COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

One Ashburton Place - Room 503
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SCOTT RAGUCCI,
Appellant
v.

CASE NO: G1-05-27

TOWN OF SAUGUS,
Respondent

Appellant's Attorney:	Alfred Gordon, Esq. Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, P.C. 18 Tremont Street Boston, MA 02108
Appointing Authority's Attorney:	Eugene J. Sullivan, Esq. Holtz & Reed, LLP One Bowdoin Square Boston, MA 02114
HRD's Attorney:	Martha Lipchitz O'Connor, Esq. Human Resources Division One Ashburton Place Boston, MA 02108
Commissioner:	Paul M. Stein

DECISION ON CROSS-MOTIONS FOR SUMMARY DECISION

The Appellant, Scott Ragucci, acting pursuant to G.L.c.31, §2(b), appeals the decision of the Town of Saugus (Saugus) and the Massachusetts Human Resources Division (HRD), to "bypass" him for appointment from Saugus's roster of intermittent firefighters to a full-time position as a Saugus firefighter. The Appellant moved for Summary Decision, which HRD and Saugus opposed and filed a Cross-Motion for Summary Decision. A hearing on the motions was held by the Civil Service Commission (the Commission) on September 8, 2008. This appeal is related to another appeal (Ragucci v. Saugus, CSC Docket No. D-08-220) in which the Appellant challenges Saugus's subsequent abolishment of the town's roster of intermittent firefighters.

FINDINGS OF FACT

Giving appropriate weight to the documents submitted by the parties, and the argument presented by the Appellant, the Town and HRD, and inferences reasonably drawn from the evidence, I find the following material facts to be undisputed:

Background Concerning Intermittent Fire Force Appointments

1. The authority to establish a permanent reserve or intermittent service is designed to provide appointing authorities with a roster of authorized civil service employees who can be called at short notice to work on an as-needed basis, performing essentially as substitutes for full-time employees who may be out ill or on vacation, and to provide extra personnel in emergency or special situations on a short-term basis. The terms "intermittent" and "reserve" force are essentially interchangeable when applied to towns; cities are restricted in the size of a "reserve" force but not an "intermittent force". (*Respondent's Opposition, Caggiano Aff't; HRD Civil Service Unit, "A Certification Handbook: Entry Level Police Officer and Firefighter Appointments For Permanent Intermittent and Reserve Service Subject to Civil Service" [HRD Intermittent Handbook], Section V*)

2. Prior to making an intermittent appointment, an appointing authority must requisition a certification from HRD for the number of permanent intermittent vacancies that are to be filled. Upon receipt of such a requisition, HRD issues a Certification to the appointing authority from the eligible list for the entry level position of Firefighter or Police Office, as applicable. The appointing authority then proceeds to appoint candidates in accordance with civil service law and rules in the same manner as any original civil service appointment. (*Respondent's Opposition, Caggiano Aff't; HRD Intermittent Handbook, Section V*)

3. Once candidates have been selected for appointment, the appointing authority returns the signed Certification with the standard Authorization of Employment Form 14 for approval by HRD. (*Respondent's Opposition, Caggiano Aff't; HRD Intermittent Handbook, Section V*)

4. After HRD approves the intermittent appointments, the names of the appointees in that particular community are placed on a standing list called a "roster". The names are placed on the roster "in order of the date of appointment shown" on the Authorization of Employment Form 14. (*Respondent's Opposition, Caggiano Aff't; HRD Intermittent Handbook, Section V*)

5. When a community with an intermittent 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 intermittent officers. Candidates must be listed on that certification "by date and order of their appointment as reflected in the records" provided to HRD by the appointing authority. Candidates with the "same date of appointment are listed in the exact order in which their names appeared on the Authorization of Employment Form 14 provided by the Appointing Authority at the time they were appointed." (The only exception to this rule pertains to communities subject to Consent Decrees covering certain minority candidates which the parties do not assert is applicable to Saugus.) (*Respondent's Opposition, Caggiano Aff't; HRD Intermittent Handbook, Section VIII*)

6. Because of the special significance of the order in which names are placed on the Form 14 submitted at the time intermittent officers are appointed, HRD provides the following instructions about preparing such forms: "Appointing Authorities are asked to

take particular notice of MGL Chapter 31, Section 60, which specifies that intermittent . . . officers must be placed and maintained on the roster and certified for full-time employment in the order in which they were appointed. It is the Appointing Authority's responsibility to insure that the effective dates of employment and the order in which employees are listed on the Authorization of Employment Form follow this requirement, so that certifications issued from the roster list will list names in appropriate order." (*Respondent's Opposition, Caggiano Aff't; HRD Intermittent Handbook, Section V, VIII*)

The 2003 Appointments to the Saugus Intermittent Fire Force

7. In 2003, Saugus requisitioned certification from HRD for appointment of nine (9) permanent intermittent fire officers. HRD issued Certification #230220 dated March 6, 2003, containing the names of twenty candidates from the then current eligible civil service list. (*Respondent's Opposition, Caggiano Aff't*)

8. The name of the Appellant, Scott Ragucci, appeared on Certification #230220 dated March 6, 2003. Mr. Ragucci was one of first nine candidates on the list who had a veteran's preferences for the position of permanent intermittent firefighter. His preference and examination score placed him fifth overall on Certification #230220, out of sixteen candidates (seven without veteran's preference) who signed willing to accept appointment on the Certification. (*Appellant's Motion, Exhibit 1; Respondent's Opposition, Exhibit B*)

9. The name of Joseph P. Imbrogna, also a veteran, appeared on Certification #230220, tied for sixth place with another veteran, Matthew D. Nicolo, meaning that (a) Messrs. Imbrogna and Nicolo had received the same (tied) examination score and (b) Mr. Ragucci has received a higher examination score than Messrs. Imbrogna or Nicolo. ((*Appellant's Motion, Exhibit 1; Respondent's Opposition, Exhibit B*)

10. The complete score order of the nine candidates on Certification #30220 is:

1	CROOKER, ROBERT J	(Disabled Veteran)	
2	REA, STEPHEN L	(Disabled Veteran)	
3	SACCO, GARY S	(Veteran)	
4	DEON, THOMAS	(Veteran)	
5	RAGUCCI, SCOTT E	(Veteran)	
6#	IMBROGNA, JOSEPH P	(Veteran)	#TIE SCORE
6#	NICOLO, MATTHEW D	(Veteran)	#TIE SCORE
8	FOWLER, MATTHEW W	(Veteran)	
9	BARKER, MICHAEL J	(Veteran)	

(*Appellant's Motion, Exhibit 1; Respondent's Opposition, Exhibit B*)

11. On April 16, 2003, Saugus appointed the first nine candidates above (all veterans) to the nine vacant positions of permanent intermittent firefighters. (*Appellant's Motion, Exhibits 2, 3; Respondent's Opposition, Exhibit C*)

12. In accordance with the standard procedures, Saugus provided to HRD an Authorization of Employment Form 14, dated April 16, 2003, which HRD approved on or after April 30, 2003, informing HRD of the appointments. Saugus listed the names of the nine appointees on the Form 14 in the following order (which corresponds to their score order on Certification #230220), with the following appointment dates:

Robert J. Crooker	04.16.2003
Rea, Stephen L.	04.27.2003
Gary Sacco	06.15.2003
Thomas Deon	04.16.2003
Scott Ragucci	04.16.2003
Joseph P. Imbrogna	04.16.2003
Matthew D. Nicolo	05.04.2003
Matthew Fowler	04.16.2003
Michel J. Barker	04.16.2003

(*Appellant's Motion, Exhibit 5; Respondent's Opposition, Exhibit C*)

13. As a result of subsequent correspondence from Saugus to HRD dated April 21, 2004, Saugus requested to "amend the existing Permanent Intermittent Firefighters list to reflect Stephen L. Rea and Gary Sacco's employment date of April 16, 2003 and the

order in which they appeared on certification #230220". HRD appears to have changed the employment dates on the original Form 14 accordingly, to reflect the corrected dates of employment provided by the Saugus April 21, 2004 letter, but, otherwise, the amended Form 14, as of April 21, 2004 showed the appointees in the same, original order:

Robert J. Crooker	04.16.2003
Rea, Stephen L.	04.16.2003
Gary Sacco	04.16.2003
Thomas Deon	04.16.2003
Scott Ragucci	04.16.2003
Joseph P. Imbrogna	04.16.2003
Matthew D. Nicolo	05.04.2003
Matthew Fowler	04.16.2003
Michel J. Barker	04.16.2003

(*Appellant's Motion, Exhibits 3, 5; Respondent's Opposition, Exhibit C*)

14. On or about September 3, 2004, Saugus requisitioned a certification from HRD for appointment of one (1) full-time firefighter. In response to that requisition, HRD issued Roster Certification #240829 containing the names of the following seven (7) permanent intermittent firefighters and a "Date of Appt." for each, in the following order:

Robert J. Crooker	04.16.03
Scott E. Ragucci	04.16.03
Joseph P. Imbrogna	04.16.03
Matthew W. Fowler	04.16.03
Michael J. Baker	04.16.03
Matthew D. Nicolo	05.04.03
Gary S. Sacco	06.15.03

(*Appellant's Motion, Exhibits 6; Respondent's Opposition, Exhibit D*)

15. By listing seven (7) names for appointment to the one (1) vacant full-time Firefighter position, and taking note that HRD PAR.09 rules apply a "2n+1" formula for certification and appointment, the Commission must infer that HRD assumed that the first five (5) candidates were deemed to be "tied"; based on their "Date of Appt.", or appointment dates. (*Appellant's Motion, Exhibits 6; Respondent's Opposition, Exhibit D*)

16. At the Commission's request, HRD provided a current copy of the Permanent Intermittent Roster for the Saugus Fire Department. That Roster lists the permanent intermittent firefighters in order of their dates of appointment and, within the group of firefighters having the same appointment date, the roster lists the names in the order as specified by Saugus in its April 16, 2003 Form 14, as amended by its subsequent letter of April 21, 2004. The only exception to this order is the placement of Firefighter Sacco at the bottom of the Roster Certification, apparently using the 06.15.03 appointment date given for him on the original Form 14, rather than the corrected appointment date of 04.16.03. The Commission infers this discrepancy was an administrative oversight and that HRD would have intended to follow the corrected order of names on the Form 14 provided to HRD in Saugus's April 21, 2004 letter. (*Appellant's Motion, Exhibits 3, 5, 6; Respondent's Opposition, Exhibits C, D; Saugus Fire Roster [updated thru 8/31/08]*)

17. On September 16, 2004, Saugus submitted to HRD an Authorization of Employment Form 14 reflecting the appointment of intermittent Firefighter Joseph P. Imbrogna to the full–time Firefighter position, with an employment date of October 4, 2004. HRD approved the appointment on September 27, 2004. (*Appellant's Motion, Exhibit 8; Respondent's Opposition, Exhibit E*)

18. Saugus submitted no reasons for selecting Firefighter Imbrogna over any of the other permanent intermittent firefighters on the Roster Certification. On January 10, 2004, Firefighter Ragucci filed an appeal with the Commission asserting that he had been "bypassed" without a statement of reasons having been provided.

19. On or about May 19, 2005, Saugus notified Firefighter. Ragucci that he had not been appointed to the full-time position of Firefighter, again, without explanation. The

delay in notice and no issue of timeliness has been raised by either party as an issue in this appeal.

20. The Roster also indicates that, in June 2004, Saugus appointed Firefighter Rea and Firefighter Deon from the permanent intermittent roster to full time status, both of whom had stood higher than Firefighters Ragucci and Imbrogna on the original Certification #230220, and all of whom had the same 04.16.03 appointment date. The Roster also indicates that Saugus appointed Firefighter Barker to full time status in June 2005 and Firefighter Fowler to full time status in January 2006, both of whom also had a 04.16.03 appointment date, but who had stood lower than Firefighters Ragucci and Imbrogna on the original Certification #230220. The Appellant had not challenged the administrative discrepancy concerning Firefighter Sacco nor the other appointments from the Roster. (*Saugus Fire Roster updated thru 8/31/08]*)

21. The Commission takes administrative notice that, in August 2008, while this appeal was pending, Saugus abolished its intermittent fire force, stating that Saugus had not utilized intermittent firefighters for approximately twenty years and that the current Fire Chief "does not consider the use of intermittent firefighters in this community consistent with safety, logistical, or financial needs." Accordingly, Firefighter Ragucci's appointment to the intermittent fire force was terminated effective August 28, 2008.[1]

22. The Appellant has filed a separate appeal to the Commission that challenges the abolishment of the Saugus permanent intermittent fire force and the resulting termination from his position. See Ragucci v. Saugus, CSC Docket No. D-08-220.

[1] The Roster has been annotated by HRD to indicate that the Appellant, and other Saugus permanent intermittent firefighters on the Roster at the time their positions were eliminated are to be afforded certain "reinstatement" rights and "reemployment" rights (presumably pursuant to G.L.c.31,§§40 and 46). *(Saugus Fire Roster [updated thru 8/31/08]*) The specific rights to which the Appellant may be entitled has not been addressed by the parties and is not treated as a matter within the scope of the Appellant's appeal.

CONCLUSION

The preference that enables full-time appointment of previously appointed intermittent firefighters is contained in G.L.c.31, Section 60:

> In any city or town having an intermittent . . . fire force to which the civil service law and rules are applicable, original appointments to the lowest title in the regular . . . fire force shall be made from among the permanent members of such intermittent . . . force, as the case may be, whose names are certified by the administrator [now HRD] to the appointing authority. *Names of such members shall be listed on the certification in the order of their civil service appointments to such intermittent . . . fire force, or, if such order is not ascertainable, in the order provided by the appointing authority at the time of their appointments to such intermittent . . . force*. . . .

(*emphasis added*)

It appears that HRD and the Commission, as well as appointing authorities, have always assumed that "appointment" is synonymous with the "date of employment" listed on a Form 14, as opposed to the date of the Form 14 itself. See HRD Intermittent Handbook, Section V, VIII. See, e.g., LaGrice v. Town of Avon, 8 MCSR 77 (1995) (holding that appointing authority improperly manipulated the "starting dates" for nine appointees listed on the "same Return of Certification" so as to improperly affect their order on an intermittent roster); Llewellyn v. Town of Rockland, CSC Docket No. E-360 (1994) (referring to intermittent police candidates hired simultaneously and improperly granted different "appointment dates") Although "appointment" date for purposes of Section 60 could just as easily mean the date that an appointing authority submitted, or HRD approved, a Form 14, the Commission prefers not to adopt that meaning, but to apply the "employment date" as the "appointment" date which seems more consistent with the established practice. Under either interpretation, however, in this case, Firefighter Imbrogna and Firefighter Ragucci would have the same "appointment date".

The Commission has consistently decided, and HRD has consistently employed the practice, that if two candidates on a certification have the same examination score: (a) they are considered "tied", (b) they are listed on the Certification in alphabetical order, and (c) the appointment of either one is not considered to be a "bypass" of the other candidate. See PAR.01 (definition of "by-pass"); Edson v. Town of Reading, 21 MCSR 453, 455 (2008) (Conclusion of the Majority); Dalyrymple v. Town of Winthrop, 19 MCSR 379 (2006); Fasano v. City of Quincy, 17 MCSR 80 (2004); Baptista v. Department of Public Welfare, 6 MCSR 21 (1993).

In this case however, the "tie" does not arise between two candidates with equal test scores on a qualifying merit examination but because they all happen to be chosen for "appointment" simultaneously. Thus, the rule that calls for alphabetically listing candidates for original appointment who are otherwise "tied" by reason of merit scores is apt only to a point when choosing between intermittent firefighters who have achieved distinct merit scores, under the scheme of G.L.c.31, §60.

In another somewhat analogous situation, labor service promotional appointments are also made from "rosters" under G.L.c.31, §29. The Commission has determined that an appointing authority is authorized to select a qualified labor service candidate from a labor service roster without stating reasons and unsuccessful candidates do not have any appeal to the Commission. See Brienzo v. Town of Acushnet, 20 MCSR 530 (2007); Murzin v. City of Westfield, 20 MCSR 305 (2007). Labor service appointments, however, are made entirely on the basis of an applicant's seniority, applying the "2n+1" formula to the labor service roster of candidates complied according to the order in which they signed a "register" expressing an interest in such employment. G.L.c.31, §§ 28 & 29; PAR.09; PAR.19. There is no counterpart in the labor service statutes or rules to the

purported second-stage "tie-breaker" proviso in G.L.c.31, Section 60, when applicants have equal seniority or "register" dates, which is the critical issue here.

The four Commission decisions that concern Section 60 intermittent force rosters are also somewhat inconclusive. They do tend to suggest that candidates on an intermittent roster with the same appointment or employment date are, indeed, "tied" within the meaning of the first clause of the second sentence of Section 60. These decisions, however, also appear to go on to suggest that Section 60 intends, whenever possible, that an appointing authority (and HRD) should apply "tiebreaking" criteria consistent with "merit principles" to "ascertain" a definitive roster order within a tied group of appointees having the same appointment date. Thus, unless full-time positions filled from intermittent rosters properly follow the strict placement of the appointees' names on that roster, it does seems that they should be treated as the functional equivalent of a "bypass" that requires appointing authority justification and HRD approval.[2]

In Town of Holbrook, 1 MSCR 141 (1988), a Board of Selectmen hired seven intermittent police officers, making "offers of appointment" after voting separately on each candidate. The Board submitted a Form 14 listing each appointee as beginning employment on May 6, 1987, apparently listing the candidates in the order in which the Board voted to offer them employment, which put the Appellant in first place although his exam score was lower than others who had been appointed. When the Appellant was not selected first for a subsequent full-time appointment, he appealed to the Commission.

[2]The Commission reached a similar conclusion with respect to "bypass" appeals from labor service appointments under G.L.c31,§28, where the appointing authority is required to appoint candidates selected on basis of their standing on a roster ordered according to when they "filed their applications", i.e., "first-come first served". Although the order is not based on relative scores on a qualifying examination and an appeal by a person claiming the appointing authority hired someone out of order is not strictly a "bypass" within the meaning of G.L.c.31,§27, the Commission has determined that it has jurisdiction of such Section 28 appeals and that such "out-of-order" appointments require the same justified "statement of reasons" as do the traditional Section 27 bypass. Seariac v. City of Marlborough, 7 MSCR 254 (1994)

The Commission dismissed the appeal, stating that: (1) all the appointees listed on the Form 14 had the same employment date, so the order in which they belonged on the intermittent roster was "unascertainable" within the meaning of Section 60 "precisely because the applicants were tied"; (2) the sequence in which the appointees were offered employment was not relevant; but (3) an "ascertainable" order should have been created by listing the names in order according to how the appointees names appeared on the certification list from which the intermittent appointments had been made, i.e., according to the appointees' statutory preferences and merit examination scores. In the Holbrook case, however, it didn't matter that employment dates (a tie) were used, rather than a properly ordered roster based on examination score (the Appellant's score was lower than the successful candidate). In either case, the Appellant was not bypassed.

In Llewellyn v. Town of Rockland, CSC Docket No. E-630 (1994), the Board of Selectmen simultaneously appointed a group of permanent intermittent police officers, but purported to assign each appointee different "appointment dates", granting the earliest seniority date to the candidate who had scored lowest on the qualifying examination. The Commission granted equitable relief, invalidating the ranking of the officers on the intermittent roster according to their purportedly different "appointment dates". The Commission ruled that each candidate had the same "appointment date" of April 19, 1988. The majority opinion (4-1) then ruled that the proper intermittent roster order of these candidates with the same appointment date should be according to their respective standing on the certification from which they had been appointed, relying on the second-clause in the second sentence of Section 60 to require breaking what would otherwise be

a "tie". Commissioner Waxman dissented; she would not apply any second-stage tie-breaker, but simply would have put all the candidates on the intermittent roster as "tied".[3]

In LaGrice v. Town of Avon, 8 MCSR 77 (1995), the Commission invalidated an appointing authority's use of "staggered" appointment dates to create a different seniority for each candidate. The Commission granted all appointees "identical seniority dates", and directed that, in the future, "unless there are sound and sufficient reasons for doing otherwise, appointments to an intermittent roster from the same certification should be listed, on the return of certification, in the same order that the appointees names appeared on the eligibility list."

Finally, in Goodwin v. Somerville School Comm, 7 MCSR 267 (1994), the Commission made clear that an appointing authority cannot use the provisions of Section 60 to create an intermittent force roster for the purpose of circumventing the statutory priorities for appointment to a permanent position that comes from performing better on a qualifying examination.

As the foregoing review demonstrates, the statutory language of Section 60 is susceptible of more than one interpretation. Reduced to its core, the conundrum is whether the creation of an intermittent public safety roster pursuant to Section 60 is meant to level the playing field and erase all preferences and merit-based distinctions among intermittent appointees that are ordinarily relevant to an original public safety appointment, or whether, when previously appointed intermittent officers come up for

[3] The parties have pointed out that, subsequent to the Commission's decision in Llewellyn, Section 60 was amended in 1989 (St.1989, c.175) to change the "tiebreaker" language, which previously read "in the order of place of such members on the eligible list from which certifications of their names for appointments to the intermittent or reserve force were made", so that it now reads: "in the order provided by the appointing authority at the time of their appointments to such intermittent or reserve police or fire force." There is apparently no legislative history explaining the amendment. The Commission cannot discern that the amendment makes any material change to the fundamental two-stage construct of Section 60 that would lead the Commission to any different decision in this case.

future appointment to a full-time position, their original relative ranking on the qualifying examination and their original statutory preferences are intended to remain a legitimate, distinguishing factor in the selection process. HRD certainly makes a respectable argument in support of the first premise. The Commission decides, however, that the weight of analysis and the prior decisions of the Commission lead to the conclusion that Section 60 meant to instruct an appointing authority to incorporate, to the extent possible, merit-based distinctions and statutory preferences among candidates within an intermittent roster rather than to mandate that they disappear entirely.

Every appointment of either permanent "intermittent" or "full time" firefighters derives from an eligible list complied from the group of candidates who passed the same qualifying examination and made the cut as the first "2n+1" that put them on the certification to the municipality seeking to hire them, either as full-time or intermittent officers, as he case may be. When making a "full time" appointment directly from such a certification, it is clear that an appointing authority must file with HRD and HRD must approve a written statement of "sound and sufficient" reasons "in accordance with basic merit principles" before a person listed lower on the certification may be appointed over a person listed higher, and the non-selected person who is higher on the list has a well-established right of appeal to the Commission to contest the justification proffered for the "bypass" of the more highly ranked candidate. G.L.c.31,§27, G.L.c.31§2(b). See, e.g., MacHenry v. Civil Service Comm'n, 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996) (noting that personnel administrator (and Commission oversight thereof) in bypass cases is to "review, and not merely formally to receive bypass reasons" and evaluate them)

The Commission finds no persuasive reason to read into Section 60 any intention by the legislature to dilute the merit principles that apply to direct full-time appointments when it comes to appointing "intermittent" officers who will fill essentially those same positions. The specificity with which the statute calls for future appointments to be made from an "ascertainable" order established at the time of the intermittent appointment, tends to reinforce the idea that intermittent candidates should be ranked on the roster with the same merit considerations that placed them in the order on which they initially appeared on the eligibility list, as opposed merely to using the indiscriminate date on which they were all "appointed".. Indeed, one purpose of a roster created under Section 60 is to establish a preference that can be used as a stepping stone to a full time appointment. (In Saugus, this appears to have been the only purpose of the force.) When the order in which "intermittents" are placed on such a roster so directly affects their future chances for advancement, basic merit principles suggest it best that they be hired off that roster in an order consistent with their relative ranking earned by their standing on the qualifying examination as well as with any statutory preferences applicable to an original appointment. This interpretation of Section 60 provides a result that best appears to meet the basic purpose of the civil service law to appoint and advance personnel on merit and not by serendipity.

This is not to say that an "out-of-order" roster ranking or "out-of-order" appointment from Section 60 roster is never appropriate. "Sound and sufficient" reasons may well exist to select a lower ranked "intermittent" over a higher ranked individual – i.e., for choosing to rank "intermittents" on the roster in a different order from how they appeared on the eligibility list or to appoint one ahead of a higher ranked individual to a full time position. The civil service law and rules provide a process to demonstrate such a choice is

justified, which can be utilized when the roster is established and the candidates are notified of the order in which they have been placed, or at the time of the appointment, as the case may be. Nor is there any prohibition to ranking candidates actually "tied" on the certification as similarly "tied" on the roster, so long as that intent is duly, and unequivocally noted by the appointing authority when the roster is established.

In sum, on the facts in this appeal, the Commission concludes that the roster order created by Saugus for the class of permanent intermittent firefighters appointed in April 2003 places Firefighter Ragucci in order ahead of Firefighter Imbrogna. That both candidates were appointed on the same day, alone, does not make then "tied" for purposes of the final roster order. The undisputed record clearly established that, in April 2003 and confirmed in April 2004, Saugus made a conscious choice to place the appointees on the return of certification in an order that mirrored their standing on the eligibility list and the certification from which they were selected. There appears no dispute that the ordering provided by Saugus comports with basic merit principles. Firefighter Ragucci was entitled to rely on the order in which he was placed on the roster ahead of Firefighter Imbrogna and to expect that he would be chosen for full-time employment first, absenct a justification for "bypassing" him and opportunity to appeal. Indeed, had Saugus made its current position to the contrary known at the time the roster was established, Firefighter Ragucci might have exercised a challenge that could have resolved the issue before the full time position was filled in 2004. See Llewellyn v. Town of Rockland, CSC Docket No. E-630 (1994)

Finally, as noted above, it appears undisputed that Saugus has not employed "intermittent" firefighters on the job for nearly twenty years. Thus, neither Fighter Ragucci nor Firefighter Imbrogna had served as Saugus firefighters in the interval from

their appointments as "intermittent" firefighters in April 2003 until September 2004, when the full-time appointment arose. The Commission does not know whether this circumstance is a common occurrence, but, here, Saugus has chosen a candidate who undisputedly ranked lower on merit just eighteen months earlier, without any intervening performance experience to assess and without any reasons given. Such an unexplained outcome is hard to reconcile with the fundamental objectives of the merit principles underlying the civil service law.

RELIEF TO BE GRANTED

Mr. Ragucci's employment rights have been adversely affected through no fault of his own. The relief to be granted, however, is affected by the fact that Saugus has now abolished the permanent intermittent firefighter forces to which Mr. Ragucci had been appointed. Mr. Ragucci challenges that action by separate appeal.

If Saugus had not abolished its intermittent force, the Commission would have directed HRD and Saugus, as it did in the Llewellyn case, to make the appropriate prospective changes to the intermittent roster, so that Mr. Ragucci is restored to his proper prime of place and received the next opportunity for appointment as a full time Saugus firefighter, with an appropriate potential for adjustment in his seniority.

Based on the undisputed facts presented to the Commission, the Commission concludes that the same practical result can be achieved by placing Mr. Ragucci's name directly on the applicable eligibility list and certification for original appointment to the Saugus Fire Department. The Commission assumes that the next original appointment to a full-time position of firefighter will be made from such a certification. Thus, the relief in this appeal moots the relevance of any further relief in the related appeal.

Accordingly, pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs:

(1) HRD shall place the name of the Appellant, Scott Ragucci, at the top of the eligibility list for original appointment to the position of Firefighter so that his name appears at the top of any current list and any future certification and list from which the next original appointment to the position of Firefighter in the Saugus Fire Department shall be made, so that he shall receive at least one opportunity for consideration from the next certification for appointment as a firefighter in the Saugus Fire Department.

(2) If and when Scott Ragucci is selected for appointment as a full-time firefighter in the Saugus Fire Department, his civil service records shall be retroactively adjusted to show, for seniority purposes, a starting date of October 4, 2004, the Employment Date of the other person selected from Roster Certification No. 240829.

Nothing in this decision is intended to affect the Appellant's reinstatement or reemployment rights, if any, to which the Appellant may otherwise be entitled pursuant to G.L.c.31, §§40 & 46.

For the reasons stated above, the Appellant's appeal is hereby ***allowed.***

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and Taylor, Commissioners {AYE}; Marquis, Commissioner {NO]) on December 11, 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. 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 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 to:
Alfred Gordon, Esq. (for Appellant)
Eugene J. Sullivan, Esq. (for Appointing Authority)
Martha Lipchitz O'Connor, Esq. (for HRD)