompanied by HFD Lt. Ortiz) visited the address and met with Firefighter D, who said Firefighter S was working and was not home, but he showed them a room he said Firefighter S purportedly was renting. This investigation satisfied Lt. Boucher that Firefighter S had been truthful about claiming to be a current Holyoke resident and he took no further action to investigate when Firefighter S moved to Holyoke or whether he had lived there for the year prior to the April 2016 Firefighter's exam. (*Exh.8; Testimony of Boucher*)

12. While the Commission found that allegation regarding whether Firefighter S's residency irrelevant to the merits of Candidate Bacon's appeal, the allegations raised questions that the Commission determined warranted the Commission's further attention. In the Bacon Decision, dated May 23, 2019, the Commission ordered that Holyoke provide the Commission with a "report of any additional information that supports [Firefighter] S's residency claim for the one (1) year

period prior to the 2016 firefighter exam so that the Commission could “decide, what, if any, further action is necessary.”(*Bacon*)

13. The initial report from Holyoke focused on the status of Firefighter S’s residency in January 2017, at the time of his appointment, as opposed to whether Firefighter S met the statutory requirements of continuously residing in Holyoke one year prior to the April 2016 Firefighter’s exam. Accordingly, the Commission scheduled a “Show Cause” Hearing for October 23, 2019 (rescheduled to December 11, 2019) and requested that, meanwhile, Holyoke conduct a more thorough, independent investigation and provide specific documentation to prove or disprove whether Firefighter S met the residency preference requirements. (*Procedural Order dated January 6, 2020 [Bowman, Chairman]*)

14. On December 4, 2019, Holyoke reported to the Commission: “As of today, the City is unable to prove or disprove whether [Firefighter S] at the time of his appointment met the residency requirement.” Based on this report and review of all of the documentation then submitted by the parties, before and after the Show Cause Hearing on December 11, 2019, the Commission voted to initiate this investigation in order to take sworn testimony and receive any additional evidence that Holyoke and Firefighter S could produce that was necessary to make a definitive conclusion about Firefighter S’s residency preference. (*Procedural Order dated January 6, 2020 [Bowman, Chairman]*)

15. Based on the testimony of the witnesses and the Exhibits in evidence, the preponderance of the evidence provided during the investigative conference established the following facts:

A. Firefighter S submitted a 25-page application, entitled “Personal History Statement” to the

HFD which contains a Certification on the last page, dated 12/20/16, which states:

“I hereby certify that I have personally completed and initialed each page of this form and any supplemental page(s) attached, and that all statements made are true and complete to the best of my knowledge and belief. *I understand that any misstatement of material fact may subject me to disqualification; or if I have been appointed, may disqualify me from continued employment.*” (*emphasis added*). (*Exh. I*)

B. The first page of the HFD application contains the following statement:

“There are very few automatic bases for rejection. Even issues of misconduct, such as prior illegal drug use, driving under the influence, theft or even arrest or conviction are usually not, in and of themselves, automatically disqualifying. However, deliberate misstatements or omissions can and often will result in your application being rejected, regardless of the nature or reason for the misstatements/omissions. In fact, one reason individuals ‘fail’ background investigations is because they deliberately withhold or misrepresent job-relevant information from their prospective employer.” *(emphasis added) (Exh.1)*

C. Among the responses provided by Firefighter S in his HFD application, he made the following statements related to his current and prior residences

- Section 1:3 – ADDRESS WHERE YOU RESIDE: [Street Address Redacted] Holyoke MA
- Section 4:21:A – ADDRESS WHERE YOU NOW LIVE – FROM: October 2014 to Present – [Street address redacted] Holyoke MA – OWNER: [Firefighter D] – NAMES OF THOSE WITH WHOM YOU LIVE: [Firefighter D]
- Section 4:21:B – FORMER ADDRESS – FROM: 2008 to 2014 – [Street address redacted] Easthampton MA - REASON FOR MOVING: Relationship Separation
- Section 4:21:C – FORMER ADDRESS – FROM: 2000 TO 2008 – [Street address redacted] Easthampton MA – NAMES OF THOSE WITH WHOM YOU LIVED; [Name redacted] (mother) – REASON FOR MOVING: New Home
- Section 5:39 – In November 2014, he applied for a position as EMT/Firefighter for the Easthampton Fire Department and indicated he was “on [the] list” for that position.³
- Section 9:77 –Easthampton listed as his residence on MA driver’s license with an Expiration Date: 12/29/2019)

(Exh.1)

D. As part of his investigation into Firefighter S’s application, Lt. Boucher also relied on the following information:

- A Tenant Verification Form sent on December 28, 2016 to the person Firefighter S had listed as his landlord from 2008 to 2014. This form (not required to be attested) was returned on 1/3/17 and stated that Firefighter S had lived at that address from 3/1/2008 to 9/31/2014 and left when he “broke up with his girlfriend”, which Lt Boucher found to be consistent with the statement on Firefighter S’s application that he had moved out in 2014 because of a “Relationship Separation.”.

³According to HRD, no certification was issued in 2014 to Easthampton for appointment of EMT/Firefighters, but there was a certification (#03147) issued to Easthampton in August 2015 as to which HRD’s records show that Firefighter S had responded and indicated “willing to Accept” but he was not selected. *(Exh.1; Administrative Notice [HRD/ Neogov.com; Certification # 03147])*

- Two attempted “unannounced” home visits to the Holyoke address. Firefighter S was not present on either visit but, at the second visit, Firefighter D showed Lt. Boucher and Lt. Ortiz the room that he said Firefighter S occupied.⁴
- Firefighter D submitted a personal letter of reference dated 12/21/2016 which stated that he had known Firefighter S of “many years” and “interacted with him in a variety of capacities” including working with him as an EMT at a private ambulance company. The letter did not mention that Firefighter S was renting a room from Firefighter D and he did not return the Tenant Verification Form sent to him.⁵
- A Massachusetts driver’s license (issued in December 2014 listing an address in Easthampton) but which contained a handwritten notation by Firefighter S that he had since changed his residence from Easthampton to Holyoke.

(Exhs2 through 5, 7, 8 & 10; Testimony of Boucher)

E. Based on the above documentation, Lt. Boucher (and his colleague Lt. Ortiz, who accompanied Lt. Boucher to the home visit to Firefighter D’s residence), both concluded that, “there was no indications of deceptiveness or untruthfulness” as to any of the residency information and, therefore, “there was no reason to look any further” into his residency preference. *(Exh.8; Testimony of Boucher & Ortiz)*

F. Firefighter S testified at the investigative conference:

- Firefighter S grew up in Easthampton. After attending Westfield State University where he received a bachelor’s degree in Sports Medicine in 2008, he moved back to Easthampton to live with his (former) girlfriend who was renting a home in Easthampton.
- He studied for and was certified as an EMT which started him on a career path with a private ambulance company in 2010. In 2014, he became an EMT instructor. He has now reached the level of Paramedic.
- In or about 2014, he decided that the next logical career step for him was to become a municipal firefighter.
- In or about October 2014, he moved out of his (former) girlfriend’s home after they mutually agreed to separate. He hoped, at the time, that the separation would be temporary and, eventually, they would resume the relationship.

⁴Firefighter D had offered to contact Firefighter S to arrange a visit when Firefighter S would be home, but Firefighter D was told not to do that because the visit had to be “unannounced.”

⁵When asked why he did not follow-up with Firefighter D to obtain a tenant verification form Lt. Boucher said that would be giving special treatment to Firefighter S because he happened to be renting from an HFD firefighter, and that would not be fair to candidates who were not renting from an HFD employee. *(Testimony of Boucher)*

- He had established a friendship with Firefighter D through their work together for the private ambulance service. Firefighter D offered to let Firefighter S live with him in Holyoke for as long as he needed.
- When Firefighter S's Driver's License came up for renewal in December 2014, he renewed it "on-line". He did not think to change the address from his parents' home, which he had been the address he had used on his license since he first obtained it.
- Firefighter S never reconciled with his (former) girlfriend. They both eventually married others.
- When Firefighter S's former girlfriend got married, she moved out of the Easthampton home and, in or about July 2018, Firefighter S purchased the home and moved back to Easthampton where he now lives with his current spouse and their young child.
- When Firefighter S applied to take the 2016 civil service Firefighter's examination, he provided Firefighter D's home as his residence. At the time he applied to take the examination, he did not know that being a Holyoke resident gave him a "preference" in being hired as a HFD Firefighter.
- During the time that Firefighter S's application was under consideration by the HFD, he was then working many extra hours as an EMT as well as teaching two nights a week and on weekends, as well as in the "clinical" phase of his Paramedic certification. He said he was getting about 2 hours sleep a night at the time.

(Testimony of Firefighter S)

G. After the Commission initiated this investigation, Firefighter S provided a letter from Firefighter D, dated November 14, 2019, addressed "To: Whom it may concern", which stated:

"I'm writing this letter on behalf of [Firefighter S] who resided at my residence, [street address redacted] in Holyoke MA. I was his landlord from October 2014 until June 2018. [Firefighter S] paid me rent on a bi-weekly basis in the form of cash payments. Toward the end of [Firefighter S's] stay with me he expressed that he would be moving out for a different place to live."

(Exh.9)

H. Firefighter D did not appear or testify at the investigative conference. No documents were provided nor was any testimony proffered that corroborated the statements that Firefighter S had paid him rent as asserted in the unsworn letter *(Exh.9; Testimony of Firefighter S)*

I. In February 2020, Jeffrey Przekopowski became the HFD Fire Chief. After assuming that position, he reviewed the HFD's hiring process and the procedures for conducting background investigations of candidates for appointment as HFD firefighters. Chief Przekopowski provided a copy of the draft "New hire procedure" which he had prepared which, among other

things, added new procedures designed to improve the quality of background investigations and, in particular, to address the issues regarding verification of a candidate's residency and qualification to claim a residency preference that were identified by the Commission in the Bacon and through this investigation. In particular, the proposed new procedures provided:

- “Require specific proof of residency for period of time required by civil service guidelines (1 year prior to test date) Said proof of residency shall include, but not be limited to, landlord verification form, lease agreement, rent payments, mortgage/deed, utility bills/payments, credit report, white pages, motor vehicle registration and insurance, voter registration information, etc.”
- “Submit Civil Service Residency Verification form.”

J. Lt. Boucher and Chief Przekopowski did agree that the December 2014 issuance of a driver's license showing an Easthampton address was not consistent with the evidence that Firefighter S had moved from Easthampton to Holyoke in October 2014. It would have been the type of “red flag” that warranted further follow-up and/or investigation. (Testimony of Boucher & Przekopowski)

K. Lt. Boucher and Lt. Ortiz testified that Firefighter S's sworn testimony before the Commission sufficiently satisfied them about the discrepancy in the residences listed on his Driver's License. (*Testimony of Boucher & Ortiz*)

L. Chief Przekopowski also indicated that he would incorporate further additional improvements to the proposed policy suggested by the Commission. (*Exh.9; Testimony of Chief Przekopowski*)

16. Although given the opportunity to do so, Firefighter S produced no documentation that established when, if ever, he changed his residence from Easthampton to Holyoke, or that he had continuously resided in Holyoke for one year prior to the Firefighter's examination. He did not produce any evidence that he voted in Holyoke, paid his motor vehicle excise tax to Holyoke, that he registered his motor vehicle in Holyoke or that he notified his insurance company that his motor

vehicle was garaged in Holyoke. He produced no evidence of bank statements, billing statements, receipts or mail addressed to him at the Holyoke address. As noted earlier, neither Firefighter S nor Firefighter D provided any records that supported the claim that Firefighter S was paying Firefighter rent on a bi-weekly, or any other, basis. (*Bacon; Testimony of Firefighter S*)

17. At the time that Holyoke hired Firefighter S (and 9 other candidates) from Certification 04132, Holyoke was, and still remains, a “Consent Decree” community, under which it was required to make certain accommodations to ensure that minorities (Black and Hispanic candidates) were fairly represented and ranked on the Certification.⁶ After the ordering of the certification as required under the “Consent Decree”, three minority candidates were hired, including the lowest ranked candidate (position 18), who was in a tie group with another minority candidate (position 19) who was not hired. Below those candidates, all Holyoke residents, were additional minorities and non-minorities (positions 24 through 28) listed outside the “2n+1” formula. (*Administrative Notice [HRD Reordered Certification & Forms 14 dated 3/13/17 & 3/20/17]*).

Statutory Framework

G.L.c.31, §2 states in relevant part:

“In addition to its other powers and duties, the commission shall have the following powers and duties: (a) To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.”

G.L.c.31, §72 states in part:

The commission or the administrator may investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services. The commission or the administrator may report the results of any such investigation to the governor or the general court.

The commission or administrator, upon the request of an appointing authority, shall inquire into the efficiency and conduct of any employee in a civil service position who was appointed by such appointing authority. The commission or the administrator may also

⁶ Firefighter S is a non-minority candidate.

conduct such an inquiry at any time without such request by an appointing authority. After conducting an inquiry pursuant to this paragraph, the commission or administrator may recommend to the appointing authority that such employee be removed or may make other appropriate recommendations.

G.L.c.31, §73, provides, in relevant part:

If, in the opinion of the administrator, a person is appointed or employed in a civil service position in violation of civil service law and rules, the commission or the administrator shall mail a written notice of such violation to such person and to the appointing authority. The commission or the administrator shall then file a written notice of such violation with . . .the officer whose duty it is to pay the salary or compensation of such person

The payment of any salary or compensation to such person shall cease at the expiration of one week after the filing of such written notice

Finally, the Commission is authorized to “assess a fee upon the appointing authority when appropriate action has occurred.” See, e.g., Acts of 2019, c. 41, §2, Line Item 1108-1011,

These statutes confer significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate and what remedies are in order when illegal or inappropriate action has occurred. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007). See also Dennehy v. Civ. Serv. Comm’n, No. 2013-00540, Suffolk Superior Court (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.”). The Commission has consistently acted to protect the civil service rights of those who were prejudiced by systemic violations. See In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield, 24 MCSR 627 (2011) (Commission opened an investigation and ordered relief when it became known that the Deputy Fire Chief of the Springfield Fire Department had been involved in the hiring of a class of firefighters which involved the bypassing of certain more highly ranked candidates in favor of the Deputy Chief’s son) In Re: Town of Oxford’s 2011 Review and Selection of Permanent Intermittent Police Officer Officers, CSC No. I-11-280 (2011) (Commission took action after investigation of appointments made in Oxford in which the direct involvement of the appointing authority compromised a selection process

which favored certain relatives of the appointing authorities); In Re: City of Methuen’s Review and Selection of Reserve Police Officer Candidates in the Fall of 2008, CSC No.I-09-290 (2010) (same). Request by John Mograss, et al. to Investigate the Failure To Administer Civil Service Examinations the Public Safety Position of Captain at the Massachusetts Department of Correction, 28 MCSR 601 (2015) (Commission entertained a request for investigation by a group of Lieutenants and Captains of the Department of Correction, to determine why no examinations had been held since 1981 for promotion to the civil service position of Captain, which deprived them of the opportunity to obtain civil service permanency in this position)

Conclusion

Among the paramount “basic merit principles” which govern Massachusetts Civil Service law is the requirement for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment.” G.L.c.31, §1. The opportunity for consideration and selection of candidates based on their relative ranking on eligible lists after competitive examinations, based on examination scores and statutory preferences, is the core means by which this mission is accomplished. G.L.c.31, §26 & §27. Among the statutory preferences incorporated into the civil service law, residents of a civil service community are entitled to be considered for original appointment to public safety positions ahead of non-residents. G.L.c.31, §58, ¶3 provides:

“If any person who has resided in a city or town for one year immediately prior to the date of examination for appointment to the police force or fire force of said city or town has the same standing on the eligible list established as the result of such examination as another person who has not so resided in said city or town, the administrator, when certifying names to the appointing authority for the police force or fire force of said city or town, shall place the name of the person who has so resided ahead of the name of the person who has not so resided; provided, that upon written request of the appointing authority to the administrator, the administrator shall, when certifying names from said eligible list for original appointment to the police force or fire force of a city or town, place the names of all persons who have resided

in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.”⁷⁷

This statutory preference for residents, along with the application of the so-called “2n+1” formula, which requires selection of candidates from the first “2n+1” names on a certification, means, when a candidate is erroneously placed on a certification as a resident, that error carries significant consequences for other qualified residents (or otherwise higher ranked non-residents) who, thereby would be excluded from consideration because the insertion of the candidate who was not entitled to claim residency bumps them out of consideration. Because of the serious consequence for candidates, e.g., Holyoke residents who did meet the statutory residency requirement (which in this case included at least one minority candidate) and who may have lost the opportunity for appointment through no fault of their own, and may not even become aware that they were aggrieved by the violation, the Commission takes violations of the residency preference law seriously.

In Layton v Somerville, 24 MCSR 440 (2011), on reconsideration, 24 MCSR 619 (2011), in concluding that candidates were improperly granted residency preference, the Commission determined that the word “residence” means “. . . the physical location of the employee’s house or other dwelling place.” Crete v. City of Lawrence, 18 MCSR 22, 23 (2005) citing Doris v. Police Commissioner of Boston, 374 Mass. at 445 (1978). HRD’s Verification of Applicant’s Residence Preference form, states, in part, “. . . [p]ursuant to G.L. Chapter 31, Section 58 [a job applicant] [must] [] *maintain residence* in the Appointing Authority’s community for a *full year* preceding the date of the examination. Residence means the principal place of domicile of the applicant. *Principal place of domicile means an applicant’s true, fixed and permanent home.*” Id. (emphasis added). See also Investigation Re: Residency Preference of Certain Pittsfield Firefighters, 32 MCSR 230 (2019) (after investigation, candidates appointed who did not meet residency preference resigned)

⁷⁷ Holyoke applies the proviso requiring preference of all residents over all non-residents.

When Firefighter S, and the other nine (9) candidates, were hired from Certification #04132, HFD's investigation into the residency of those candidates focused on confirming the candidates' current residence and, unless a "red flag" suggested that the candidate was not a current resident of Holyoke, no regular protocol was in place to proactively investigate whether a candidate also met the requirement for residency preference, i.e., proving that he/she had resided in Holyoke for at least one full year prior to taking the Firefighter's examination.

The HFD, under the direction of recently appointed Chief Przekopowski, now has taken steps to ensure that, going forward, the two separate matters of current residency and residency preference BOTH are thoroughly investigated and confirmed. The Commission acknowledges this positive change. In the case of Firefighter S, however, many "red flags", remain that leave serious doubt that he was qualified for residency preference at the time he was hired.

- As recently as December 2019, at the onset of this investigation, six months after the Commission first requested that Holyoke investigate the matter, Holyoke acknowledged that it still was unable to verify whether Firefighter S met the statutory residency preference requirements.
- At the investigative conference, Firefighter S testified that, when he first moved to Holyoke he did not expect to stay at the home of Firefighter D for very long, but expected to reconcile with his former girlfriend and to resume living with her in Easthampton.
- Firefighter S demonstrated continuing ties to Easthampton, as evidenced by his "willing to accept" appointment to the Easthampton Fire Department, perhaps as recently as August 2015, and his 2018 purchase of the Easthampton home where he and his former girlfriend had lived together.

- Firefighter D was not called to testify at the investigative conference, which leaves unexplained why Firefighter D neglected to mention that Firefighter S resided with him when he wrote his letter of reference in December 2016, why he neglected to return the Landlord Verification Form sent to him, and why neither Firefighter D nor Firefighter S have produced any records that confirm the tenancy or the alleged regular rent payments.
- Firefighter S produced none of the usual documentary indicia of residence. In particular, he did not provide any of the following information: (a) motor vehicle registration, excise tax bills, or insurance policies showing that he registered and insured his motor vehicle as a Holyoke resident during the requisite one year period; (b) evidence to show that he was registered to vote in Holyoke, that he was not registered to vote in Easthampton and did not continue to vote in Easthampton during the requisite one year period; and (c) billing records or other mail, including but not limited to mail sent by HRD, to show that he was receiving such mail in Holyoke, not at a residence in Easthampton, during the requisite one year period..

Without resolution of these “red flags”, the Commission is fully justified to conclude this investigation, find that Firefighter S was not a Holyoke resident, as defined under civil service law, for one year prior to the date of the April 2016 Firefighter’s Examination and take action to remediate what appears to be a facially illegal appointment. I recognize that Firefighter S has become a well-regarded member of the HFD, but that, alone, cannot excuse the fact that his appointment appears to have been unlawful and, if so, it appears that it prevented the hiring of at least one, other qualified (minority) candidate. Accordingly, after careful consideration, Holyoke and Firefighter S shall be provided one further opportunity to produce sufficient proof to show that the appointment of Firefighter S was made in accordance with, and not in violation of, civil service law.

Therefore, I make the following interim conclusions and orders:

A. Holyoke shall complete the following specific investigation of the “red flags” that remain unresolved concerning Firefighter S’s qualification to claim a Holyoke residence preference at the time he was hired, which must include, at a minimum: (1) a Landlord Verification Form completed by Firefighter D attesting to the period of time that Firefighter S rented from him and, specifically, stating when he first began receiving rent from Firefighter S, when he last received rent from him, and the amount of rent (or approximate amount) paid in 2014, 2015 and 2016; (2) specific documentation, including but not limited to at least three of the following; (a) all 2014-2016 Easthampton and Holyoke voting records, (b) all 2014-2016 motor vehicle registrations, (b) all 2014-2016 excise tax statements, (c) all 2014-2016 insurance policies and (d) six or more bank statements or other mail postmarked in 2015 or 2016 and addressed to him in Holyoke; and (3) a copy of all correspondence and documentation prepared by or sent to Firefighter S in 2014 through 2016 regarding his application for appointment to the Easthampton Fire Department

B. Holyoke shall, forthwith, promulgate the proposed revisions to its New Hire Procedures, which will, at a minimum, incorporate the proposed additions provided to the Commission during this investigative conference, and to document, as part of any future background investigation of candidates for original appointment to the HFD, the specific steps taken and documentation upon which the HFD relies to prove that a candidate qualifies for a Holyoke residency preference. Satisfactory proof of a residency preference must include documentation in at least three of the following categories consistent with the establishment of a permanent residence in Holyoke: (a) voting records; (b) driver’s license; (c) motor vehicle registration; (d) excise tax bills; (e) real estate tax bills; (f) income tax returns; (g) bank statements; (h) property deed or leases; and (i) utility or other bills addressed to the candidate’s Holyoke address.

C. Holyoke shall report to the Commission, within 30 days of the date hereof, the results of its investigation and actions taken pursuant to Paragraphs A and B above, together with copies of all of the required documentation, at which time the Commission may initiate such further action as necessary or appropriate.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on November 19, 2020.

Notice to:

Russell Dupere, Esq. (for City of Holyoke)

Patrick Bryant, Esq. (for Firefighter S)

Patrick Butler, Esq. (HRD)