

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

Case No: I-09-423

In the matter of:

**City of Methuen's 2008 /
2009 Review and Selection
of Reserve Firefighter
Candidates**

**CIVIL SERVICE COMMISSION INVESTIGATION
FINDINGS AND ORDERS**

Pursuant to G.L. c. 31, §§ 2(a) and 72, the Civil Service Commission (hereinafter "Commission") opened an investigation on December 10, 2009 to review the process used by the City of Methuen (hereinafter "City") regarding the 2008 / 2009 review and selection of reserve firefighter candidates.

The investigation was initiated after the Commission conducted a pre-hearing conference regarding a related appeal involving a candidate not selected for appointment.¹

The City and the state's Human Resources Division (hereinafter "HRD"), in response to a Commission order, submitted information related to the review process in question.²

A hearing was conducted at Methuen City Hall which was attended by:

- Peter J. McQuillan, City Solicitor, City of Methuen;
- Colleen McCarthy, Director of Human Resources, City of Methuen;
- Steven Buote, Fire Chief, City of Methuen;
- David Copley;
- Gregory McCorry, candidate for reserve firefighter;
- Ross Hendrigan, candidate for reserve firefighter;
- Paul Valliere, candidate for reserve firefighter;
- Craig Langlais, candidate for reserve firefighter;
- Daniel Pomerleau, candidate for reserve firefighter;
- Salvatore DiPrima, candidate for reserve firefighter;
- John Blais, candidate for reserve firefighter;
- Matthew Collier, candidate for reserve firefighter;

¹ The related appeal involves Anthony Shaheen (CSC Case No. G1-09-347).

² Information submitted to the Commission by the City which can be deemed a part of an applicant's personnel record is impounded.

- Rebecca Ferreira, candidate for reserve firefighter;
- Mark Abraham, candidate for reserve firefighter;
- David Crogan, candidate for reserve firefighter;
- Liberato Melillo, candidate for reserve firefighter;
- Michael Lough, candidate for reserve firefighter;
- Patrick McKallagat, candidate for reserve firefighter;
- Eric Manzi, candidate for reserve firefighter;
- Jack Burke;
- Sean Wholley, candidate for reserve firefighter (2008 eligible list).

Based on a careful review of the documentary evidence, testimony and statements, I make the following findings of fact:

FINDINGS OF FACT

1. HRD issued Certification No. 280591 to the City on June 25, 2008 for the selection of seven (7) permanent reserve firefighters with the instructions stating that “selection must be of 7 of the first 15 highest who will accept appointment.” This Certification was generated from a 2006 “eligible list” of candidates who took and passed a civil service examination for firefighter.
2. Forty-four (44) individuals signed the Certification indicating their willingness to accept the appointed if selected.³
3. Without notifying HRD, the City subsequently decided to hire fifteen (15) reserve firefighter candidates to ensure a full complement of reserves on its roster.
4. Although the City failed to notify HRD of its intention to hire fifteen (15), as opposed to seven (7), reserve firefighters, I find that the City’s decision was based on the operational needs of the Fire Department and there were no ulterior motives on behalf of the City for making this decision.
5. Further, I find that had the City notified HRD of its desire to increase the number of candidates selected to fifteen (15), no additional names would have been provided to the City as more than enough candidates (44) had signed the Certification to meet the statutory “2n +1” formula” regarding selections.
6. The Fire Chief and Deputy Fire Chief at the time (both of whom have since retired) interviewed thirty-four (34) candidates who completed an application for employment. The City’s Human Resources Director, Colleen McCarthy, participated in some of those interviews.
7. The Fire Chief and Deputy Fire Chief ranked the thirty-four (34) candidates (from 1 to 34) and recommended fifteen (15) candidates for appointment. The City was unable to

³ The Certification provided to the Civil Service Commission does not contain a signature for David Crogan or Gregory McCorry. Based on the testimony of Mr. Crogan and Mr. McCorry and the testimony of Colleen McCarthy, I find that both Crogan and McCorry did sign the Certification indicating their willingness to accept appointment if selected. Thus, for the purposes of this order, they are deemed to be included as part of the forty-four (44) candidates who signed Certification No. 280591.

retrieve any notes, interview guides or other written comments of the retired Fire Chief and Deputy Fire Chief.

8. Ms. McCarthy met with Mayor William Manzi (who serves as the Appointing Authority) and reviewed the list of thirty-four (34) candidates, including the fifteen (15) recommended by the Fire Chief and the Deputy Fire Chief.
9. Mayor Manzi subsequently selected sixteen (16) candidates for appointment. The City was unable to show that the decision to expand the number of candidates to sixteen (16), as opposed to fifteen (15), was based on the operational needs of the Fire Department.
10. After paying a \$150 fee, 15 of the 16 selected candidates subsequently took and passed a required Physical Abilities Test.
11. PAR.08 (2) requires that a Certification for public safety original appointments be returned to HRD by the Appointing Authority no later than 12 weeks after it was issued. PAR.08(2).
12. The City failed to return the Certification to HRD listing the selected candidates and/or the reasons for bypassing certain candidates. As a result, the Certification is considered void under PAR.08(2).
13. A new civil service examination was administered by HRD in 2008 resulting in the creation of a new eligible list for the title of reserve firefighter in the City of Methuen.
14. Some candidates selected from the 2006 eligible list did not take the subsequent examination used to create the 2008 eligible list believing they would be selected for appointment from the 2006 eligible list.
15. If the City were to requisition a Certification from HRD to hire fifteen (15) reserve firefighters today, the Certification would be created using the 2008 eligible list, thus excluding many of the individuals selected for appointment whose names do not appear on the 2008 eligible list. I find that these individuals are aggrieved as their employment status has been harmed through no fault of their own.

COMMISSION ORDERS

Pursuant to G.L. c. 31, §§ 2(a) and 72 and Chapter 310 of the Acts of 1993 and for all of the reasons cited in the findings above, the Commission, in order to provide relief to aggrieved individuals who were harmed through no fault of their own, hereby orders the following as a result of its investigation into the 2008 / 2009 review and selection process of reserve firefighter candidates in the City of Methuen:

1. HRD is to reactivate the 2006 eligible list of reserve firefighter candidates in the City of Methuen for the sole purpose of allowing the City to select 15 reserve firefighter candidates.

2. Certification No. 280591, containing the names of forty-four (44) candidates willing to accept employment if appointed to the position of reserve firefighter candidate, is reactivated.
3. Within sixty (60) days of the issuance of this order, the City may select up to fifteen (15) candidates for reserve firefighter from the forty-four (44) candidates willing to accept appointment.
4. The City shall comply with all requirements of the civil service law and rules in making these selections. Further, prior to initiating the review of candidates, the City has agreed to notify all candidates regarding the details of the transparent review process that will be utilized.
5. In regard to this selection process only, the City is required to notify HRD of the positive reasons for selecting all fifteen (15) candidates and the negative reasons for not selecting any of the other candidates willing to accept employment, but who are not selected.
6. HRD will determine if the reasons submitted are sound and sufficient reasons for not selecting any bypassed candidates.
7. The Commission's investigation under G.L. c. 31, § 2(a) will remain open until these selections have been made.
8. Using its authority under both Sections 2(a) and 2(b) of Chapter 31, the Commission, in regard to this selection process only, will hear appeals from any non-selected candidate that believes that his/her non-selection was not based on basic merit principles.⁴

This order is to be posted in the office of Methuen City Clerk and also posted conspicuously in the headquarters of the Methuen Fire Department.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on January 28, 2010.

A True Copy. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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.

⁴ Related Case No. G1-09-347 (Anthony Shaheen v. City of Methuen) is hereby dismissed without prejudice for all the reasons cited in this decision. Mr. Shaheen, should he not be selected for appointment from Certification No. 280591, may contest his non-selection to the Civil Service Commission.

Notice to:
Peter J. McQuillan, Esq. (for Appointing Authority)
City of Methuen Law Department
41 Pleasant Street: Room 311
Methuen, MA 01844

Tsuyoshi Fukuda, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Also posted at www.mass.gov/csc