

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

MARC SAVAGE,  
Appellant / Petitioner

B2-14-154 (Exam Appeal)  
I-14-212 (Investigation Request)

v.

HUMAN RESOURCES DIVISION  
& SPRINGFIELD FIRE DEPARTMENT,  
Respondents

Appearance for Appellant:

Arnold J. Lizana, Esq.  
111 Ingersoll Grove  
Springfield, MA 01109

Appearance for Human Resources Division:

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Appearance for Springfield Fire Department:

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City of Springfield  
36 Court Street  
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

**DECISION &  
RESPONSE TO REQUEST FOR INVESTIGATION**

On July 3, 2014, the Appellant / Petitioner, Marc A. Savage (Mr. Savage), a Captain in the Springfield Fire Department (SFD), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to “cancel” the results of a promotional examination for Deputy Fire Chief, which was administered on March 22, 2014.

On July 23, 2014, I held a pre-hearing conference at the Springfield State Building in Springfield, MA, which was attended by Mr. Savage, his counsel, counsel for the SFD and (via telephone) counsel for HRD.

As part of this pre-hearing conference, counsel for Mr. Savage argued that G.L. c. 31, § 59 does not permit HRD to “cancel” the results of a promotional examination that had already been given and, even it did, HRD’s action was not warranted here. Also, as part of the pre-hearing, counsel for Mr. Savage raised the allegation that the request (by the SFD) to cancel the results of the examination was the result of bias by the SFD Commissioner. I informed the parties that, based on these statements, it appeared that Mr. Savage was also requesting that the Commission conduct an investigation, pursuant to G.L. c. 31, § 2(a).

After the conclusion of the pre-hearing on July 23, 2014, I issued a Procedural Order memorializing the agreed-upon orders that were discussed at the pre-hearing. The Procedural Order:

- Joined the SFD as a party;
- Required HRD to produce various documents;
- Provided Mr. Savage with thirty (30) days to file a brief with the Commission to show cause why the Commission should initiate an investigation;
- Provided the SFD and HRD with the opportunity to file a Motion to Dismiss and a response to Mr. Savage’s request for investigation;
- Provided Mr. Savage with the opportunity to reply to the Motions to Dismiss.
- Required the parties to appear for a hearing / conference on September 10, 2014.

All of the above information was received and the above-referenced hearing / conference was held at the Springfield State Building on September 10, 2014. The hearing was attended by Mr.

Savage, his counsel, counsel for the SFD, the Fire Commissioner and counsel for HRD. I heard oral argument from counsel for all parties and statements from Mr. Savage and the Fire Commissioner.

Based on the documents and affidavits submitted, the statements made at the hearing, and taking administrative notice of all applicable civil service law and rules, I find the following:

1) Mr. Savage, a 36-year veteran of the SFD, is the highest-ranking African American in the Department, currently holding the title of Fire Captain.

2) G.L. c. 31, § 59 states in relevant part:

“An examination for a promotional appointment to any title in a police or fire force shall be open only to permanent employees in the next lower title in such force, except that if the number of such employees, or the number of applicants eligible for the examination is less than four, the examination shall be opened to permanent employees in the next lower titles in succession in such force until either four such eligible employees have applied for examination or until the examination is open to all permanent employees in lower titles in such force”.

3) If an Appointing Authority has less than four (4) eligible applicants sign up to take a police or fire promotional examination, HRD’s general policy and practice is to postpone the examination and reschedule it for the following year, at which time HRD opens up the eligibility to the next lower title in succession pursuant to Section 59.

4) In the following year, if there is still an insufficient number of eligible applicants that have signed up to take the examination, HRD will postpone and reschedule the exam (again) for the next year, opening up the eligibility to the next lower title in succession. This process continues until the examination has been opened up to the lowest possible title.

- 5) On March 6, 2013, HRD postponed the 2013 promotional Deputy Fire Chief examination for the SFD as only one (1) person signed up to take the exam. That 2013 exam was only open to permanent employees in the District Fire Chief title, which is the next lower title to Deputy Fire Chief.
- 6) On January 29, 2014, HRD notified SFD that the promotional Deputy Fire Chief examination was rescheduled for March 22, 2014. The exam was now open to permanent employees in both the District Fire Chief and Fire Captain titles.
- 7) On March 6, 2014, SFD Deputy Jerrold Prendergast emailed HRD to determine whether “enough people signed up for the Springfield Deputy [Fire Chief] exam [scheduled for March 22].”
- 8) On March 8, 2014, HRD responded to Deputy Prendergast’s email, stating: “There were only 2 applicants for the Deputy Chief’s exam, however, since it was previously postponed, the exam will move forward ...”
- 9) On March 22, 2014, HRD administered the SFD promotional Deputy Fire Chief examination to two individuals: 1) Mr. Savage; and 2) Glenn Guyer.
- 10) Mr. Guyer was appointed by SFD Commissioner Conant as a *Provisional* Deputy Fire Chief in March 2012.
- 11) At least since the March 2012 provisional appointment, Commissioner Conant and Mr. Guyer have had a professional and friendly, social relationship.
- 12) Upon the establishment of an eligible list and the subsequent certification of at least three (3) names willing to accept a promotional appointment to Deputy Fire Chief, Mr. Guyer’s provisional appointment would be vacated.

13) On May 29, 2014, the results for the written exam were released to the applicants by email.

Both Mr. Savage and Mr. Guyer received passing scores. (Both Mr. Savage and the SFD believe that Mr. Guyer had a higher score than Mr. Savage.)

14) The position of Deputy Fire Chief is subject to a residency requirement that can be waived by the City's Mayor. As of May 29, Mr. Guyer did not reside in Springfield.

15) On June 20, 2014, Commissioner Conant emailed HRD stating:

"On March 22, 2014, an exam was held for Deputy Chief. To my knowledge, only 2 individuals submitted employee verification forms for signature and the test was still held for Springfield. Can you tell me why it was allowed with only two applicants or if there was four or more applicants, what the names of the individuals were. If you cannot answer, could you point me to the right person who would be able to. Thank you."

16) On June 23, 2014, HRD emailed Commissioner Conant stating:

"We have reviewed your request and discovered that the Deputy Fire Chief's exam erroneously moved forward with only 2 applicants, instead of 4. Attached is a postponement notice and the exam will be automatically scheduled for next March, where it will be opened to the next lower grade, unless you choose to cancel it altogether. The 2 applicants who took the exam will be notified of the postponement and their examination fees will be refunded within 24-48 hours. Thank you for bringing this to our attention and we apologize for the inconvenience caused."

17) The "postponement notice" that was attached stated:

"Dear Appointing Authority:

This is to advise you that less than four applications were received from individuals eligible to take the March 22, 2014, departmental promotional examination for Deputy Fire Chief in your Fire Department.

In accordance with MGL Ch. 31, § 59, this examination has been postponed and departmental personnel in the next lower grade will be eligible to apply. This examination will be automatically rescheduled for the next available examination for this title, unless an alternate request (i.e. Sole Assessment Center request, request to cancel the examination) is received and approved at least 7 Mondays prior to the rescheduled examination date.

Please post this notice in all conspicuous places throughout your Fire Department/Station(s), so all applicants have notice of this cancellation. All applicants who paid an examination processing fee for this exam will have such fee refunded.

Please feel free to contact me should you have any questions and/or concerns regarding this matter.”

18) Both Mr. Savage and Mr. Guyer were subsequently notified by email of HRD’s decision and received a refund of their examination fee.

19) As of September 10, 2014, Mr. Guyer remained as the Provisional Deputy Fire Chief.

*HRD’s Position*

HRD argues that Section 59 is clear and unambiguous requiring that:

- a) A promotional examination for police and fire positions only be conducted when there are at least four (4) eligible applicants that have signed up to take it; *and*
- b) If less than four (4) eligible candidates have signed up; the examination must be opened up to *all* lower titles until at least four (4) eligible candidates have signed up or the lowest title has already been reached.

According to HRD, their consistent practice is to: postpone a promotional examination whenever there are less than four (4) eligible candidates; re-post the examination to be held one (1) year later, at which time those in the next lower title would be eligible to apply; and to continue this postponement / re-posting process until at least four (4) eligible candidates have signed up or they have reached the lowest title.

HRD argues that they simply erred<sup>1</sup> by allowing the promotional examination to go forward, and, upon review, corrected the error to ensure compliance with Section 59 and HRD’s well-established practice regarding promotional examinations.

Further, HRD argues that their authority to take this action is firmly established in the civil service law.

Finally, HRD argues that there were no ulterior motives guiding their decision-making

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<sup>1</sup>HRD’s brief attributes the error to staff turnover.

process and that they were unaware of any allegations of bias or discrimination when they effectively canceled the promotional examination and continued it for another year.

For these reasons, HRD argues that the Commission should dismiss Mr. Savage's appeal under Section 2(b) and deny his request for investigation under Section 2(a).

*Mr. Savage's Position*

First, Mr. Savage interprets the language of Section 59 differently than HRD. According to Mr. Savage, Section 59 does not require HRD to continue moving down to *all* of the titles in its attempt to secure four (4) exam applicants. Rather, according to Mr. Savage, once HRD moves down more than one title (i.e. – District Fire Chief and Captain), they have satisfied the requirement of Section 59 which states: “the examination shall be opened to permanent employees in the next lower *titles* in succession in such force until either four such eligible employees have applied for examination or until the examination is open to all permanent employees in lower titles in such force.” Applied here, Mr. Savage argues that once HRD opened the promotional examination up to two titles (District Fire Chief and Captain), the requirements of Section 59 were satisfied and the promotional examination for Deputy Fire Chief could be administered with less than four (4) applicants. In support of his argument, Mr. Savage suggests that it could not have been the legislative intent to “open[] the process up to the lowest ranked firefighters [which] would likely result in grossly underqualified civil servants in important leadership positions like Deputy Fire Chief.”

Second, Mr. Savage argues that HRD's purported reason for the chain of events that occurred here “lacks credibility” and that HRD's “attempt to travel back in time and retroactively ‘postpone’ an examination that has already been studied for, administered and scored was a thinly veiled attempt to mask the discriminatory and corrupt back room decision making of the

SFD Commissioner.”

That leads to Mr. Savage’s request for an investigation, the basis of which is that Commissioner Conant, based on his own “unethical and discriminatory agenda” manipulated civil service rules and pressured HRD into making its decision in order to prevent the promotion of Mr. Savage and, ultimately, potentially pave the way for the permanent appointment of his friend, Mr. Guyer.

#### *Springfield Fire Department’s Position*

Labeling Mr. Savage’s allegations as “vexatious and frivolous”, the SFD argues that what occurred here was a “simple and legitimate course of events” in which HRD, after realizing an error occurred, appropriately postponed and re-scheduled the promotional examination to allow for the sufficient number of applicants to sign up for the examination.

The SFD, and Commissioner Conant in particular, vehemently disputes any allegation of bias or ulterior motives. Rather, the SFD argues that, assuming that a sufficient number of applicants sign up for the next promotional examination, they will ensure a merit-based process in deciding who is promoted to the permanent position of Deputy Fire Chief, a position currently occupied on a provisional basis by Mr. Guyer.

#### *Analysis*

HRD is vested with considerable authority to administer the day-to-day functions of the civil service system, including, but not limited to, “administering and enforcing” the civil service law and “conducting examinations for purposes of establishing eligible lists”. (See G.L. c. 31, §§ 5 & 77)

In McLaughlin v. Department of Personnel Administration, 10 MCSR 176 (1997), the Commission explicitly stated that HRD’s authority in this regard includes the ability, when based



upon sound and sufficient reasons, to void an examination that had already been administered. In McLaughlin, subsequent to administering a promotional examination for Fire Captain, HRD was unable to verify that the fourth applicant (not McLaughlin) timely filed his application to take the test. Thus, HRD voided the test, and then scheduled a second test that was open to all eligible firefighters in the fire department. McLaughlin, who was eligible to take the examination, appealed to the Commission. In ruling in favor of HRD, the Commission ruled that: “HRD acted within its statutory authority in canceling the examination. HRD provided sound and sufficient reasons for their action. There is sufficient evidence to conclude that four eligible applicants had not timely applied for the examination and therefore the examination is not valid. Further, Chapter 31 Sec. 59 does not limit HRD from taking retroactive measures to assure statutory compliance.” I see no reason to disturb this well-reasoned interpretation of the civil service law as it relates to HRD’s authority in such matters.

The only potential substantive distinction between the instant appeal and McLaughlin is that the examination in question was for Fire Captain, the examination was initially only open to Fire Lieutenants and HRD only had to re-schedule the examination once, to move down to the next lower title of firefighter (which happens to be the lowest title) in order to receive the minimum four (4) applicants.

Given that distinction, it is necessary to address Mr. Savage’s other argument that, once HRD opens the examination to more than one title, it is not required to open the exam to lower titles if, as occurred here, a minimum of four (4) applicants do not apply. Respectfully, the relevant portion of Section 59, does not support Mr. Savage’s reading of the statute – at all.

Section 59 states, in relevant part that:

“An examination for a promotional appointment to any title in a police or fire force shall be open only to permanent employees in the next lower title in such force, except that if the number of such employees, or the number of applicants eligible for the examination is less than four, the examination shall be opened to permanent employees in the next lower titles *in succession* in such force until either four such eligible employees have applied for examination or until the examination is open to *all permanent employees in lower titles in such force.*”  
(*emphasis added*)

I do not see any ambiguity in this statute and concur with HRD’s well-reasoned argument that the Legislature would not have included the phrase “in succession” if HRD only had to open eligibility up to “some lower titles and not necessarily all lower titles” when there continues to be an insufficient number of applicants during an examination’s life cycle. The Legislature’s intent is further confirmed by the reference to opening the examination to “all permanent employees in lower titles in such force”, which clearly anticipates that individuals occupying the lowest title in the force could be eligible to sit for promotional examinations in higher titles beyond the next higher title.

The only remaining issue is whether HRD had sound and sufficient reasons to void the results of the promotional examination. Unlike McLaughlin, there is not even a dispute that only two eligible applicants sat for the promotional examination here. For this reason, HRD was not only permitted, but, arguably, required to void the results of the examination, despite its initial error to go forward with the examination.

That leaves Mr. Savage’s final argument, which although outlined in a request for investigation under Section 2(a), is inexorably tied to his appeal under Section 2(b).

Mr. Savage’s allegations in this regard have evolved as the adjudicatory process has moved forward here. Initially, Mr. Savage alleged that Commissioner Conant’s alleged bias stemmed from a longstanding and close friendship with Mr. Guyer that stretched

back as far as 1998 when Mr. Guyer purportedly served as “Best Man” in Commissioner Conant’s wedding. That allegation turned out to be inaccurate. It was Mr. Guyer’s brother who served as Best Man in Commissioner Conant’s wedding. Similarly, contrary to Mr. Savage’s initial allegation, there was no credible evidence to show that Mr. Guyer sought and/or was denied a residency waiver prior to Commissioner Conant’s inquiry to HRD regarding why the promotional examination went forward with only two (2) candidates.

Moreover, Mr. Savage’s argument that he (Mr. Savage), as the only candidate purportedly meeting the residency requirement, would have been promoted to the permanent Deputy Chief position but for HRD’s decision to void the results of the examination, is not accurate. As the eligible list contained the names of less than three candidates whose name could appear on a Certification for Deputy Fire Chief, Commission Conant was permitted, under civil service law, to continue having Mr. Guyer serve as Provisional Deputy Fire Chief and schedule another examination regardless of HRD’s actions here.

In regard to the suggestion that HRD and the SFD somehow acted in tandem in a nefarious fashion, there is simply no credible evidence to support this integrity-impugning allegation.

Finally, there is Mr. Savage’s overarching allegation, that Commissioner Conant’s had a “discriminatory agenda” against Mr. Savage, one of the Department’s most senior African American uniformed firefighters. The Commission does not shirk from its core responsibility of ensuring that personnel decisions are based on “basic merit principles” which includes: “assuring fair treatment of all applicants and employees in all aspects of

personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens.” (emphasis added) (G.L. c. 31, § 1)

While this allegation will be vetted by the Massachusetts Commission Against Discrimination (MCAD), where Mr. Savage has now filed a complaint, the record here does not support Mr. Savage’s allegation that Commissioner Conant acted contrary to basic merit principles.

Rather, HRD and Commissioner Conant, based on the information presented here, acted in accordance with the civil service law and rules. For this reason, Mr. Savage’s appeal under Docket No. B2-14-154 is hereby **denied** as is his request for investigation under Tracking No. I-14-212.

In reaching this decision, I am mindful that the (re-scheduled) examination and promotional process for the permanent Deputy Fire Chief position is fast approaching. I trust that the SFD will take all necessary steps to insure a promotional process that is free of any actual or perceived bias that could arise if one of the candidates eligible for the permanent promotion is someone who socializes with the Fire Commissioner and his wife.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding

Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Arnold Lizana, Esq. (for Appellant / Petitioner)

Ernest Law, Esq. (for HRD)

Maite Parsi, Esq. (for Springfield Fire Department)