

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

MARCEL R. LAPIERRE,  
Appellant

v.

Docket No. G2-07-164

CITY OF CHICOPEE,  
Respondent

Appellant's Representative:

*Pro Se*  
Marcel Lapierre

Respondent's Representative:

Thomas John Rooke, Esq.  
Associate City Solicitor  
City of Chicopee  
17 Springfield Street  
Chicopee, MA 01013

Commissioner:

Donald Marquis

ORDER OF DISMISSAL

*Procedural Background*

Pursuant to G.L. c. 31, §2 (b), the Appellant, Marcel Lapierre, (hereafter "Appellant" or "Lapierre") appealed the decision of the City of Chicopee (hereafter "City" or "Appointing Authority") claiming that he was bypassed for promotional appointment to the position of full-time Fire Captain. A pre-hearing conference was held at the offices of the Civil Service Commission on July 30, 2007.

### *Factual Background*

On January 16, 2007, the state's Human Resources Division (HRD), at the request of the City of Chicopee, issued a civil service list for the position of Fire Captain. Of those candidates willing to accept appointment, the list contained the names of three (3) candidates, including the Appellant, all of whom were tied with a score of 83. The City selected a candidate from among the list of three tied candidates other than the Appellant.

### *Conclusion*

HRD Personnel Administration Rules ("PAR"), issued pursuant to G.L. c. 31, §§ 3(d) and 5, define a bypass as "the selection of a person or persons whose name or names ... appear lower on a certification than a person or persons who are not appointed and whose names appear higher on said certification." PAR.02.

As prior Commission decisions have well established, selection from a group of tied candidates is not a bypass. *See, e.g., Baptista v. Department of Public Welfare*, 6 MCSR 21 (1993) and *Johnston v. City of Everett*, G2-06-107 (2007), *citing Kallas v. Franklin School Department*, 11 MCSR 73 (1996).

Pursuant to 801 CMR (7)(g)(3), the Presiding Officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter. The evidence demonstrates that the Appellant and the individual appointed to the permanent Fire Captain position were tied candidates on the civil service list. Choosing from among tied candidates does not constitute a bypass that can be appealed to the Commission.

For all of the above reasons, the Appellant's appeal under Docket No. G2-07-164 is hereby *dismissed*.

Civil Service Commission

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Donald Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on August 9, 2007.

A True copy. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Marcel Lapierre (Appellant)  
Thomas John Rooke, Esq. (for Appointing Authority)  
John Marra, Esq. (HRD)