

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

JOHN F. NEE, Jr.,  
Appellant

v.

G2-08-112

HUMAN RESOURCES DIVISION,  
Respondent

Appellant's Attorney:

*Pro Se*  
John F. Nee, Jr.

Respondent's Attorney:

Suzanne L. Faigel, Esq.  
Human Resources Division  
One Asbhurton Place: Room 211  
Boston, MA 02108

Commissioners:

Donald R. Marquis

**INTERIM ORDER**

*Procedural History*

On May 12, 2008, John Nee (hereafter "Appellant" or "Nee"), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (hereafter "Commission"), appealing the May 5, 2008 decision of the state's Human Resources Division (hereafter "HRD") to prevent him from taking the June 21, 2008 promotional examination for the position of lieutenant in the Boston Fire Department.

A pre-hearing conference was conducted at the offices of the Commission before Commissioner Marquis on June 9, 2008 which was attended by the pro se Appellant and

counsel for HRD and the City of Boston (hereafter “City”). A schedule was established for the parties to submit motions and answers to the Commission.

### *Background*

On November 17, 2007, HRD administered the promotional examination for Boston Fire Lieutenant to 186 test-takers. After allegations of misconduct regarding the examination, HRD investigated the matter, found that misconduct occurred, concluded that the integrity and fairness of the examination was compromised and canceled the examination. A new promotional examination is now scheduled for June 21, 2008.

In regard to Mr. Nee, one of the 186 test-takers, HRD determined that he violated a known rule that prohibits the copying of test questions. It is unknown whether this incident was related to the larger investigation HRD completed into the overall integrity of the examination.

HRD argues that, since HRD would have canceled the Appellant’s exam results from the November 2007 examination upon reaching the above-referenced conclusion regarding his alleged “copying”, HRD has determined that he can not participate in the upcoming re-take of the examination on June 21, 2008.

The Appellant strenuously argues that he did not violate any known rule and that he did not “copy” any test questions. Rather, according to the Appellant, he and several other test-takers simply participated in the well-established practice in which various test-takers remember several questions from the test and meet to compile information after the examination. According to the Appellant, and at least one District Fire Chief that submitted a letter on his behalf, this practice allows test-takers to, among other things, determine, what, if any questions they wish to protest, pursuant to G.L. c. 31, § 22.

### *Interim Order*

The Commission hereby orders the state's Human Resources Division to allow the Appellant to take the June 21, 2008 promotional examination in question. Whether or not the results from this "re-take examination" can be used to include the Appellant in the subsequent eligibility generated from this examination will be determined as a result of the final disposition of the instant appeal before the Commission. To deny Mr. Nee the opportunity to take the June 21, 2008, prior to the outcome of the instant appeal before the Commission, would cause him irreparable harm. Allowing him to sit for the exam, however, and then determining whether his name should be included on the ensuing eligibility list, will not prejudice HRD, the City or any other test-takers.

### Civil Service Commission

---

Donald R. Marquis  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on June 12, 2008.

A true record. Attest:

---

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:

John F. Nee (Appellant)  
Suzanne L. Faigel, Esq. (for HRD)  
John Marra, Esq. (HRD)  
Robert Boyle, Esq. (for City of Boston)