

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

WAYNE LEDUC,  
*Appellant*

v.

E-22-135

CITY OF LAWRENCE,  
*Respondent*

Appearance for Appellant:

Joseph L. Sulman, Esq.  
391 Totten Pond Road, Ste. 402  
Waltham, MA 02451

Appearance for Respondent:

Ann Marie Noonan, Esq.  
Valerie Dominello & Hillman LLC  
One University Avenue  
Suite 300B  
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Commissioner:

Christopher C. Bowman

**SUMMARY**

For the purpose of ensuring greater transparency regarding the process used to fill a senior level civil service position in the City's Fire Department and taking account of the broad discretionary powers afforded to the Commission to conduct investigations for the purpose of ensuring compliance with the civil service law, the Commission allowed the Appellant's request to initiate an investigation.

**RESPONSE TO REQUEST FOR INVESTIGATION**

On October 6, 2022, the Appellant, Wayne LeDuc (Appellant), a Fire Captain in the City of Lawrence (City)'s Fire Department, filed an appeal with the Civil Service Commission (Commission) under G.L. c. 31, § 2(b), contesting his non-selection for Deputy Fire Chief. At the same time, the Appellant requested that the Commission initiate an investigation under G.L. c. 31, § 2(a).

On November 1, 2022, I held a remote pre-hearing conference which was attended by the Appellant, his counsel, the City's Fire Chief and counsel for the City. As part of the pre-hearing conference, the parties stipulated to the following, unless otherwise noted:

- A. On July 21, 2020, the Appellant took the examination for Deputy Fire Chief and received a score of 78.
- B. On October 15, 2020, the state's Human Resources Division (HRD) established an eligible list for Lawrence Deputy Fire Chief.
- C. On August 24, 2022, at the request of the Fire Chief to fill a vacancy due to a retirement of Deputy Fire Chief to occur on September 7, 2022, the City created a certification to fill the vacancy.
- D. The City's Mayor is the Appointing Authority for the Fire Department.
- E. The Appellant's name was ranked first on the certification and then-Captain Mathew Nadeau was ranked second.
- F. The Appellant signed the certification as willing to accept the promotional appointment; Captain Nadeau signed the certification and hand-wrote "declined", leaving the Appellant as the only candidate on the certification.
- G. The City's Fire Chief forwarded paperwork to the Mayor's Office recommending the promotional appointment of the Appellant.
- H. On August 30, 2022, HRD notified the City that the current eligible list would expire on September 14, 2022, to be replaced by another eligible list, based on a promotional examination administered on May 21, 2022.

- I. On September 13, 2022, the Fire Chief met with the Mayor personally to reiterate his recommendation that the Appellant be promoted (prior to the expiration of the eligible list).
- J. According to the Fire Chief, the Mayor told him (the Fire Chief): “I’ll think about it.”
- K. The Mayor did not promote the Appellant.
- L. On September 15, 2022, a new eligible list was established; Captain Mathew Nadeau was ranked first and the Appellant was ranked third.
- M. Based on the new eligible list, the Fire Chief requested the creation of a new certification. Nadeau signed the certification, which was created on September 22, as willing to accept appointment.
- N. The Fire Chief recommended Nadeau for promotional appointment based on his #1 rank on the certification.
- O. The Mayor promoted Nadeau to Deputy Fire Chief on September 29, 2022.

As part of his appeal and request for investigation, the Appellant argues that the Mayor’s decision to let the prior eligible list expire was based, at least in part, on the Appellant’s opposition to the Mayor’s proposal to create a non-civil service Assistant Fire Chief position which, according to the Appellant, the Mayor wanted to fill with a personal acquaintance. Counsel for the City disputed the Appellant’s allegation, arguing that union members unanimously opposed the creation of the Assistant Fire Chief position, not just the Appellant. Further, counsel for the City attributed the Mayor’s decision not to act on the prior eligible list to time constraints and the need to tend to other priorities at the time.

Counsel for the Appellant stated at the pre-hearing conference that a senior officer in the Fire Department had reliable information that could help show the Commission that the Mayor’s

decision was indeed linked to the Appellant's opposition to the creation of an Assistant Fire Chief position.

For all of these reasons, I issued a Procedural Order on November 1, 2022 providing the Appellant with 30 days to submit a position statement with the Commission, arguing why the Commission should initiate an investigation under Section 2(a) of Chapter 31. As part of that order, I advised the Appellant to attempt to obtain an affidavit from the senior officer in the Fire Department referenced at the pre-hearing conference. The City was provided with 30 days thereafter to file a reply regarding why the Commission should not initiate an investigation. Both parties made timely submissions.

*Appellant's Submission*

As part of the Appellant's written submission, he wrote that the "senior officer" referenced at the pre-hearing was a Deputy Fire Chief and:

[T]he Appellant spoke with this Deputy Chief and obtained a letter from him that confirms this conversation. The Deputy Chief expressed hesitation with this letter being submitted to the Commission with his identifying information, however, although he stood behind the content of the letter. Accordingly, the Appellant is providing the Deputy's unsigned letter with his name redacted . . . . The Appellant intends to subpoena the Deputy Chief for testimony if the Commission opens an investigation and convenes an evidentiary hearing . . . .

The unsigned letter attached to the Appellant's submission purports to be from a Deputy Fire Chief who allegedly had a conversation with the employee in line for the new Assistant Chief position that never came to fruition. The letter states in part:

During our conversation the topic of the recent Deputy Chiefs appointment came up. He stated that the Mayor did not promote Wayne LeDuc because he spoke up against the proposed Assistant Chief position and that I should tell him to keep his mouth shut. I said OK.

### *Respondent's Submission*

The City argues that the Commission should not give any consideration to the unsigned letter submitted by the Appellant, stating in part:

The Commission was clear during the pre-hearing conference and its procedural order that it expected reliable evidence, in the form of an affidavit, be submitted in support of Appellant's claims. Namely, that the Appellant's witness could testify that he was told the Mayor did not promote the Appellant due to the Appellant's opposition to the creation of a new Assistant Chief position at a closed-door union meeting. Despite this clear directive, the Appellant has not submitted any reliable evidence to his central contention. Instead, the Appellant submitted a redacted letter, not signed under the pains and penalties of perjury nor sworn to in any manner. The redaction of the author's name undermines the letter's reliability as does its failure to be submitted in any sworn manner.

Moreover, the City argues that, even if the letter is accepted as reliable, the author of the letter does not even assert that the Mayor actually told anyone that there was a connection between the Appellant's non-selection and his purported opposition to the creation of the Assistant Chief position. Rather, it was simply speculation of another person regarding why the Mayor did not promote the Appellant.

The City also attached an affidavit from the City's Mayor stating that: a) the Mayor has no personal knowledge of the Appellant; b) the Mayor did not have any conversation with the individual identified in the Deputy Chief's anonymous letter regarding his decision not to promote the Appellant; and c) "the timing of [the Mayor's] decision of whether and when to fill the vacant Deputy Chief position was not in any way made to consciously bypass any one individual."

### *Commission Response and Orders*

This is a close call. Entrenched in the civil service system is the reality that the expiration of eligible lists, the creation of new eligible lists and the timing of vacancies, will result in perceived winners and losers among those seeking promotional appointments depending

on which list (the expiring list or the new list) your name appears on, and in what rank order. That normal eligibility churning does not warrant Commission intervention unless there is evidence that the timing of promotions has been tainted by impermissible personal or political bias to favor – or disfavor – a particular candidate or candidates.

The timing of this promotion and its delay, despite the Fire Chief’s recommendation, definitely raises my eyebrow and invites some level of heightened scrutiny by the Commission. It is undisputed that, prior to the expiration of the eligible list upon which the Appellant was ranked first, there was indeed a vacancy for Deputy Fire Chief. Further, it is undisputed that the Fire Chief, with what appears to be ample time, forwarded a recommendation to the Mayor that the Appellant be promoted. With time running out on the life of that eligible list, the Fire Chief met personally with the Mayor and reminded him of the time-sensitivity of the promotional appointment. Without any substantive explanation, the Mayor let that list expire and then moved with expediency to fill the promotional vacancy once the new eligible list was established. I have yet to hear any plausible explanation for this delay, beyond that the Mayor had a busy schedule and that it was his prerogative to let the list expire before making the promotional appointment.

For the purpose of ensuring greater transparency regarding the process used to fill this senior level civil service position in the City’s Fire Department, and taking account of the broad discretionary powers afforded to the Commission to conduct investigations for the purpose of ensuring compliance with the civil service law, I am recommending that the Commission initiate an investigation under G.L. c. 31, §§ 2(a), 72-74 to hear sworn testimony regarding this matter from the following individuals:

1. Mayor Brian De Pena;

2. Fire Chief Brian Moriarty;
3. Pascal Ruiz;
4. Wayne LeDuc; and
5. The author of the anonymous letter to the Commission.

For administrative efficiency, I would ask the Respondent to facilitate notice to De Pena, Moriarty and Ruiz, with the Appellant facilitating notice to the Deputy Fire Chief who authored the letter attached to the Appellant's submission to the Commission.

A remote conference will be held on Wednesday, April 5, 2023 at 10:00 A.M. via Webex video conference.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on February 23, 2023, the Commission accepted the Chair's recommendation to initiate an investigation.

Notice to:  
Joseph Sulman, Esq. (for Appellant / Petitioner)  
Ann Marie Noonan, Esq. (for Respondent)