

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

CHRISTOPHER LINK,  
Appellant

v.

E-18-188  
E-18-195

CITY OF HAVERHILL &  
HUMAN RESOURCES DIVISION,  
Respondents

Appearance for Appellant:

Stephen C. Pfaff, Esq.  
Louison, Costello, Condon &  
Pfaff, LLP  
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Boston, MA 02110

Appearance for City of Haverhill:

Timothy D. Zessin, Esq.  
KP Law  
101 Arch Street  
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Boston, MA 02110

Appearance for Human Resources Division:

Melissa Thomson, Esq.  
Human Resources Division  
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Commissioner:

Christopher C. Bowman

**INTERIM DECISION**

1. On September 28, 2018, the Appellant, Christopher Link (Lt. Link), a Fire Lieutenant in the City of Haverhill (City)'s Fire Department, filed an appeal with the Civil Service Commission (Commission), arguing that the City violated Section 25 of Chapter 31 (the civil service law) by promoting Raymond Robinson to the position of Deputy Fire Chief from an eligible list that was scheduled to expire on June 25, 2017.
2. On October 22, 2018, I held a pre-hearing conference at the Mercier Community Center in Lowell, which was attended by Lt. Link, his counsel, counsel for the City, the City's Human

Resources Director and counsel for the state's Human Resources Division (HRD) (via phone).

3. As part of the pre-hearing conference, the parties agreed that:
  - A. On March 21, 2015, HRD administered a promotional examination for Haverhill Deputy Fire Chief.
  - B. Raymond Robinson took and passed this promotional examination.
  - C. Lt. Link was not eligible to take the promotional examination as he was not in the next lower title and a sufficient number of candidates in the next lower title signed up for the examination.
  - D. On June 25, 2015, HRD established an eligible list for Deputy Fire Chief, which included the name of Raymond Robinson.
  - E. The June 25, 2015 eligible list was scheduled to expire on June 25, 2017.
  - F. G.L. c. 31, s. 25 states in relevant part: "Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies ... 3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established ... "
4. HRD stated that its longstanding practice when no subsequent eligible list has been established is to extend the eligible list to the date that falls on the first day of the month three years after the date of the examination. Here, that date would be March 1, 2018.
5. A scheduled examination for Deputy Fire Chief did not go forward as scheduled because an insufficient number of candidates in the next lower title did not sign up. The examination was re-scheduled to May 19, 2018 and eligibility was opened up to the next lower title (Lt.), allowing Lt. Link to take the promotional examination.
6. The promotion of Deputy Chief Robinson occurred after March 1, 2018.
7. As part of the pre-hearing conference, the City stated that, on February 15, 2018, after consulting with HRD, the City submitted a written request to HRD to extend the life of the eligible list due to the cancellation and rescheduling of the promotional examination. The February 15, 2018 letter from the City to HRD was attached to the Appellant's appeal to the Commission.
8. HRD stated that it never replied to the City's request, but, had HRD replied, the request would have been approved.
9. The City produced email communication between the City and HRD to support its argument that, based on prior communication with HRD, it was anticipated that HRD would approve a request for extension by the City.

10. The Appellant argued that, absent an approval from HRD, the promotional appointment of Mr. Robinson was not permitted, and any promotional appointment to Deputy Fire Chief should be from individuals on the eligible list to be established from the May 19<sup>th</sup> examination. (The Appellant received the highest score of all applicants on that examination.)
11. At the conclusion of the pre-hearing, I joined HRD as a party and set a briefing schedule for the City and HRD to submit a Motion for Summary Decision in 30 days and the Appellant to submit a reply / opposition 30 days thereafter, assuming that he wanted to continue with the pursuit of his appeal.
12. On October 23, 2018, upon reviewing recently-filed appeals with the Commission, I became aware that HRD, on October 19<sup>th</sup>, filed a petition with the Commission, asking the Commission to (retroactively) extend the Deputy Fire Chief eligible list in Haverhill to August 14, 2018 stating, in part that “ ... the City requested an extension of the eligible list in February 2018 by uploading it into the online system. HRD was unaware of that request prior to the list’s expiration on March 1, 2018, but would have approved it and extended the eligible list through August 14, 2018.
13. That Petition was docketed as CSC Case No. E-18-195 and consolidated with this appeal.
14. Via an October 23, 2018 Procedural Order, I ordered the City to provide Deputy Chief Robinson with all communication related to this appeal and Petition, including the Procedural Order.<sup>1</sup>
15. On November 20, 2018, HRD submitted a Motion for Summary Decision.
16. On November 27, 2018, the City “joined” HRD’s Motion for Summary Decision
17. On December 20, 2018, Lt. Link filed an opposition to HRD and the City’s Motion for Summary Decision.
18. On April 9, 2019, upon review of all of the submissions, including the attachments, I became aware that there appeared to be a dispute regarding whether Mr. Robinson was promoted *before* or *after* the establishment of the new eligible list on August 14, 2018. Specifically, Lt. Link argued that the evidence showed that the Mayor promoted Mr. Robinson to Deputy Fire Chief on July 10, 2018, while Lt. Link argued that the promotional appointment was not made until August 24, 2018. This was a separate issue from what the parties had been disputing: whether or not the prior eligible list should be deemed to have been extended through August 14, 2018.
19. On April 16, 2019, I held a status conference (via phone) with the parties. At the conclusion of that conference, I allowed the parties additional time to submit supplemental briefs to address this second issue.

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<sup>1</sup> The Commission has not received a motion to intervene by Mr. Robinson.

20. On April 26, 2019 and May 7, 2019, I received supplemental briefs from the City and Lt. Link addressing the new issue.
21. Of most relevance in the City's brief were the following assertions:
- I. Pursuant to certification delegation, the City created a Certification for Deputy Fire Chief on July 10, 2018.
  - II. That same day, on July 10, 2018, Robinson signed the Certification "noting that he was 'selected for appointment' and 'willing to accept' the appointment."
  - III. The City's Mayor signed the Notice indicating that he had selected Mr. Robinson for promotional appointment.
  - IV. By memorandum dated August 24, 2018, the Fire Chief notified the Fire Department that the Mayor had recently made two promotional appointments, including Raymond Robinson to the position of Deputy Fire Chief. The memorandum does not specify the date of the appointment.
22. Of most relevance in Lt. Link's response are two sworn affidavits, one from Lt. Link and the other from the local union President.
23. The affidavit from Lt. Link states in relevant part: "On August 16, 2018, I had a conversation with Chief William F. Laliberty when I was working an overtime shift, and I asked him for an update regarding the promotion to the position of deputy fire chief. He stated to me that Mayor Fiorentini had yet to make a decision."
24. The affidavit from the local union president states in relevant part: "On August 20, 2018, I had a meeting with Mayor Fiorentini to discuss union matters. Present at the meeting beside me and the Mayor was [] another union member. During the course of the meeting, Mayor Fiorentini stated that he was going to fill the captain's position but he wanted my thoughts on the Deputy Chief promotion. I responded by telling the Mayor that it was his appointment to make and I had to stay neutral but the appointment should be made as soon as possible to fill the vacancy."

### *Analysis*

G.L. c. 31, § 25 states in relevant part:

"Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: ... (3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established ..."

In Callanan and others v. Personnel Administrator for the Commonwealth, 400 Mass. 597 (1987), the SJC stated in relevant part:

“Effective February 21, 1986, [G.L. c. 31] Section 25 was amended by St. 1985, c. 527, Section 13, ***to extend an expiring list automatically if a new list has not been established***; the extension is terminated, however, upon the establishment of a new list, or upon the decision of the administrator "that the effective maintenance of the merit system so requires such revocation." Not only do the provisions give the administrator substantial discretion over extending eligibility lists, they also reflect the preference for the establishment of new lists. The corresponding provision for extension of a list because of a court order is designed to ensure that those on the list are eligible for the entire period of the list. Id. ***Nothing in that provision indicates that a court may extend a list to provide the members of the old list consideration for all promotions which might have become available before the list's statutorily prescribed expiration.***” (emphasis added)

This appeal first came to the Commission regarding the question of whether the City could make promotional appointments to the position of Deputy Fire Chief after *March 1, 2018*, the date upon which the eligible list for Deputy Fire Chief was to expire. The Appellant, whose name did not appear on that eligible list, argued that the City failed to receive authorization from HRD to extend the eligible list and, hence, any promotional appointment to Deputy Fire Chief made after March 1, 2018 was invalid.

First, as referenced above, an eligible list is automatically extended if a new list has not been established. Thus, as a new eligible list had not been established as of March 1, 2018, the eligible list, upon which Raymond Robinson’s name appeared first, was automatically extended. To the extent that such approval was needed by HRD, HRD and the City have shown that the only reason that formal approval was not given was due to administrative oversight by HRD. For these reasons, the City was permitted to make a promotional appointment to Deputy Fire Chief after March 1, 2018.

Section 25 is equally clear, however, that the City was not permitted to make a promotional appointment to Deputy Fire Chief on or after August 14, 2018, the date upon which a new eligible list for Deputy Fire Chief in Haverhill was established. That turns to the question of when the promotional appointment of Robinson was made. The City argues that the promotional appointment was made on July 10, 2018 and the Appellant (Mr. Link) argues that the promotional appointment of Robinson was not made until August 24, 2018.

Even standing alone, the evidence submitted by the City does not establish that the promotional appointment occurred on July 10<sup>th</sup>. First, the City submitted a Certification dated July 10, 2018, stating that Robinson “signed the Certification noting that he was ‘selected for appointment’ and ‘willing to accept’ the appointment.” The City appears to be stating that Robinson promoted *himself* on July 10<sup>th</sup>, which is illogical and impermissible.

Second, the affidavit from the City’s Human Resources Director is, at best, ambiguous on this issue stating: “On the same date, July 10, 2018, the City *completed* HRD’s Notice of Employment form to notify HRD of its appointment of Robinson to the position of Deputy Chief.” (emphasis added) The next, separate sentence of the affidavit states: “The City’s Mayor signed the Notice indicating that he had ‘selected the undersigned individuals for appointment (or promotion) ...” There is no indication in this second sentence of when the Notice of Employment was signed by the Mayor. Further, the Notice of Employment is not dated and the City opted not to submit an affidavit from the Mayor indicating when he signed the Notice of Employment.<sup>2</sup>

Third, the same affidavit states that: “By memorandum dated August 24, 2018, Chief Laliberty formally notified the Fire Department that Mayor Fiorentini *had recently made* two promotional appointments, including Raymond Robinson to the position of Deputy Fire Chief. The memorandum does not specify the dates of the appointments.” (emphasis added) In fact, that memorandum from the Fire Chief makes no reference that the Mayor had *recently made* promotional appointments. Rather, the memorandum, in its entirety states:

“August 24, 2018

RE: GENERAL ORDER – 2018028

The honorable Mayor James J. Fiorentini has appointed the following men to permanent positions.

Deputy Chief Raymond Robinson to Permanent Deputy Chief.

Captain Peter Schena to Permanent Captain.

Signed

William F. Laliberty

Fire Chief”

Taken together, the evidence presented by the City not only fails to establish that the promotional appointment of Robinson occurred on July 10<sup>th</sup>, but, rather, suggests that the appointment was not made until August 24, 2018.

The sworn affidavits submitted by the Appellant (Link) and the local union president bolster this conclusion, both referencing conversations which appear to confirm that on dates *after* August 14, 2018, the Mayor had yet to make a final decision regarding the promotional appointment to Deputy Fire Chief.

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<sup>2</sup> In the event that the City is prepared to have the Mayor testify in regard to whether he made the promotional appointment before or after August 14, 2018, the City may file a motion for reconsideration of this Interim Decision.

*Conclusion*

The City has failed to show that the promotional appointment of Mr. Robinson to Deputy Fire Chief was made prior to August 14, 2018, the date upon which the eligible list containing the name of Mr. Robinson expired.

*Relief*

The Appellant, Mr. Link, asks the Commission to vacate the promotional appointment of Mr. Robinson. While that relief may, ultimately, be appropriate here, I am inclined to provide the parties with sixty (60) days to confer regarding the appropriate relief and/or reach an agreement that may forego the need for the Commission to enter a final decision and order of relief.

For these reasons, the parties shall, within sixty (60) days, provide the Commission with a status update regarding attempts to resolve this matter without the need for a final decision and/or order of relief by the Commission.

Based on the information received from the parties, the Commission will issue further orders as appropriate.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 12, 2019.

Notice:

Stephen Pfaff, Esq. (for Appellant)

Timothy Zessin, Esq. (for City of Haverhill)

Melissa Thomson, Esq. (for HRD)