

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108

CHRISTOPHER KING,
Appellant

v.

G2-17-206

WESTFIELD FIRE COMMISSION,
Respondent

Appearance for Appellant:

Pro Se
Christopher King

Appearance for Respondent:

Jeffrey Krok, Esq.
City of Westfield
59 Court Street
Westfield, MA 01085

Commissioner:

Christopher C. Bowman

DECISION

On October 6, 2017, the Appellant, Christopher King (Mr. King), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Westfield Fire Commission (City or Fire Commission) to bypass him for promotional appointment to the position of Fire Captain in the City’s Fire Department (WFD). On November 8, 2017, I held a pre-hearing conference at the Springfield State Building in Springfield, MA. On January 31, 2018, I held a full hearing at the Westfield City Hall in Westfield, MA.¹ The full

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

hearing was digitally recorded and both parties received a CD of the proceeding.² On March 1st and 2nd, 2018, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

The City submitted thirteen (13) exhibits (A-M); and Lt. King submitted twelve (12) exhibits (1-12). Based on the documents submitted and the testimony of the following witnesses:

For the City:

- Mary Regan, Fire Chief, City of Westfield;
- Dean DesMarais, Fire Chief, City of Chicopee;
- Thomas Coulombe, Fire Chief, City of Ware;
- Carlo Bonavita, Fire Commissioner, City of Westfield;
- Alan Sirois, Fire Chief, Town of Agawam;
- Walter Nelson, Fire Chief, Town of Amherst;
- Albert Masciadrelli, Fire Commission Chair, City of Westfield;
- Jane Ssakiewicz, Personnel Director, City of Westfield;

For Mr. King:

- Christopher Kane, Fire Captain, City of Westfield;
- Jon-Randle Quarles, Firefighter / Paramedic, City of Westfield;
- Eric Liptak, Firefighter / Paramedic, City of Westfield;
- Patrick Kane, Jr., Deputy Fire Chief, City of Westfield;
- Christopher King, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, I find the following:

1. The City of Westfield has a population of approximately 41,500.
2. The Westfield Fire Department consists of a Fire Chief; five (5) Deputy Chiefs; Eight (8) line Captains; and approximately sixty-five (65) firefighters / EMT / Paramedics. (Testimony of Regan)

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

3. A three (3)-member Fire Commission serves as the Appointing Authority for the Fire Department in Westfield. (Testimony of Masciadrelli and Regan)
4. Mr. King took and passed the civil service examination for Fire Captain in November 2015 and received a score of 84. On or around April 1, 2016, the state's Human Resources Division (HRD) established an eligible list of candidates for Westfield Fire Captain. Using that eligible list, the Fire Commission created a Certification (03318) to fill one (1) permanent vacancy for Fire Captain. Mr. King's name appeared first on this Certification and the candidate selected for promotional appointment (Selected Candidate)³ appeared second. (Stipulated Facts and Testimony of Regan)
5. Mr. King has been employed by the Westfield Fire Department for seventeen (17) years. For most of that time, Mr. King served as a Firefighter / Paramedic. For approximately seventeen (17) months, while there was no eligible list in place for Captain, Mr. King served as a Provisional Captain for "A Group". (Testimony of Mr. King and Exhibit M)
6. Mr. King has an Associates degree in EMS / Fire Science. He is a nationally registered paramedic; certified as a state EMT / Paramedic; an American Heart Association ACLS – Provider; and provides training to other firefighters on the "decon trailer". From 2014 to 2016, Mr. King served as the Treasurer for the local firefighters' union. (Testimony of Mr. King and Exhibit M)
7. The Selected Candidate has been employed by the Westfield Fire Department for eleven (11) years as a Firefighter / EMT. (Exhibit M) For approximately twelve (12) months, while there was no eligible list in place for Captain, the Selected Candidate also served as a Provisional Captain. (Testimony of Regan)

³ The Selected Candidate attended the Civil Service Commission hearing.

8. The Selected Candidate has an Associates degree in Fire Science and a Bachelors degree in Business Administration. He has been trained or has training as a Fire Officer I, “SLICERS”, Firefighter 1 & 2, Hazmat Awareness, Elevator Rescue, E911, Flashover Simulator Training, Advanced EMT Transition and High Voltage Awareness. (Exhibit M)
9. On July 25, 2017, the City and Mr. King entered into a settlement agreement related to an unrelated disciplinary matter. As part of that agreement, Mr. King agreed to a written reprimand and the City agreed not to use this reprimand as a factor regarding the upcoming promotional appointment for Fire Captain. (Exhibit A)
10. To ensure that the reprimand was not a factor in the promotional process, the City “agreed ... to utilize a completely independent hiring panel to vet applicants for the Captain promotion ...” with the understanding that the Fire Commission made the ultimate decision regarding the promotional appointment. (Exhibit A)
11. The City’s Personnel Director assembled a panel (Panel) of four (4) Fire Chiefs from Chicopee, Ware, Agawam and Amherst to interview the candidates. (Testimony of Regan)
All four Fire Chiefs testified before the (Civil Service) Commission.
12. The interviews before the Panel were not recorded.
13. The Panel asked each candidate to respond to ten (10) questions and six (6) case scenarios. The panelists rated the responses to each question and case scenario from one (1) to five (5) with 1 being the poorest rating and 5 being the best rating, with the exception of one of the case scenarios, in which it appears that the candidate could receive up to 20 points, based on a list of pre-determined issues that the Panelists were looking for in the candidate’s response, for which 1 point was awarded for referencing each issue. (Exhibit F)

14. All four (4) panelists rated the Selected Candidate higher than Mr. King (85 v. 73; 73 v. 69; 72 v. 67; 60.5 v. 52.5) (Exhibit F)
15. Three (3) of the panelists took notes regarding the answers provided by the applicants. (Exhibit F and Exhibits 1A & 1B)
16. Dean Desmaris, one of the interview panelists, has been the Chief of the Chicopee Fire Department (143 employees) since January 5, 2017 and began working for that Department in 1987. (Testimony of Chief Desmaris) His scoring sheets indicate that he gave the Selected Candidate a cumulative score of 85 and Mr. King a score of 73. (Exhibit F) He did not know any of the candidates prior to the interviews. (Testimony of Chief Desmaris)
17. Chief Desmaris recalls that, although Mr. King and the Selected Candidate were “close” in terms of interview performance, the Selected Candidate performed better, providing more complete and accurate answers. (Testimony of Chief Desmaris)
18. The notes taken by Chief Desmaris during the interview are consistent with his testimony. For example, one of the questions references a hypothetical scenario in which a probationary firefighter is being “picked on” by another firefighter in an attempt to “break” him. Chief Desmaris’s notes indicate that the Selected Candidate stated that this behavior may constitute harassment, while Mr. King failed to mention this and responded by saying that he would “let probationary employee know it’s going to happen” and “have veteran crew member ‘tone it down’”. (Exhibit F)
19. Thomas Coulombe, another interview panelist, has been the Chief of the Ware Fire Department since 2000. He began serving full-time in the Ware Fire Department in 1987. He has previously worked for private sector companies involved in evaluating fire

department candidates. (Testimony of Chief Coulombe) His scoring sheets indicate that he gave the Selected Candidate a score of 60.5 and Mr. King a score of 62.5. (Exhibit F)

20. Chief Coulombe was concerned about Mr. King's response to one particular case scenario.

In that scenario, the candidate, as Fire Captain, has heard through the rumor mill that someone has been coming in to work hung over or under the influence of alcohol on a regular basis. Later, a firefighter who is a driver confides in the Fire Captain that he has an alcohol dependency problem and aspects of his life are getting out of control. Based on Mr. King's response, Chief Coulombe concluded that Mr. King would only bring this matter to the attention of the union, as opposed to notifying management. (Testimony of Chief Coulombe)

21. Alan Sirois, another interview panelist, has been the Chief of the Agawam Fire Department since 2011. He began working for the Agawam Fire Department in 2001. He also has prior firefighter experience in Maine. (Testimony of Chief Sirois) His scoring sheets indicate that he gave the Selected Candidate a score of 73 and Mr. King a score of 69. (Exhibit F)

22. Chief Sirois considered the interview performance of each of these candidates to be "very close". (Testimony of Chief Sirois)

23. In regard to the scenario referenced above related to a firefighter with alcohol dependency problems, Chief Sirois was concerned that Mr. King did not reference informing management. (Testimony of Chief Sirois)

24. The notes taken by Chief Sirois during the interview are consistent with his testimony. His notes regarding Mr. King's response to the question discussed above state: "passed info to union but not to mgt." (Exhibit F)

25. Chief Sirois recalls that, during a discussion after the interviews were completed, the other Fire Chiefs who served as panelist also raised concerns about Mr. King's response to this scenario. (Testimony of Chief Sirois)
26. Walter Nelson, another interview panelist, has been the Fire Chief of the Town of Amherst for eight (8) years. Prior to that, he served in the Holyoke Fire Department for twenty-eight (28) years in various capacities, including Deputy Fire Chief. (Testimony of Nelson) His scoring sheets indicate that he gave the Selected Candidate a score of 72 and Mr. King a score of 67. (Exhibit F)
27. Chief Nelson recalls that both candidates performed well during the interview. What separated the two (2) candidates for Chief Nelson was the case scenario related to the firefighter with an issue with alcohol dependency. Chief Nelson was concerned that Mr. King, in his response, never discussed informing the Fire Chief of the issue. Chief Nelson thought it was self-evident that this was a "big deal" and that Mr. King should have understood that the Fire Chief should be notified in this scenario. (Testimony of Chief Nelson)
28. On September 5, 2017, two (2) members of the Fire Commission (1 was absent) then conducted their own interview of the candidates during a public session of a Fire Commission meeting. Prior to the Fire Commission interviews, the Chairman and the City's Personnel Director provided an overview of the prior interviews conducted by the panel of Fire Chiefs and provided the Fire Commissioners with a sheet showing that the Fire Chiefs ranked the Selected Candidate 1st and Mr. King 2nd. (Exhibit L)

29. The Chairman of the Fire Commission conducted a detailed review of the notes and other material of the Fire Chiefs; the other Fire Commissioner only conducted a cursory review of that material. (Testimony of Chairman Masciadrelli and Commissioner Bonavita)
30. As part of the interview before the Fire Commission, each candidate was allowed to give an opening statement. Mr. King read from prepared notes and the Selected Candidate gave his opening statement without referencing notes. (Exhibit L)
31. Each candidate was asked, if promoted, what his goals and objectives would be for the Fire Department and where he sees himself in 5-10 years. (Exhibit L)
32. Each candidate was asked what personal attributes they possessed which would make them a good Fire Captain. (Exhibit L)
33. Each candidate was then asked to make a closing statement. (Exhibit L)
34. After the interviews, the Fire Commission, referencing the prior review of the Fire Chiefs, voted 2-0 to promote the Selected Candidate, thus bypassing Mr. King. (Exhibits C & L)
35. On September 8, 2017, the Fire Commission Chairman penned a "bypass letter" to Mr. King. The letter states that the decision was based on the results of the Fire Chiefs' interviews, the Fire Commission interviews and that "... [Selected Candidate] showed to be more prepared, technically advanced, committed as a supervisor and focused on the needs of not only the department but more importantly on the safety and success of his team." (Exhibit E)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts

Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 259 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1.

The role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions (City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010), citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 824-826 (2006)) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. Beverly. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited.

Analysis

As part of my assessment regarding whether political considerations, favoritism, or bias played a role in this promotional appointment, I listened carefully to all of the witnesses,

including the four (4) Fire Chiefs who served on the external interview panel. There was not even a hint of bias. Rather, their credible, forthright testimony showed that they took their role here seriously, and offered informed feedback based on their observations and over 115 years of collective experience in fire fighting.

While each of the Fire Chiefs candidly acknowledged that both of the candidates performed relatively well, all of the Fire Chiefs, both in their testimony and/or their notes, recalled that the Selected Candidate performed better and the Fire Chiefs offered valid, concrete examples to support their conclusions.

In addition to the above reasons, I gave the ratings of the Fire Chiefs even greater weight given the circumstances regarding why this external panel was created. As discussed in the findings, it was *Mr. King and the local union* that asked for an outside panel to review the candidates for promotion, to ensure that the process was not impacted by a written reprimand that Mr. King had agreed to shortly before the interview process here began. The City and the Fire Commission agreed to that request and assembled a group of Fire Chiefs with no prior knowledge of the candidates and/or their disciplinary histories. After a careful and thoughtful review, they unanimously concluded that the Selected Candidate performed better during the interview and conveyed that information to the Fire Commission. In his post-hearing brief, Mr. King appears to have a case of buyer's remorse, stating in part that: "... the Fire Commissioners put far too much weight on the pre-screen process with conflicting information of its intended purpose."

Finally, the evidence does not show that either of the Fire Commissioners was pre-disposed to voting for any particular candidate for promotion. While it would have been a better process if one of the Fire Commissioners had conducted more than a cursory review of the Fire Chiefs'

findings, I found the process used by the Fire Commission to be fair, impartial and highly transparent, as evidenced, in part, by conducting the interviews during a public (recorded) meeting.

While the Fire Commission, based on a thorough review process, has provided valid reasons for bypassing Mr. King for promotional appointment, nothing in this decision should be construed as painting Mr. King in a bad light and/or a reason for bypassing Mr. King in the future. Even though he was a pro se litigant before the Commission, his presentation was thorough and highly professional. Further, Mr. King's colleagues offered poignant testimony regarding his leadership and integrity. Finally, both Mr. King and the Selected Candidate offered compelling, heartfelt opening statements to the Fire Commission, showing their commitment to the Westfield Fire Department. I am confident that all of Mr. King's positive attributes will be considered by the Westfield Fire Commission when future vacancies arise.

Conclusion

For all of the above reasons, Mr. King's appeal under Docket No. G2-17-206 is hereby ***denied.***

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 13, 2018.

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. 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 to:

Christopher King (Appellant)

Jeffrey Krok, Esq. (for Respondent)