

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION  
One Ashburton Place, Room 503  
Boston, MA 02108  
(617) 727-2293

SEAN LAYTON & RYAN LAYTON,  
Appellants

v.

G1-10-293 (Sean Layton)  
G1-10-292 (Ryan Layton)

CITY OF SOMERVILLE,  
Respondent

Appellants' Attorney:

Paul T. Hynes, Esq.  
Angoff, Goldman, Manning,  
Wanger, Hynes & Dunlap, P.C.  
100 River Ridge Drive, Suite 203  
Norwood, MA 02062

Respondent's Attorney:

Robert V. Collins, Esq.  
Chief Labor Counsel  
City of Somerville  
City Hall  
93 Highland Avenue  
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

DECISION

*Procedural History*

The Appellants (who are brothers) both filed individual appeals with the Civil Service Commission that are related to the same general issue.

Sean Layton and Ryan Layton took and passed a civil service examination for the position of firefighter that was administered by the state's Human Resources Division (HRD). Based on their assertions at the time of the examination that they satisfied the

residency requirement (resided in Somerville at least one year prior to the date of the examination), HRD placed their names on an eligible list of candidates with a residency preference.

Both of the Appellants were then appointed as reserve firefighters after the City completed a background check that included an inquiry into whether they did indeed reside in Somerville at least one year prior to the date of the civil service examination. Although the investigator from the City's police department raised some questions regarding whether there was sufficient information to verify their residency at the time, the City, apparently satisfied that the requirement had been met, appointed both of them as reserve firefighters. Due to vacancies at the time, Sean Layton, whose name appeared higher than that of his brother Ryan, was almost simultaneously appointed as a permanent full-time firefighter by the City.

Several months later, while Sean Layton was still serving his probationary period as a permanent full-time firefighter, additional vacancies for permanent full-time positions became available and Ryan Layton was considered for appointment to a full-time position.

In the interim, another individual, Sean O'Brien, filed an appeal with the Commission, arguing that he was aggrieved because the City failed to consider him for appointment as a reserve firefighter immediately after he took and passed a military make-up examination after returning from active military duty in Iraq. For reasons stated in a decision regarding that matter, the Commission ordered that Mr. O'Brien be given at least one consideration for the position of reserve firefighter. If not selected, he would have a further right of appeal to the Commission. As part of the O'Brien appeal (See

Case No. E-10-139), the Appellant's advocate / representative, a former member of the Somerville City Council, indicated that allegations of nepotism would be part of any future bypass hearing (the father of Sean and Ryan Layton is a Somerville firefighter). Mr. O'Brien, as a result of the Commission order, was considered for appointment. He was bypassed for untruthfulness related to his residency. Mr. O'Brien has filed a bypass appeal with the Commission regarding his non-selection (See Case No. G1-11-56) and a full hearing is scheduled for September 19, 2011 at 10:00 A.M. at the Somerville Central Library.

When considering whether to appoint Ryan Layton (who was then a reserve) as a permanent full-time firefighter, the City conducted another background investigation, including an inquiry into whether Ryan Layton had satisfied the residency requirement. A different investigator from the City's police department concluded that neither Ryan Layton – or Sean Layton – had satisfied the residency requirement. Based on this conclusion, the City determined that Ryan Layton and Sean Layton should not have been listed as residents on the eligible list and should not have been considered for appointment. Thus, the City terminated Sean Layton from his position as a permanent firefighter, did not appoint Ryan Layton as a permanent firefighter and terminated him from his reserve firefighter position.

Both Ryan Layton and Sean Layton have now filed an appeal with the Commission, arguing that that the Commission should hear these appeals as timely "bypass appeals" as the City effectively re-opened the selection process, and, based on its further investigation, deemed that the Appellants should not be "selected" for appointment. Thus, the Appellants argue that they have been bypassed and, as they have filed an appeal

with the Commission within the applicable 60-day time period, the Commission should hear and decide these appeals as bypass appeals.

The City argues that the Appellants were employees terminated prior to serving their statutorily-required probationary period and the Commission has no jurisdiction to hear a disciplinary appeal regarding these probationary employees. The City filed a Motion to Dismiss based on jurisdictional grounds and the Appellants filed a reply. I heard oral argument regarding this issue at the commencement of a hearing on February 25, 2011.

The Commission has broad authority under G.L. c. 31, § 2(a) to conduct investigations, including when there are allegations that decisions were not based on basic merit principles or were tainted by political considerations, favoritism or bias by an Appointing Authority . Based on the information available to the Commission at the time, there was sufficient justification to warrant such an investigation and for the Commission to conduct a full evidentiary hearing regarding the City's decision to: 1) terminate Sean Layton as a firefighter; 2) not select Ryan Layton as a firefighter and terminate him as a reserve firefighter.

I conducted a public hearing on this matter over a period of two days at the Somerville Central Library in Somerville Public Library on February 25, 2011 and March 2, 2011. During the course of the hearing, sixty-four (64) exhibits were entered into evidence (26 relating to Sean Layton and 38 relating to Ryan Layton). In addition, there were two (2) chucks and a number of stipulations that were agreed to prior to the beginning of the evidentiary hearing. With the assent of the City, two additional Appellant documents were entered into evidence after the close of the hearing and marked as Exhibits 27 and 39 respectively.

Based on these documents and the testimony of:

*For the Appointing Authority:*

- Kevin Kelleher, Chief Engineer (Fire Chief); Somerville Fire Department;
- Paul Duffy, Detective, Somerville Police Department;
- Jessie B. Baker, former Personnel Director, City of Somerville;
- Detective Sergeant Sean Sheehan; Somerville Police Department;

*For the Appellant:*

- Lieutenant Jay Colbert, President, Fire Association of Somerville, Local 76;
- Steven Layton, Firefighter, Somerville Fire Department; Father of Appellants;
- Lieutenant James Keenan, Somerville Fire Department;
- Sean Layton, Appellant;
- Ryan Layton, Appellant;

I make the following findings of fact:

1. On April 26, 2008, the Appellants took and passed the civil service firefighter examination. Sean Layton received a higher score. As such, his name appeared in a higher “band” of candidates. (Stipulated Fact)
2. As a result of passing the civil service examination, the Appellants’ names appeared on an eligible list of candidates for firefighter in the City of Somerville maintained by the state’s Human Resources Division (HRD), with Sean Layton’s name appearing higher than Ryan Layton’s. (Stipulated Fact)
3. On August 17, 2009, the City requested authorization to hire 9 permanent reserve firefighters from HRD. (Stipulated Fact)
4. On September 9, 2009 the City received Certification No. 290651 from HRD. (Stipulated Fact)

5. Pursuant to G.L. c. 31, § 58, any person who has resided in a city or town for one year immediately prior to the date of the examination receives a residency preference that requires them to be considered before non-residents.
6. In order to qualify for the Section 58 residency preference here, the Appellants had to reside in Somerville from April 26, 2007 through April 26, 2008, one year prior to the date of the examination. (Stipulated Fact)
7. At the time of the examination, both of the Appellants indicated that they met the Section 58 residency requirement as, according to them, they both resided at 43 Governor Winthrop Road in Somerville since February 2007. (Stipulated Fact)
8. It is undisputed that Fire Lieutenant James Keenan of the Somerville Fire Department was a tenant at 43 Governor Winthrop Road, which is an apartment in a multi-family house. The central question discussed in more detail below is whether or not Sean and Ryan Layton also lived in this apartment for one year prior to taking the civil service examination.
9. There were 24 candidates on the Certification who indicated that they were willing to accept employment as a reserve firefighter. All of them, including the Appellants, had claimed the residency preference under Section 58 and thus, were listed above non-residents who were not considered. (Stipulated Fact)
10. On September 11, 2009, the Appellants were notified by the City's Personnel Director, Jessie Baker, to report to an orientation session on September 24, 2009 in order to commence the application process. (Testimony of Baker)
11. Both of the Appellants completed an application for employment. A background investigation, which included a residency check, was then completed by Somerville

Police Detective Paul Duffy on or around November 2009. (Sean Exhibits 15, 24 & 25; Ryan Exhibit 24)

12. Detective Duffy has been a Somerville police officer for twenty-two (22) years and has served as a detective for 11 of those 22 years. In addition to his normal duties and responsibilities, he was asked to conduct background investigations on several firefighter candidates, including the Appellants. (Testimony of Duffy)

13. As part of his report regarding his background investigation of Ryan Layton, Detective Duffy stated:

“The one issue that I did invest extra time is the candidate’s residency claim. As does his brother, Sean, the candidate claims he was living at 43 Governor Winthrop Road in Somerville from February, 2007 to April, 2008. As part of my investigation, I attempted to obtain proof of this claim. The RMV shows that his license and vehicle registration listed 99 Glen Road, Wilmington, as his address. During my interview, he admitted that he kept the vehicle registered at the Wilmington address to save money on his insurance. As far as his license, he basically indicated that he ‘never got around to it’. He further explained that he had heard that the landlord was going to be selling the house and that he knew he would have to be moving soon so he didn’t want to have to change his license address a second time. When the house was sold, the candidate moved to his current address in Somerville and then changed his license.

I learned that the landlord at 43 Governor Winthrop, William Clark, had moved to Omaha, Nebraska and left no forwarding address. I contacted the candidate and his brother’s roommate (sic), Bill Keenan, regarding the candidate’s claim of living there. He confirmed that both brothers lived there and that they would pay him cash to cover their portion of the utility bills and he would make the payment. This would explain why the candidate’s name was not on (sic) any utility bills.

The last issue was the candidate’s name not being on the voting list in Somerville. Like his brother, it was still on the list in Wilmington. He assured me that, like his license, he never bothered to change his voting status to Somerville.

I opine that the candidate was being truthful in answering these questions and is willing to answer any more questions that the personnel office might have for him.” (Ryan Exhibit 24)

14. Detective Duffy restated some of the same concerns regarding residency in his background investigation of Sean Layton, including the fact that Sean Layton was not registered to vote in Somerville, but concluded that “nothing during my interview ... would lead me to believe the candidate was being anything but honest regarding these issues.” (Sean Exhibit 15)
15. On December 16, 2009, both of the Appellants were interviewed (separately) by an interview panel that consisted of Personnel Director Jessie Baker, Fire Chief Kevin Kelleher, Deputy Fire Chief Peter St. Clair and the city’s labor counsel. (Testimony of Baker)
16. The interview panel had Detective Duffy’s report, the employment application and the recruit candidate information form when they interviewed Sean Layton and Ryan Layton. (Testimony of Baker)
17. Chief Kelleher testified that he spoke with Somerville firefighter Steve Layton, the father of Sean and Ryan Layton, sometime after the interviews and he was assured by Steve Layton that there were no problems regarding his sons’ residency. (Testimony of Kelleher)
18. Chief Kelleher testified that he considers Steve Layton to be of high character and a very honest person. (Testimony of Kelleher)
19. Ms. Baker testified that she chaired the interview panel and ensured that each of the panelists was provided with all of the candidate information, including the background investigations. (Testimony of Baker)



20. Ms. Baker was the City's Personnel Director until February 11, 2011. At the time of this hearing, she no longer worked for the City as she had accepted a promotional opportunity in Vermont, where her family resides. (Testimony of Baker)
21. Ms. Baker testified that she relies on the background investigations completed by police personnel to verify that candidates meet the requirements for the civil service residency preference. (Testimony of Baker)
22. Ms. Baker testified that both Sean and Ryan Layton confirmed during their interviews that they had lived in Somerville at 43 Governor Winthrop Road in Somerville for more than one year prior to the civil service examination and that the panel "had no reason to question the veracity of Detective Duffy's report." (Testimony of Baker)
23. When I asked Ms. Baker if she had any concerns about the various issues raised in Detective Duffy's report (i.e. – no utility bills in their name, auto registration in Winthrop, registered to vote in Wilmington), she reiterated that she relied on Detective Duffy's conclusion that Sean and Ryan Layton were being truthful about their residency. (Testimony of Baker)
24. I asked Ms. Baker, a native of Vermont, if she had reviewed Sean Layton's application for employment which indicated that he was a student at the University of Vermont in Burlington through May 2007, which she acknowledges is a four-hour driving commute (each way) from Somerville. (Sean Layton's application also indicates that he was employed as a grounds crew person in Burlington, Vermont through May 2007). Ms. Baker testified that she did ask Sean Layton about this during his interview and, "his response was that he was a senior in college. It was his intention to establish residency in Somerville upon graduation which was in May. I

believe his classes were up in April. He had moved down to Somerville and established an apartment. He was basically doing his commuting thing during his final semester.” I asked Ms. Baker if she found it plausible that Sean Layton was embarking on a four-hour commute each day. She stated: “I believe at that point he was a senior in college. He was finishing up his requirements. He had come down on weekends, etc. to establish residency in Somerville because he knew he wanted to become a firefighter here and take the exam. I believe that he had established that apartment, that he was coming down when he could.” I asked Ms. Baker where she believed Sean Layton was living in April 2007 – Burlington or Somerville? She replied: “At that point in time, I believe he was living both at the University of Vermont finishing up his final semester and had established residency in the City of Somerville.” (Testimony of Baker)

25. On March 1, 2010, ten of the 24 candidates who were willing to accept employment as reserves, including both of the Appellants, were selected for appointment as reserve firefighters. (Sean Exhibit 13)
26. After HRD approves reserve appointments, the names of the appointees in that particular community are placed on a standing list called a “roster”. (HRD Intermittent Handbook, Section V)
27. On March 11, 2010, the City created a roster with 10 names of reserve firefighters which included both of the Appellants (Sean Layton was ranked higher than Sean Layton).
28. When a community with a reserve force has full-time vacancies in that force to be filled, those vacancies must be filled, ahead of any other eligible candidates, from a

“Roster Certification” requisitioned by the appointing authority from HRD. HRD compiles the Roster Certification from the roster of permanent reserve firefighters. (HRD Intermittent Handbook, Section VIII)

29. On March 11, 2010, the same day the roster was created, the City sent a “Notice of Employment” for 6 permanent *full-time* firefighters to HRD with an appointment date effective March 21, 2010. This list included the name of Sean Layton but not Appellant Ryan Layton as Ryan Layton had a lower score.<sup>1</sup> (Sean Exhibit 12)
30. On June 8, 2010 the City submitted a request to HRD seeking to appoint 4 additional permanent full-time firefighters. (Ryan Exhibit 25)
31. On June 17, 2010, Sean O’Brien, who had taken and passed a military make-up examination for the position of reserve firefighter in Somerville, filed an appeal with the Commission.
32. On July 6, 2010, the Commission held a pre-hearing conference regarding the O’Brien appeal. O’Brien’s father-in-law, a former Somerville City Councilor, appeared as O’Brien’s advocate and made references to the appointment of Sean and Ryan Layton and the issue of residency.
33. On July 23, 2010 Roster Certification #S90899 was generated to select 4 additional permanent full-time firefighters. This certification included the name of Appellant Ryan Layton.
34. On August 3, 2010, the City’s Personnel Department had its police department conduct follow-up background investigations of all 4 names on Roster Certification #S90899, including Ryan Layton. (Testimony of Baker)

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<sup>1</sup> Although there is no evidence that a “roster certification” was used here, it does not appear to be relevant to the instant appeals as it appears that the City opted to choose the 6 highest-ranked reserve firefighters from the roster.

35. Chief Kelleher testified that although he was aware of follow-up criminal history checks being done on reserve candidates seeking to be appointed as full-time firefighters, he could not recall if the City had ever before conducted a follow-up investigation regarding whether the reserve firefighter had met the residency preference at the time of the civil service examination. (Testimony of Kelleher)
36. Ms. Baker testified that when she became Personnel Director, she recommended to the Mayor that candidates go through another complete background investigation if six months had elapsed since the prior investigation was completed. She testified that she never put this policy into writing, but that it was accepted by the Mayor. (Testimony of Baker)
37. Fire Lieutenant Jay Colbert is president of the local firefighters union. He testified before the Commission that he expressed his displeasure to Ms. Baker regarding the City's decision to conduct another background investigation of the candidates. According to Mr. Colbert, Ms. Baker told him, "don't blame the Mayor, it's because of O'Brien and Puglia." (Testimony of Colbert)
38. On August 12, 2010, Detective Sergeant Sean Sheehan submitted a follow-up background investigation of both Ryan Layton *and* Sean Layton to the City's Personnel Department. (Sean Exhibit 7; Ryan Exhibit 6)
39. According to Sgt. Sheehan's report, "I was asked by the office of the Mayor ... to conduct a follow-up investigation for Firefighter Sean Layton. Specifically, because of new information which recently came to light, I was asked to confirm [Sean] Layton's residency in the City of Somerville from April 26, 2007 to April 26, 2008, the one-year time period prior to the 2008 Firefighter Exam." Prior to the

investigation relating specifically to Sean Layton, Sgt. Sheehan met with Sean Layton, Chief Kelleher, the Deputy Fire Chief and the local union president to advise them of the investigation. (Sean Exhibit 7 and Ryan Exhibit 6)

40. Sgt. Sheehan has been a police officer in Somerville for 9 ½ years. He has a law degree, completed one week of related training regarding background investigations and has been performing such investigations for the past two years. He is currently on special assignment and works out of the Mayor's office. (Testimony of Sheehan)
41. As part of his written report regarding his investigation of Ryan Layton, Sgt. Sheehan made the following findings and conclusions:

“[Ryan] Layton provided copies of all three of his credit reports. None of these reports list 43 Gov. Winthrop Rd., Somerville as a current or former address.

On August 5, 2010, I received a faxed copy of 2 athletic contracts from St. Mary's High School, Lynn, MA for the 2007-2008 school year ... The first contract is for Assistant Football Coach, which ran from September 7, 2007 until November 21, 2007. On this contract, [Ryan] Layton indicates that his address is 99 Glen Road, Wilmington, MA. The second contract is for Assistant Lacrosse Coach, which ran from April 2, 2008 until May 20, 2008. On this contract [Ryan] Layton also indicates that his address is 99 Glen Road, Wilmington, MA.

... [A] report from the Registry of Motor Vehicles ... indicates that [Ryan] Layton changed his Operators License address from 99 Glen Road, Wilmington to 23 Lincoln Street, Somerville on May 20, 2008. [Ryan] Layton explained during the initial investigation that he kept his motor vehicle registered in Wilmington to avoid paying higher insurance rates.

[Ryan] Layton's 2007 Federal Income Tax returns indicate his address as 99 Glen Road, Wilmington, MA.

[Ryan] Layton's 2007 W2's from both his current employer State Street Bank and his former employer, St. Mary's High School, indicate his address as 99 Glen Road, Wilmington, MA.

2008 Notice to Appear for [Ryan Layton's][civil service] Examination indicates his address as 43 Governor Winthrop Road, Somerville, MA.

[Ryan] Layton voted in Wilmington in the local election on April 28, 2007, almost 2 months after he was to have moved to 43 Gov. Winthrop Road, Somerville and 2 days after he took the 2008 Firefighter exam.

[Ryan] Layton voted in Wilmington on February 5, 2010.

During the course of my investigation I spoke with Ryan on several occasions. On all of these occasions I explained to Ryan that it was incumbent upon him to provide the city with any and all paperwork which would directly connect him with 43 Gov. Winthrop Rd. The only paperwork Ryan was able to provide was the notice to appear for the 2008 Firefighter Exam.” (Ryan Exhibit 6)

42. Among the findings and conclusions in Sgt. Sheehan’s investigation of *Sean Layton*, were:

“I advised [Sean] Layton that I needed copies of his 2007 Federal Income Tax returns (including W2’s), copies of any bills which were mailed to the Gov. Winthrop Road address, copies of bank statements which would indicate were (sic) he conducted the majority of his banking activity, and any and all documentation which would indicate he resided at 43 Gov. Winthrop Road during the prescribed time period. I asked [Sean] Layton to provide this information by August 20<sup>th</sup>. On August 19<sup>th</sup> I met with [Sean] Layton at the Somerville Police Station and [Sean] Layton provided me with a copy of his 2008 Firefighter Exam Notice to Appear, which was post marked 43 Gov. Winthrop Road, Somerville. I asked [Sean] Layton if he had a copy of his tax return and he stated he did not file his 2007 tax return because he did not earn enough money to file. I then asked [Sean] Layton if he believed any additional documentation would be forthcoming and he replied ‘No’.

As a requirement for his initial employment with the city of Somerville, [Sean] Layton was required to submit copies of all three of his credit reports. On all three credit reports the only listed address for [Sean] Layton are 23 Lincoln Street, Somerville and 99 Glen Road, Wilmington. Nowhere, on any of the three credit reports, does it list 43 Gov. Winthrop Road, Somerville as a current or former address.

On February 5, 2008, [Sean] Layton voted in the presidential primary in Wilmington ... more than one year after he was to have moved to 43 Governor Winthrop Rd.

At my meeting with [Sean] Layton on August 16, I explained that it was extremely important for him to produce any documentation or statements of individuals to indicate he resided at 43 Gov. Winthrop Rd. during the April 2007 to April 2008 time period. To this date [August 30, 2010] the only information I

have received from [Sean] Layton is his notice to appear for the 2008 Firefighter Exam.” (Sean Exhibit 7)

43. As part of his investigation, Sgt. Sheehan also did a canvass of the neighborhood around 43 Governor Winthrop Road. Of the 8 people that he spoke with, 2 of them indicated that they were aware that Sean and Ryan Layton lived at that address. Those two individuals are the brother and mother of Lt. Keenan. Another neighbor indicated that she had lived on Governor Winthrop Road for 65 years and thought that “Jim” [Keenan] lived alone. Another neighbor, who has lived on the street for 12 years, said she did not recognize the Layton and that “she has 2 small grandchildren so she watches all the cars in the neighborhood and has never seen Layton entering or exiting a motor vehicle on the street.” One of the neighbors interviewed by Sgt. Sheehan was a Somerville police officer who indicated that he knew Jim Keenan but did not recognize the Laytons. (Ryan Exhibit 6 & Sean Exhibit 7)

44. Sgt. Sheehan also interviewed another neighbor who had lived in the same multi-family building in question and she did not recognize the Laytons and was not aware that anyone other than Lt. Keenan was living there. (Sean Exhibit 7)

45. Sgt. Sheehan also spoke with the owner / landlord of 43 Governor Winthrop Road. The landlord, who travels out-of-state for work, testified that Lt. Keenan told him that two people would be living with him, but he never knew the names of the individuals. (Sean Exhibit 7)

46. Through a letter dated October 8, 2010, Ms. Baker requested both Appellants to report to her office on October 18, 2010 and either provide additional evidence as to their residency in Somerville during the year prior to their taking the civil service exam or to resign or face termination. (Sean Exhibit 4)

47. Through a letter dated October 15, 2010, Ms. Baker postponed the meeting date with the Appellants to October 25, 2010.
48. During a meeting conducted by Ms. Baker, she offered the Appellants an additional opportunity to present evidence supporting their claims of residency and receiving no additional evidence. (Testimony of Baker)
49. Ms. Baker testified that, after reviewing Sgt. Sheehan's report and receiving no additional information, she concluded that Sean and Ryan Layton did not reside at the Governor Winthrop address for one year prior to taking the civil service examination. (Testimony of Baker)
50. On October 28, 2010 an Absence and Termination Notice / Form 56 was submitted to HRD for both Appellants Sean and Ryan Layton. (Sean Exhibit 1 and Ryan Exhibit 1)
51. At the hearing before the Commission, four individuals testified that the Appellants did reside at the Governor Winthrop address for one year prior to taking the civil service examination: Firefighter Steven Layton (father of the Appellants); Fire Lieutenant James Keenan; and Sean and Ryan Layton.

*Testimony of Steven Layton*

52. Steven Layton has been a Somerville firefighter since 1986. He has served as vice president of the local firefighters' union for 14 years. His father was a firefighter as was his brother. His two sons, Sean and Ryan, have always wanted to be firefighters.
53. Steven Layton testified that he was aware that a civil service examination for Somerville firefighter would take place in April 2008. In order for his sons to be eligible for the residency preference, he knew that his sons, Ryan and Sean, would



need to establish residency in Somerville for at least one year prior to the examination.

54. Steven Layton testified that he became aware sometime in 2007 that Lt. James Keenan was looking for a roommate at his Somerville apartment that he was living in shortly after a recent divorce. According to Mr. Layton, he arranged for his two sons to move in with Keenan so that they could meet the residency requirement for the 2008 civil service examination.

55. Steven Layton testified that sometime in February 2007, he helped his sons move a bed and a bureau into the 2-bedroom apartment at Governor Winthrop Road. He described the Governor Winthrop second-story apartment as having 2 bedrooms, 1 bathroom, a living room, a kitchen and another small room in the front. He testified that Sean and Ryan shared the second bedroom, which had 1 bed and 1 “futon sofa”.

56. Steven Layton testified that he would occasionally visit his sons at the Governor Winthrop Road apartment.

*Testimony of James Keenan*

57. James Keenan has been a firefighter in Somerville for twenty-six (26) years and current serves as a lieutenant. He has known Steve Layton and the entire Layton family for this entire period.

58. Lt. Keenan testified that he began renting the Governor Winthrop Road apartment in November 2006 while he was going through a divorce. He described the building as a 3-family home and he rented the unit on the second floor.

59. Lt. Keenan testified that he talked to Steve Layton one day about the “huge apartment” he was living in and they both agreed it would be a perfect place for Sean

and Ryan Layton to move into with him in order to meet the residency requirement for the 2008 civil service examination.

60. Lt. Keenan testified that Sean and Ryan Layton moved into the apartment in February 2007, with the Laytons sharing the second bedroom. He testified that when the house was sold in May 2008, he moved out and the Laytons moved to Lincoln Street in Somerville.

61. Lt. Keenan obtained a written affidavit from his landlord which states that Ryan and Sean Layton were sharing the apartment with him.

62. Lt. Keenan testified that he paid \$500/month plus utilities for the apartment. He testified that Sean and Ryan Layton each paid him \$200 / month and that the payments were always in cash.

*Testimony of Sean Layton*

63. Sean Layton testified that he moved into the apartment on Governor Winthrop Road in February 2007 because he wanted to establish residency and meet the residency requirement for the civil service examination that would be held in April 2008.

64. Sean Layton testified that he was a full-time student at the University of Vermont in February 2007 and that he was “back and forth” between Somerville and Vermont from February to May 2007.

65. Sean Layton was enrolled in six (6) classes during his final semester, two of which he took online. He also played on the school’s lacrosse team and had a part-time job in Vermont that was arranged through the financial aid office. Some of the lacrosse games took place on weekends.

66. Asked how he commuted back and forth from Vermont to Somerville between February 2007 to May 2007, he testified that he “begged rides, took a bus or used the family’s third car.”
67. Sean Layton testified that after graduation, he moved into the Governor Winthrop Road apartment full-time in May 2007 and picked up a part-time painting and bartending jobs. He testified that he was paid in cash for these jobs, that he did not receive a W-2 and that he did not have a checking account during the entire time period he lived at the Governor Winthrop Road apartment.
68. Asked why he was not able to show credit card receipts for purchases at any businesses near Governor Winthrop Road for the time period in question, he testified that he only used the credit cards for emergencies.
69. Asked why he voted in Wilmington when he was living at the Governor Winthrop Road address, Sean Layton testified that, if he did, it was through absentee ballot while he was enrolled at the University of Vermont.
70. Asked to review voting records that showed he voted in Wilmington as late as February 2008, months after his graduation, he was unable to provide any explanation.
71. Sean Layton confirmed that he has a laptop, an email account and an active Facebook account. Asked how he accessed and paid for Internet service, he testified that he would go to Internet cafes at school. Asked how he accessed the Internet while living at the Governor Winthrop Road apartment, he stated “I don’t even think I had my computer there.”

72. When asked how much time he spent at the Governor Winthrop Road apartment and what he did while there, he stated, "I pretty much did not have a life, because I was either in the house looking up jobs on the computer or working ...".

73. Sean Layton testified that his father would hand him \$200 in cash each month and that he would give this cash to James Keenan.

*Testimony of Ryan Layton*

74. Ryan Layton testified that he has been employed at State Street Bank as a fund administration performance analyst for four (4) years. He has also worked part-time as a coach at St. Mary's High School in Lynn, MA.

75. He testified that he moved into the apartment at 43 Governor Winthrop Road in February 2007 and lived there full-time through May 2008.

76. Ryan Layton testified that his father told him about the opportunity to move in with Keenan and he was eager to do so because it allowed him to meet the residency requirement for the 2008 civil service examination and the \$200/month rent was very affordable.

77. He testified that he borrowed a van from a family friend in February 2007 and moved a futon and bureau into the apartment.

78. Ryan Layton testified that he would see his brother Sean during the first few months when Sean would come home on weekends and occasionally during the week for a job interview.

79. Ryan Layton testified that he was unable to provide Sgt. Sheehan with any paperwork to verify he lived at the Governor Winthrop Road address other than his notice of

appear for the civil service examination. He testified that, since the house was for sale, he decided to keep his mailing address at his parents' home in Wilmington.

80. Ryan Layton acknowledged that his car was registered in Wilmington from February 2007 to May 2008; that all his tax returns had his parents' address in Wilmington. He did not dispute voting records that showed he voted in Wilmington in February 2008.

81. I asked Ryan why, in August 2008, he signed a contract with St. Mary's High School for a coaching position that had a Wilmington address on it. He stated that he wanted to make sure that he received his money and he did not want to give the Governor Winthrop Road address because he did not know how long he would be living there.

82. Ryan Layton testified that at all relevant times he maintained a checking account and received direct deposit payment from his employer, State Street Bank. However, he testified that he always paid Lt. Keenan in cash each month.

83. Asked if he could produce any ATM records showing that he withdrew \$200 each month from his checking account to pay Lt. Keenan, the Appellant testified that he doesn't keep ATM receipts for four years. I asked him if he looked at his bank records to see if there is a record of such withdrawals, he stated, "I switched banks."

## CONCLUSION

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. at 259, citing Cambridge v. Civil Serv. Comm'n, 43 Mass.App.Ct. at 304. "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.

Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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).

G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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.” Watertown v. Arria, 16 Mass. App. Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

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. 824-826 (2006). 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.

Sean and Ryan Layton grew up in Wilmington, Massachusetts. Their father, Steven Layton, has been a Somerville firefighter for approximately twenty-five years and has served as vice president of the local firefighters union for over a decade. He is well liked and respected by his colleagues and City officials.

Sean and Ryan both took and passed the civil service examination for Somerville firefighter in April 2008, claiming to be residents of Somerville. Under G.L. c. 31, § 58, this residency preference allowed them to be considered ahead of all non-residents. It is undisputed that they would not have been considered or “reachable” if they were non-residents. Section 58 requires that Sean and Ryan reside in Somerville for at least one year prior to the April 2008 examination.

In the Fall of 2009, the City considered both Sean and Ryan for the position of reserve firefighter. As part of the review process, the City conducted background checks of both individuals. The background investigation, conducted by a Somerville police detective,

raised questions regarding whether Sean and Ryan Layton resided in Somerville one year prior to the April 2008 civil service examination. Although the detective's report stated that he found both Sean and Ryan to be truthful regarding this residency issue, the report contained ample information questioning whether they had indeed met the residency requirement. In her testimony before the Commission, Ms. Baker acknowledged that she believed at the time that Sean "was a senior in college; it was his intention to establish residency in Somerville upon graduation which was in May [2007]." She also had ample information upon which to question whether *Ryan* had met the residency requirement including the fact that his automobile was registered in Wilmington during the relevant time period and that he continued to be registered to vote in Wilmington.

The City's Fire Chief also had questions about the Laytons' residency at the time of their interviews in the Fall of 2009. Instead of engaging in the due diligence that was required, the Fire Chief erred by asking Steve Layton, the candidates' father, if there was any reason to worry about issues regarding his sons' residency. This is hardly the type of fair, even-handed follow-up that was warranted. Further, the Fire Chief's inquiry unwittingly put the elder Layton in jeopardy of violating those sections of the state ethics law that prohibit individuals from participating in matters in which he or a direct family member has a financial interest.

Ultimately, the interview panel opted to overlook the issues regarding residency and recommended the appointment of Sean and Ryan Layton as reserve firefighters. Sean, the higher ranked candidate, was immediately elevated to the position of full-time firefighter and Ryan's name remained on the City's reserve roster.



At about the same time that Ryan was being considered for an additional vacancy that had arisen for full-time firefighter, questions about the Laytons' residency were raised by a former City Councilor whose son-in-law was not selected for appointment. Notwithstanding the City's assertion otherwise, it is abundantly clear to me that the City's decision to conduct a follow-up investigation regarding the residency of Ryan (and Sean) Layton was directly related to questions publicly raised by this former City Councilor.

Over the next few weeks, a more thorough follow-up investigation was conducted by a Somerville police sergeant who was on assignment with the Mayor's office. That investigation raised some of the same issues that came to light in the prior investigation and some additional issues. Most importantly, however, was the inability of Sean and Ryan Layton to produce any documentation (other than their notice to appear for the civil service examination) that showed that they lived in Somerville one year prior to the examination in April 2008.

Based on the findings of the new report and a meeting with the Sean and Ryan Layton, the City determined that the Laytons did not reside in Somerville from April 2007 to April 2008. Thus, they terminated Sean from his position as a full-time firefighter, did not select Ryan for a full-time position and removed him from the reserve roster. These appeals to the Commission followed.

As part of the two days of hearing in Somerville, I heard testimony from Sean and Ryan Layton and their father Steven. They are humble, hard-working and likeable individuals with strong family ties. Steve Layton is rightfully proud of his sons'

accomplishments and their desire to continue in the family's honorable tradition of serving as firefighters.

Equally as clear from their testimony, however, is my conclusion that Sean and Ryan Layton did not reside in Somerville from April 2007 to April 2008.

"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: ... "[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.*" (emphasis added)

Sean Layton was a student at the University of Vermont in April 2007, one year prior to the civil service examination. He was enrolled full-time taking six classes, working at a part-time job in Vermont and playing on the college's lacrosse team. His only connection to Somerville at the time was a bed and bureau that was purportedly moved from the Layton family home in Wilmington to an apartment being rented by a Somerville Fire Lieutenant. From April 2007 to April 2008, Sean Layton's automobile was registered in Wilmington and he voted in Wilmington.

There is no reliable information or documentation to support Sean or Ryan Layton's claim that they actually resided in Somerville from April 2007 to April 2008. The affidavit from the Fire Lieutenant's landlord is not reliable as it undisputed that the landlord had no first-hand knowledge regarding whether or not Sean or Ryan Layton

actually resided at the Governor Winthrop apartment. Further, the testimony of Steven Layton and Fire Lieutenant Keenan was not sufficient to convince me that either Sean or Ryan Layton resided at the Governor Winthrop apartment in Somerville.

Most importantly, however, was the testimony of Sean and Ryan Layton. *Significant* portions of their testimony stretched the bounds of plausibility.

There is substantial evidence to show that Ryan and Sean Layton did not reside in Somerville one year prior to the civil service examination. They should not have been considered for employment as they would not have been “reachable” as non-residents, which they were at the time of the examination. For this reason, the City had reasonable justification to terminate their employment.

While I am deeply troubled that the City initially overlooked concerns about Sean and Ryan’s residency, that should not change the final result here. Sean and Ryan Layton did not meet the residency requirement at the time of the civil service examination and they should not have been considered before non-residents. But for their designation as residents, they would not have been considered for employment.

For these reasons, the Appellants’ appeals under Docket Nos. G1-10-293 & G1-10-292 are hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman  
Chairman

By a 2-1 vote of the Civil Service Commission (Bowman, Chairman – Yes; Henderson, Commissioner – No; McDowell, Commissioner – Yes; [Stein, Marquis –Absent]) on August 25, 2011.

A True copy. Attest:

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Commissioner

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 to:

Robert V. Collins, Esq. (for Appointing Authority)

Paul T. Hynes, Esq. (for Appellants)

John Marra, Esq. (HRD)