

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
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RE:

2010 / 2011 REVIEW AND SELECTION OF FIREFIGHTERS IN THE CITY OF
SPRINGFIELD

I-11-208

FINDINGS / CONCLUSIONS / ORDERS

Investigation Hearing

The Civil Service Commission (Commission) held a hearing regarding the review and selection of twenty-one (21) firefighters by the Springfield Fire Department (Fire Department) in 2010 and 2011 under the provisions of G.L. c. 31, Section 2(a), which authorizes the Commission to conduct investigations at its own discretion.

The hearing was held on July 27, 2011 in Room 305 of the Springfield State Building in Springfield, Massachusetts. As part of this hearing, I heard from the following witnesses:

- Gary G. Cassanelli, Fire Commissioner, City of Springfield;
- Jerrold E. Prendergast, Deputy Fire Chief, City of Springfield;
- John O'Shea, retired Deputy Fire Chief, City of Springfield;
- David Rivera, Fire Captain, City of Springfield.

Background

The genesis of this investigation was the filing of bypass appeals by three (3) individuals who were not selected for original appointment to the Fire Department as part of the 2010 / 2011 review and selection process.¹

Louis Shelton:	Case No. G1-11-15
Christopher Benevento:	Case No. G1-11-69
Alonzo Hardnett:	Case No. G1-11-128

¹ A fourth individual, Gelson D. Laguerre, was also bypassed for appointment. He filed a timely appeal with the Commission on February 15, 2011, but his pre-hearing was not held until October 26, 2011 because he was on active military duty. Mr. Laguerre and his counsel were provided with a status update of this investigation at the October 26th pre-hearing. (See CSC Case No. G1-11-53)

At a pre-hearing conference on March 23, 2011, Mr. Benevento raised the issue of whether the involvement of Deputy Fire Chief Prendergast compromised the review and selection process since Deputy Prendergast's son was one of the candidates selected for appointment.

As a result of that pre-hearing conference, the Commission opted to hold the three (3) bypass appeals in abeyance and, in the interim, conduct an investigation under G.L. c. 31, § 2(a) regarding the overall review and selection process of Springfield firefighter candidates in 2010 and 2011.

As part of this investigation, the Fire Department and the state's Human Resources Division (HRD), as part of a procedural order issued by the Commission on March 24, 2011, were required to produce various records, which they did.

Based on a review of those records and comments received by the Fire Department and HRD, I prepared a draft chronology of events which formed the basis of questions posed at the hearing. Prior to the hearing, I provided the Fire Department and HRD with a copy of this document and gave them the opportunity to make any corrections or modifications. I received comments, including suggested corrections and modifications from both the Fire Department and HRD. All of the substantive corrections and modifications were made and incorporated into the document. Any of the information from the final, modified document is listed under the findings below as "uncontested".

As referenced above, I also heard testimony from four (4) individuals who were involved in the selection process. Their testimony is referenced accordingly in the findings below.

Findings

Based on the documents submitted and the testimony of the Fire Department witnesses, I find the following:

1. In 2008, HRD administered an examination for the position of Springfield firefighter. (Uncontested)
2. Individuals who took and passed the examination were placed on an eligible list of candidates established by HRD in December 2008. (Uncontested)
3. The eligible list was valid until November 30, 2010. (Uncontested)
4. Zachary Prendergast, the son of Springfield Deputy Fire Chief Jerrold Prendergast (Deputy Prendergast), was among the candidates whose name appeared on the eligible list. (Uncontested)
5. The Appointing Authority for the Springfield Fire Department is Springfield Fire Commissioner Gary Cassanelli (Commissioner Cassanelli).
6. Commissioner Cassanelli testified that Deputy Prendergast notified him "early on" that his (Prendergast's) son was among the candidates on the eligible list. Commissioner Cassanelli testified that he told Deputy Prendergast that he would need to recuse himself

from the selection process if his son became a “viable candidate”. Commissioner Cassanelli testified that his definition of “viable candidate” was someone who was among the first “2n +1” candidates that could be considered for appointment. Since Commissioner Cassanelli did not consider Zachary Prendergast a viable candidate early in the process, he saw no need for Deputy Prendergast to recuse himself at that point. (Testimony of Cassanelli)

7. On February 24, 2010, HRD received a requisition dated February 19, 2010 from the Fire Department for six (6) permanent full-time firefighters. (Uncontested)
8. In March 2010, HRD and the Fire Department, in response to the February 19th requisition, exchanged a series of emails (primarily between Luz Henriquez (Henriquez) of HRD and Deputy Prendergast regarding the issue of whether individuals on the City’s “reinstatement list” and the statewide “reemployment list” had been informed of the vacancies and given the opportunity to be reinstated and/or appointed via the reemployment list. Ultimately, Deputy Prendergast informed HRD that two (2) former Springfield firefighters (Jeffrey Hall and Gary Sperlonga) had indicated a desire to be reinstated and that these two reinstatements would be in addition to the six (6) new hires. (Uncontested)
9. On April 12, 2010, HRD sent a Certification of fifty (50) names to the City (Certification No. 206437 (from the 2008 eligible list) to consider for six (6) permanent full-time firefighter positions. Consistent with the “2n + 1” formula, the Certification stated that “selection must be of 6 of the first 13 highest who will accept”. Thirty (38) individuals signed the Certification as willing to accept. Just prior to receiving this Certification, Deputy Prendergast sent an email to HRD indicating “we are contemplating a lateral transfer from another department in the Commonwealth and may only hire 5 if the request is approved.” (Uncontested)
10. On April 20, 2010, Deputy Prendergast and HRD exchanged emails regarding the issue of how to handle the names of individuals on the Certification who were on active military duty. HRD informed Deputy Prendergast that “candidates who are on active military duty can be considered for appointment while in the service and cannot be bypassed due to their unavailability due to his obligation to perform military service ... should the City locate negative information on any candidates including those in military for non-selection, this information can be submitted to HRD for review and approval.” (Uncontested)
11. Between April 21 and 23, 2010, Deputy Prendergast sent emails to HRD stating: “ ... we recently were given approval to hire an additional 13 firefighters. Can I add this request onto the 6 previous positions or do I have to process another requisition? We are trying to schedule one fire academy for all of our hires.” HRD replied via email stating that the City must send “a written request to increase the vacancies on Certification No. 206437 from 6 to 19 together with a requisition for the 13 new vacancies” and “by close of business on Monday, April 26, 2010), please fax me a copy of the signed certification, in order to determine if the City will be in need of additional names to fill these vacancies.” (Uncontested)

12. On April 26, 2010, Deputy Prendergast, in response to HRD's April 23rd email, sent a letter to HRD stating, "I respectfully request that Springfield Fire Department (SFD) Certification No. 206437 be increased from 6 vacancies to 20 vacancies. We recently received approval for 14 more hires and would like to have all 20 attend the same training academy ... it is our intent to grant a lateral transfer request to 1 firefighter from West Springfield, MA." (Uncontested)
13. Commissioner Cassanelli could not recall if the increased number of candidates included, or was in addition to, those candidates that would be transferred from other departments. (Testimony of Cassanelli)
14. Per HRD's request, the April 26th letter from the City to HRD attached the Certification issued April 12th with an indication of who had indicated a willingness to accept employment. As referenced above, thirty-eight (38) individuals had signed the Certification as willing to accept employment, twenty-four (24) greater than the maximum number of names that the Fire Department could consider for six (6) vacancies under the $2n + 1$ formula. (Uncontested)
15. It appears that HRD subsequently reviewed the April 26th letter and did not question why the number of vacancies had increased from 19 to 20 and/or did not ask if the 20 vacancies included the lateral transfer possibility. Under either 19 or 20 vacancies, this would trigger the need for additional names to meet the $2n + 1$ requirement. (19 vacancies: $2n + 1 = 39$; 20 vacancies: $2n + 1 = 41$) (Uncontested)
16. April 28, 2010, HRD issued seventy-four (74) additional names to the Fire Department. HRD erroneously included the same header indicating that the Fire Department's selection must be of 6 of the first 13 highest who will accept. If the number of vacancies was 20, then HRD's instructions to the City should have stated that its selection must be of 20 of the first 41 highest who will accept – from the entire Certification. (Uncontested)
17. The name of Zachary Prendergast, the son of Deputy Prendergast, appeared on the April 28, 2010 Certification of names. His name is on page 3 of 7 and listed among a group of "C-Tied" candidates indicating that he is a minority candidate (Springfield is among the few cities and towns in Massachusetts still subject to a federal consent decree regarding minority hiring). (Uncontested)
18. As referenced above, thirty-eight (38) individuals had already indicated a willingness to accept employment. Thus, the City, absent approval from HRD to remove any of those thirty-seven (37) names, could consider the first four (4) highest ranked individuals willing to accept employment from the 4/28/10 additional Certification, except if there is a tie for those in the last position. (Uncontested)
19. Fifty-eight (58) individuals signed the 4/28/10 additional Certification as willing to accept employment. Fourteen (14) minority candidates were listed as tied on this Certification (with a "C" next to their name) and ten (10) non-minority candidates were listed as tied (with a "D" next to their name) Zachary Prendergast is among the fourteen (14) tied minority candidates who signed the Certification as willing to accept appointment. (Uncontested)

20. Deputy Prendergast testified that, based on his review, his son was still not among the “2n+1” candidates that could be considered for appointment. Thus, he saw no need to recuse himself from the selection process at this time. (Testimony of Prendergast)
21. Between May 14, 2010 and May 17, 2010, Deputy Prendergast and HRD exchanged a series of emails including a May 17, 2010 email from Deputy Prendergast to HRD stating ... “One other question, do we have to appoint all of those that are tied in a group before moving to the next lower candidate or group of ties?”. (Uncontested)
22. In response to the May 17, 2010 email from Deputy Prendergast, HRD forwarded Deputy Prendergast a copy of Section 9 of the Personnel Administration Rule (PAR.09). PAR.09 (which was copied and pasted to the email response) states in relevant parts that, “applicants who are bypassed on a certification from any of the above or other reasons must be included by the appointing authority in the completion of the Report on Certification (Form 16 II) listing those willing to accept, and must be counted in the selection formula established by PAR.09” and “Appointing Authorities at times request removal of applicants from a Certification under the provisions of PAR.09(2) ... As with reasons for bypass, request for such removal are carefully reviewed by the Personnel Administrator and are subject to even more stringent guidelines and constraints. Appointing Authorities are advised that such removal should be requested only when substantive documentation exists that such an appointment would be detrimental to the public safety force.” (Uncontested)
23. As part of the above-referenced email exchanges, Deputy Prendergast asked HRD about removing a candidate from the Certification under PAR.03 and specifically referenced the name of Christopher Benevento. In response, HRD informed Deputy Prendergast that such requests by must be made in writing providing valid reasons for the request. (Uncontested)
24. PAR.03 states in relevant part that an applicant’s “failure to prove qualifications established by the administrator may be grounds for removal from an eligible list, after an investigation by the administrator which includes prior notice to the applicant and the opportunity to respond.”
25. Between June 4 and June 9, 2010: Commissioner Cassanelli requested that four (4) candidates be removed from the Certification under PAR.09 (Laguerre, Hardnett, Roberson and Buckhannan). (Uncontested)
26. On June 14, 2010, HRD sent a letter to Commissioner Cassanelli requesting additional information to justify the removal of the four (4) above-referenced candidates under PAR.09. (Uncontested)
27. On June 22, 2010: Commissioner Cassanelli sent HRD additional information to justify PAR.09 removal of four (4) candidates. (Uncontested)
28. On July 6, 2010, Deputy Prendergast sent an email to HRD stating in part, “we are preparing to make our selections from our firefighter certification. We had requested (4)

Par. 09 removals from our firefighter certification and were inquiring as to the status of these requests. Would you be able to update me on these requests?" HRD responded to the City's request by asking if the City had provided separate PAR.09 removal letters. The City then responded that it had sent the letters on June 22, 2010. (Uncontested)

29. On July 7, 2010, Deputy Prendergast sent an email (and a letter via fax) to HRD requesting a 6-week extension to process Certification No. 206437. HRD responded by indicating that HRD would need "detailed and specific reasons for the need for the extension." (Uncontested)
30. On July 8, 2010, Commissioner Cassanelli sent written correspondence to HRD stating: "We are respectfully requesting a 6-week extension of Certification #206437. We require additional time to certify the residency of the job applicants' as well (sic) additional time to check employment references." (Uncontested)
31. On July 22, 2010, HRD sent a letter approving the 6-week extension and indicated, that as a result of the delay, at least one additional candidate who should have been considered, must now be given the opportunity to be considered. (Uncontested)
32. On July 27, 2010, Deputy Prendergast sent an email to HRD seeking clarification regarding the need to consider additional candidates. As part of that email, Deputy Prendergast stated, "... it is my opinion that we are 'close' to [giving conditional offers of employment]. We are contemplating a submission of our selections this week to HRD. (Uncontested)
33. On July 29, 2010, A series of email exchanges took place between Deputy Prendergast and Bruce Howard at HRD about setting up a phone call to discuss the need to consider additional candidates as part of the extension. It appears that this phone call took place sometime on July 30, 2010 and Deputy Prendergast complied with HRD's directive. (Uncontested)
34. On July 30, 2010, Deputy Prendergast sent an email to HRD stating, "We are just about ready to hand out conditional offers of employment to our candidates. It has been suggested that I ask fro (sic) your opinion regarding some of the bypasses we are contemplating. I have attached our bypasses and the reasons for bypass. I would be very interested in your experience and opinion on how HRD views them." (Uncontested)
35. On August 5, 2010, Luz Henriquez sent an email to Deputy Prendergast with notes regarding what information the City should include with the reasons for bypass. (Uncontested)
36. On August 17, 2010, Deputy Prendergast sent an email to HRD inquiring about the PAR.09 removal requests of Laguerre and Benevento. HRD responded by saying they had not received them and asked for the letters. (Uncontested)
37. On August 26, 2010, Deputy Prendergast held an internal meeting with "John O'Shea, David Rivera, and Stan Skarzynski". Subject of meeting: "Final Review of New Hires" (Uncontested)

38. On September 1, 2010: Commissioner Cassanelli completed a Form 16-II to HRD with a list of fifty-one (51) names indicating whether they were selected or not selected. It appears that this was submitted to HRD, but that is not certain. (Uncontested)
39. The above-referenced 9/1/10 Form 16-II indicates that the Fire Department had selected twenty-one (21) candidates for appointment. (Uncontested)
40. There are twelve (12) "PAR.09" removal letters from the Fire Department to HRD dated September 1, 2010, but it appears that they were not received by HRD until on or about October 19, 2010. (Uncontested)
41. The 12 candidates that the Fire Department was seeking to remove via a "PAR.09" removal were: Figueroa, Bienvenue, Rathburn, Raimer, King, Kenney, Spear, Brown, Dinoia, Castro, Couture and Ruummele. (Uncontested)
42. The PAR.09 removal letter to HRD regarding Figueroa stated that he, "failed to comply with our June 7, 2010 deadline to submit requested information (employment application and resume). It is the policy of the Springfield Fire Department not to process applicants who fail to comply with deadlines for information. (Uncontested)
43. Among the information submitted to the Civil Service Commission, there is a document date-stamped April 22, 2010 from Nelson Figueroa which states, "My name is Nelson Figueroa. I would like to start by saying thank you for the opportunity to let me serve my community. I have every intention in being a firefighter. Although at this time I am currently serving our country in the armed forces, I would really appreciate if a spot can be held for me. I have a deployment to Afghanistan soon and then my contract will end April of 2012. Again I want to thank you and I hope to hear from you soon." (Uncontested)
44. Although there are twelve (12) PAR.09 removal requests apparently sent to HRD, there is only documentation showing that HRD approved eight (8) of twelve (12) removals. There are no PAR.09 removal approval letters from HRD regarding: Figueroa, King, Kenney, and Spear. (Uncontested)
45. On October 4, 2010, Deputy Prendergast sent an email to HRD asking about the status of their recommendations for hire. (Uncontested)
46. Between October 8, 2010 and October 13, 2010, fourteen (14) candidates signed conditional offers of employment including: Barrera, Basile, Sleeper, Michael Pereira, Lawrence, Picuch, McGhee, Latta, Pablo Colon, Fallon, Murphy, Lapalm, Howell, and Talmont. (Uncontested)
47. On November 1, 2010, two (2) additional candidates signed conditional offers of employment (Tangredi and Casey). (Uncontested)
48. Between November 12, 2010 and November 15, 2010, two (2) additional candidates signed conditional offers of employment (Vazquez and Ward). (Uncontested)

49. Deputy Prendergast testified that sometime in “late November”[2010], two (2) candidates who had been offered conditional offers of employment (Navaro and Cournoyer) contacted him via phone and told him that they were withdrawing from consideration. (Testimony of Prendergast)
50. Deputy Prendergast testified that, upon receiving the phone calls from Navaro and Cournoyer in late November, he notified Commissioner Cassanelli that: 1) the Fire Department would need to consider fourteen (14) additional candidates, all tied in the next position on the Certification, in order to fill the two slots now available; and 2) his son was among the tied candidates to be considered. (Testimony of Prendergast and Cassanelli)
51. Commissioner Cassanelli testified that the process was supposed to go forward with Deputy Prendergast doing only what he could do objectively and then turning it over to him for a final decision. (Testimony of Cassanelli)
52. Deputy Prendergast testified that he then proceeded to complete background checks for all fourteen (14) candidates, including his son. (Testimony of Prendergast)
53. Deputy Prendergast testified that, based on the background checks he completed, only seven (7) of the fourteen (14) candidates should be interviewed, including his son. I asked the Fire Department to submit a document that Deputy Prendergast was referencing in regard to this portion of his testimony. Although I draw no inferences from it, that document contained a spreadsheet with only twelve (12) names on it. (Testimony of Prendergast)
54. The spreadsheet submitted to the Commission indicates that three (3) of the twelve (12) candidates were not interviewed based on their background checks; one (1) was not interviewed because he was on active military duty; one (1) was not interviewed because he did not meet the residency requirement; and one (1) was not interviewed because the candidate did not complete the application process. (Testimony of Prendergast)
55. Deputy Prendergast testified that, after completing the background checks and determining that seven (7) candidates should be interviewed, he spoke to Deputy Fire Chief John O’Shea and asked him to conduct the interviews since his son was one of the candidates to be considered. Deputy Prendergast also testified that it was “his understanding” that Fire Captain David Rivera also participated in these interviews. (Testimony of Prendergast)
56. Deputy Prendergast testified that, at some point prior to the interviews, he realized that two (2) of the seven (7) candidates had already been interviewed a few months earlier by mistake. Deputy Prendergast participated in those interviews and did not recommend those two (2) candidates (Carelock and Milan) for appointment. Thus, only five (5) candidates would be interviewed for the two (2) remaining slots. (Testimony of Prendergast)

57. Deputy O'Shea also interviewed Mr. Carelock, one (1) of the two (2) candidates referenced above. Under the comments section of the rating sheet, Deputy O'Shea wrote, "very favorable impression" in regard to Mr. Carelock. (Documents)
58. Deputy Prendergast was unable to recall whether he scheduled the interviews of the five (5) remaining candidates or whether he asked Deputy O'Shea to do so. He also could not recall whether these interviews occurred over more than one day. He did recall, however, that his son was interviewed on November 30, 2010, the last day before the eligible list would expire. (Testimony of Prendergast)
59. Deputy O'Shea (now retired) testified that he remembers interviewing five (5) or six (6) candidates during this time period. He could not remember who set up the interviews but testified that he guessed it was Deputy Prendergast. Deputy O'Shea indicated that he interviewed the candidates but did not make any recommendations. He remembers handing the folders with the applicants' information back to Deputy Prendergast after the interviews and telling him that his son did a good job during the interview. (Testimony of O'Shea)
60. Fire Captain Rivera testified that he couldn't recall interviewing five (5) people during this time period, but could possibly have interviewed three (3) on or around November 30, 2010. He did recall interviewing Deputy Prendergast's son and completing a rating sheet, but neither he nor Deputy O'Shea made any recommendations. (Testimony of Rivera)
61. The Fire Department provided rating sheets from Deputy O'Shea and Captain Rivera for four (4) candidates that were all dated November 30, 2010 as well as rating sheets regarding the two (2) other tied candidates who were interviewed months earlier. (Documents)
62. Deputy Prendergast testified that sometime during the afternoon of November 30, 2010, he received the application packets back from Deputy Fire Chief O'Shea, including rating sheets for four (4) interviews that, according to the rating sheets, were all completed that day. According to Deputy Prendergast, he left the folders in Commissioner Cassanelli's office and had no communication with the Commissioner regarding the candidates at that time. (Testimony of Prendergast)
63. Commissioner Cassanelli testified that he had some recollection of receiving the folders on November 30, 2010 and the need to select two (2) additional candidates. He testified that he reviewed all of the application materials and, based on his review, decided to appoint Eduardo Colon and Jeremy Prendergast to fill the two remaining slots. (Testimony of Cassanelli)
64. Commissioner Cassanelli testified that there were several good candidates, but the deciding factor was Jeremy Prendergast's education. According to the Commissioner, Mr. Prendergast was one (1) year shy of a bachelors degree and none of the other non-selected candidates had comparable education. (Testimony of Cassannelli)

65. As referenced above, the spreadsheet referenced by Deputy Prendergast during his testimony only included twelve (12) names. Of these twelve (12) candidates, two (2) were selected (Prendergast and Colon) and ten (10) were not. I reviewed all of the documents submitted regarding the ten (10) non-selected candidates who are described below as Tied (with Prendergast), But Not Selected Candidates 1 – 10. (Documents)
66. Tied But Not Selected Candidate 1. Deputy Prendergast determined that this candidate should not be interviewed due to reasons related to a background check. The documents submitted include evidence that this candidate received a suspended sentence in 2002 for possession with intent to distribute marijuana and that he received probation in 1999 for disorderly conduct and resisting arrest. (Documents)
67. Tied But Not Selected Candidate 2. This candidate was interviewed. He is a high school graduate who has attended classes at Holyoke Community College. He served four (4) years in the United States Air Force Reserves and was also on active duty for a period of time serving as a Senior Airman. He received an honorable discharge. (Documents)
68. Tied But Not Selected Candidate 3. Deputy Prendergast determined that this candidate should not be interviewed due to reasons related to a background check. The documents submitted indicate that this candidate graduated from high school and attended UMASS Amherst for three (3) years. He has been a case manager for a local non-profit since 2006 and is fluent in Spanish. He has no criminal history. He appears to have several driving infractions, most of which occurred on or before 2005. (Documents)
69. Tied But Not Selected Candidate 4. Deputy Prendergast determined that this candidate should not be interviewed due to “residency” issues. The documents submitted indicate that this candidate has lived in Agawam (not Springfield) since 2008. (Documents)
70. Tied But Not Selected Candidate 5. This candidate was interviewed. According to the documents submitted, he graduated from Holyoke High School and has been employed as an Emergency Medical Technician since 2008. Since 2009, he has been a teacher’s assistant at a local community college assisting with teaching EMT basic courses. He is fluent in Spanish. (Documents)
71. Tied But Not Selected Candidate 6. Deputy Prendergast’s notes indicate that this candidate was “considered but not interviewed (military)”. According to the documents submitted, this candidate graduated from high school and appears to have completed two (2) years of undergraduate studies. He has been a member of the Army National Guard since 2005 and was a member of the Army Junior Reserve Officer Training Corp where he was a member of the Drill Team and Color Guard. He graduated with cadet rank of 1st Lieutenant. (Documents)
72. Tied But Not Selected Candidate 7 was not interviewed, according to Deputy Prendergast, because he did not complete the application process. (Documents)

73. Tied But Not Selected Candidate 8. Deputy Prendergast determined that this candidate should not be interviewed because of a background check and residency issues. Every document submitted by the Fire Department regarding this candidate lists Springfield as the candidate's residence. This candidate graduated from high school and has been a member of the US Army National Guard since 2007. He was awarded the Army Achievement medal for showing great leadership as a private first class. This candidate appears to have no criminal history. He has received commendations for his hard work from his current and past employer. (Documents)
74. Tied But Not Selected Candidate 9. This candidate was interviewed. According to the records submitted, this candidate received a GED certificate and attended a local community college where he received an EMT certificate. He has been working in the landscaping business for the same employer since 2006. He is fluent in Spanish and has volunteered at homeless shelters and served as served as an Assistant Coach for a local youth athletic team. (Documents)
75. Tied But Not Selected Candidate 10. This candidate was interviewed. According to the documents submitted, this candidate graduated from high school and has attended classes at the local community college. He has been employed as an Associate Public Fire Adjuster since 2003. (Documents)
76. At 5:22 P.M. on November 30, 2010, Luz Henriquez of HRD sent an email to Deputy Prendergast stating, "Greetings Deputy Prendergast: This email is in response to your voice mail message of 1:48 and 3:55 of this afternoon to my voice mail message to you of a few minutes ago. As you know the current firefighter civil service list will be replaced with the new list tomorrow December 1, 2010". (Uncontested)
77. In a letter to HRD dated November 30, 2010, Commissioner Cassanelli wrote: "I respectfully submit the enclosed copies of conditional offers of employment to candidates selected from Certification No. 206437. It is my expectation that we will have a completed Authorization for Employment (Form 14) submitted to the Human Resources Division within the next 2-weeks. Delays have caused us to move testing beyond our earlier expectations." (Uncontested)
78. On December 14, 2010, Deputy Prendergast faxed 42 pages to Luz Henriques including "Form 14, 16-II, bypass and removal reasons". Zachary Prendergast's name was among the selected candidates in this documentation. The Form 16-II indicates that the City had selected 21 candidates for appointment. (Uncontested)
79. On January 20, 2011: HRD sent a letter to Commissioner Cassanelli with results of preliminary review of selection process. The letter: 1) Requests additional information on Hatwood bypass reasons; 2) requests an explanation of what happened with candidate Jason Ramos.; 3) states that: "As you know candidates within a tie-group are interchangeable and bypass information is not required if not selected. Messrs. Leonard J. Allen, Jeremy D. Menthe, Jeffrey Pereira, Marc A. Pereira, Gary P. Pauliot and Matthew A. Riff are part of the same D-tie group from which the last four D-appointments were

made on Certification No. 206437. The City has chosen to provide bypass information only on one candidate Mr. Leonard J. Allen and not on the other candidates reached within the same D-tie group. Since bypass information is not required on Mr. Allen, the City may rescind the bypass information submitted on him. Please note that the information on Mr. Allen would not be sufficient for bypass.; 4) states that “Candidates Torres is part of the same tie-group from which the last two C-appointments were made from Certification No. 206437, he received conditional offer of employment from the City. Please clarify his status. If the City is not selecting him from this certification, please provide a letter rescinding his conditional offer of employment.” (Uncontested)

80. The January 20, 2011 letter from HRD to the City also stated: “As you know the last requirement for a Firefighter candidate to be appointed from a Certification list is to pass the PAT. The Human Resources Division records do not reveal that candidates Michael Basil, William J. LaPalm, Craig T. Fallon, Adrian N. Howell, Michael B. Pereira, Joseph P. Talmont, Jack M. Casey, Dario Tangredi, Dasan W. McGhee, Brian Ward, George Vazquez, Kenneth Murray, Zachary L. Prendergast and Eduardo Colon have taken and passed the PAT. Please identify the date when they passed the PAT. IN addition, please note that the effective date of employment cannot precede the date of passing the PAT. (Uncontested)
81. On January 25, 2011, Deputy Prendergast sent a letter to William Torres stating, “As stated in the conditional offer of employment your viability as a candidate depended on one or more of our then current firefighter candidates failing to complete the hiring process. Because all of our candidates completed the hiring process please be advised that we are rescinding our conditional offer of employment to you.” (Uncontested)
82. On January 27, 2011, Deputy Prendergast responded to HRD’s January 20, 2011 letter. Deputy Prendergast’s letter provided additional information on Hatwood’s bypass, indicates that Mr. Ramos was not selected because he failed to sign “both certifications”; rescinds the bypass reasons for Allen, attaches a copy of the rescission letter to Torres and encloses the PAT results of the candidates. One of the PAT results is for Zachary Prendergast, which indicates that he passed the PAT on 12/14/10. (Uncontested)
83. On January 27, 2011, HRD sent an email to Deputy Prendergast indicating that the City submitted the wrong version of the Form 14 listing the selected candidates. (Uncontested)
84. On January 31, 2011, Deputy Prendergast sent a corrected Form 14 to HRD. (Uncontested)
85. On February 7, 2011, Deputy Prendergast, in response to a request from HRD, sent a letter to HRD verifying that the City sent out notices to all laid off firefighters on the reinstatement list and received responses from Jeffrey Hall and Gary Sperlonga. Deputy Prendergast also forwarded a copy of a Form 13 with a date of 4/29/10 to verify that the City requested to fill 15 additional vacancies on that date (in addition to the previous request to fill 6 vacancies, which would have brought the total to 21). There is no documentation to show that HRD received that Form 13 on or about 4/29/10. The only documentation submitted to the Commission is a Form 13 date-stamped by HRD on February 9, 2011. As referenced above, Deputy Prendergast sent a letter to HRD on

4/26/10 indicating that the number of vacancies had increased from 6 to 20 – not 21. Deputy Prendergast, in response to a draft copy of this chronology, stated that these communication exchanges were based on his belief that HRD had lost the requested information and needed replacements. (Uncontested)

86. On February 10, 2011, Deputy Prendergast sent a letter to HRD indicating that the City erred by not considering Jason Ramos and will petition the Civil Service Commission for 310 relief to have him placed at the top of the next Certification. (Uncontested)
87. On February 11, 2011, HRD sent letters to non-selected applicants approving bypass reasons. (Uncontested)
88. On February 28, 2011, the Fire Department sent correspondence to CSC regarding Jason Ramos. According to the Fire Department, Mr. Ramos signed the Certification indicating his willingness to accept employment. For reasons still unknown to the Commission, the Fire Department made a second copy of the Certification and required candidates to sign both copies, which Mr. Ramos did not. The Fire Department then used the copy of the Certification that Mr. Ramos did not sign when considering candidates. Mr. Ramos's name appeared on the first Certification of names provided to the Fire Department, ranked above that of Zachary Prendergast. (Uncontested)
89. On April 7, 2011, the Commission, at the request of the Fire Department, granted relief to Mr. Ramos placing his name at the top of the next Certification until such time as he received one additional consideration. As part of that order, however, the Commission stated that it “reserved the right ... to further investigate the circumstances surrounding why the Appellant was not considered for appointment ... as part of [this investigation].” See CSC Case No. E-11-80. (Uncontested)

CONCLUSION

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm’n., 43 Mass.App.Ct. at 304. “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1.

Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

Deputy Chief Prendergast's direct involvement in the review and selection process compromised the Fire Department's ability to ensure open consideration of all candidates for the position of firefighter.

It is undisputed that Deputy Chief Prendergast's son was among the candidates seeking to be appointed as a firefighter in the City of Springfield as part of this particular hiring process. To ensure that all candidates were given open consideration, and to remove any appearance of impropriety, Deputy Chief Prendergast should have removed himself from this particular hiring round. Instead, he took partial steps to avoid the appearance of a conflict that only served to complicate the review and selection process. While Deputy Chief Prendergast verbally disclosed the perceived conflict of interest to the Fire Commissioner² and removed himself from the interviews of his son, he played an active role in other decisions that directly impacted his son's candidacy

First, Deputy Chief Prendergast interviewed two candidates that were tied with his son on a certification of names of individuals willing to accept appointment as a firefighter. He recommended that they not be appointed. While I accept his testimony that he did not know, at the time, that these candidates were tied with his son, he failed to take the necessary steps to rectify this problem when he discovered it several weeks later. At a minimum, those candidates should have been re-interviewed by a fair and impartial interview panel that did not include Deputy Prendergast.

Second, Deputy Chief Prendergast completed the background checks for his son and thirteen (13) candidates tied with his son on the same certification referenced above for two (2) unanticipated vacancies. Based on these background checks, he decided that only seven (7) of these candidates (including his son) should be considered and interviewed. Two (2) of these candidates were the same individuals (referenced above) that Deputy Prendergast had already interviewed and not recommended for appointment, reducing the number of candidates under consideration for two (2) additional vacancies to five (5). He should have played no role in these background investigations and he should not have decided which of the tied candidates would – or would not – be interviewed. Deputy Prendergast's testimony that the background check decisions were simply formulaic and objective was unpersuasive. For example, the individual identified above as Tied But Not Selected Candidate 3 appears to have a distinguished career in the military, several years of continuous service for a local non-profit, three (3) years of attending courses at UMASS Amherst and is fluent in Spanish. It appears that Deputy Prendergast eliminated this candidate, who was tied with his son, from consideration based on this driving record. This was a subjective judgment call made solely by Deputy Prendergast, as was the decision by Deputy Prendergast that his son's recent speeding ticket did *not* eliminate him from contention.

Third, Deputy Prendergast failed to schedule interviews for two (2) candidates willing to accept appointment solely because they were on active military duty. In one case, he failed to even consider him. Even if I accept that the Fire Department intended all along to hire twenty-one (21) firefighters in addition to candidate(s) that were to be transferred from another department, the decision not to fully consider these two (2) active military duty

² While the Civil Service Commission is not responsible for enforcing laws and rules of the State Ethics Commission, I take administrative notice that Section II of the State Ethics Commission Advisory No. 05-01 states that appointed officials who wish to disclose the appearance of a conflict of interest must "make such disclosures in writing to their appointing authority (the person or board who appointed them to their job). This disclosure must be kept available for public inspection." (emphasis added) Based on the testimony of Deputy Chief Prendergast, he did not make a written disclosure and hence, it could not be available for inspection by the public, including the candidates competing against his son for the position of firefighter.

candidates had a direct impact on whether the Fire Department had two (2) vacancies as of mid-November 2010, one (1) of which was filled by Deputy Prendergast's son.

Beyond the three actions cited above, the substance of which are generally not disputed by Deputy Prendergast and the Fire Department, there is strong circumstantial evidence to suggest other improprieties in the process that tipped the scales in favor of appointing Deputy Chief Prendergast's son over other candidates, including the chain of events that allegedly occurred on November 30, 2010, the last day upon which Deputy Prendergast's son was eligible for appointment.

Deputy Prendergast testified that, in order to avoid any conflict of interest, he approached a Deputy Fire Chief and Fire Captain and asked them to interview the five (5) candidates, including his son, that he had deemed eligible for an interview. Although the documents submitted indicate that only four (4) candidates were interviewed, and that all four (4) were interviewed on November 30, 2010, the two (2) interview panelists were uncertain (at best) if those interviews occurred on November 30th. Although both panelists acknowledged meeting with counsel for the Fire Department and Deputy Prendergast to refresh their memory regarding the timeline of events in preparation for their testimony, they were unable to unequivocally confirm that the interviews took place and, if so, whether they took place on November 30th. Deputy Prendergast's testimony only added to the eyebrow-raising circumstances regarding these interviews, including his testimony that he couldn't remember who set up these November 30th interviews, including his son's interview.

Even if these interviews took place, presumably all during the morning of November 30th, the testimony and documents raised serious questions as to whether Fire Commissioner Cassanelli completed a fair, thorough and objective review of the candidates interviewed during the afternoon of November 30th. An email exchange from HRD to Deputy Prendergast strongly suggests that no such review took place prior to the close of business on November 30th. Even if such a review did take place during the afternoon of November 30th, it was tainted by the above-referenced actions taken by Deputy Prendergast.

Finally, I was struck by the failure of Commissioner Cassanelli and Deputy Prendergast, even in hindsight, to recognize how the review and selection process had been compromised, at a minimum, by the appearance of a conflict of interest. Even after several months to reflect on the course of events, each of them insisted that the process was fair, objective and impartial and gave little indication that they would do things differently in the future to ensure a fair and impartial process.

Although I carefully considered the diplomatic closing statement of co-counsel for the Fire Department regarding the Fire Department's willingness to learn from this process and make improvements going forward, that was outweighed by the unwillingness of Commissioner Cassanelli and Deputy Prendergast to fully recognize how their actions or inactions resulted in a flawed review and selection process that was not fair or impartial.

Orders

The Commission, whose mission includes ensuring fair and impartial treatment of candidates for public employment, has, in cases involving other civil service communities, confronted circumstances similar to those found here, and issued appropriate relief.

In the matter of: City of Methuen's review and selection of Reserve Police Officer Candidates in the Fall of 2008, CSC Case No. I-09-290 (2010), the Commission found that the Police Chief's direct involvement in the review and selection process, which included her niece and niece's fiancé, compromised the City's ability to ensure open consideration of all candidates for the position of reserve police officer. In Methuen, the Commission rescinded an additional Certification that was erroneously sent to the City and ordered a new review and selection process that was consistent with basic merit principles. Since no appointments had been approved by HRD as of the date of the Commission's order, no appointments were disturbed or vacated.

In the matter of: Town of Oxford's 2011 review and selection of Permanent Intermittent Police Officers, CSC Case No. I-11-280 (2011), the Commission found that the actions and involvement of two members of the Board of Selectmen in the review and selection process, which included the niece of one of the Selectmen, compromised the Town's ability to ensure open consideration of all candidates for the position of permanent intermittent reserve police officer. In Oxford, the Commission prohibited the appointment of any individuals until the selection process was re-done by an impartial review panel. Further, the Commission prohibited the two Selectmen from playing any role in the new selection process. As in Methuen, no final appointments had been made at the time of the Commission's order. Thus, no appointments were disturbed or vacated.

In the matter of: Gary Smyth v. City of Quincy, CSC Case No. G2-10-3 (2011), the Commission found that there was no fair and impartial evaluation of the strengths and weaknesses of the candidates for Fire Chief through a reasonably designed, objective process free of political or personal bias, as civil service law requires. The Commission vacated the permanent appointment of the Fire Chief and made the appointment temporary until such time as the City conducted a new, fair and impartial selection process. In Smyth, there were only two candidates in contention for the one position of Fire Chief.

Here, issuing appropriate relief is complicated by the fact that permanent appointments have already been made regarding twenty-one (21) firefighters in which there were dozens of candidates willing to accept appointment, many of whom were not selected, of which some were considered bypassed. Of those bypassed candidates, four (4) have filed bypass appeals with the Commission.

Further, although the process was not fair and impartial, there is nothing in the record to suggest that Zachary Prendergast is not qualified for the position of firefighter.

For all of the above reasons, the Commission orders the following:

1. Within thirty (30) days of the issuance of this order, the Springfield Fire Department shall:
 - a) identify the names of any individuals who were willing to accept appointment from Certification No. 206437 who were not given full consideration (including an interview) because they were on active military duty; and b) provide the names of these individuals to the Commission requesting that they be placed at the top of the next Certification and remain there until such time as they receive at least one consideration for appointment. If any of these individuals are ultimately appointed, they shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 206437.
2. Within thirty (30) days of the issuance of this order, the Springfield Fire Department shall:
 - a) forward a copy of this order to all non-selected candidates from Certification No. 206437 who were tied with Zachary Prendergast; and b) notify these candidates that, pursuant to this order, they have sixty (60) days to appeal their non-selection even if they were not bypassed (i.e. – they were among a group of tied candidates).
3. The appeals of those Appellants from Certification No. 206437 who have already filed a bypass appeal with the Commission (Louis Shelton, Christopher Benevento, Alonzo Hardnett, Gelson Laguerre) shall have their hearings scheduled expeditiously. Nothing in this order shall preclude these Appellants, or any other non-selected candidates, from arguing that Deputy Prendergast's involvement in the review and selection process may have been a factor in the Springfield Fire Department's decision to bypass them.
4. Until such time as all of the appeals related to Certification No. 206437 have been resolved and until such time as all individuals granted relief from this Certification have been considered again, Deputy Prendergast shall play no role in the background checks and/or interviews of candidates for original appointment to position of firefighter. During this time period, the process for appointment of firefighters to the Springfield Fire Department shall not be deemed consistent with this Decision or in compliance with civil service law and rules unless all of the following conditions are met: (a) candidate interviews must be conducted by a panel to be selected and arranged by an independent outside individual or firm that has experience in the review and selection of public safety and/or senior public sector personnel in Massachusetts; (b) neither the outside individual or firm, nor any member of the interview panel shall have any present or prior contractual, employment or familial relationship to employees of the Springfield Fire Department or to any of the candidates; (c) the candidates will be provided, also reasonably in advance of the interview, a description of the criteria by which their credentials and their interview performance will be evaluated; (d) the evaluation criteria shall be established by the independent individual or firm selected to arrange the interviews, and shall contain such procedures and criteria that the outside individual or firm deems appropriate in consideration of a candidate for firefighter, provided that the Fire Commissioner may contribute his input to the independent individual or firm as to any aspect of the interview process, including evaluation criteria, as he deems appropriate; (e) the interview panel shall render a written report of the interviews to the Fire Commissioner; and (f) the written report shall include a specific rating of each candidate's performance in each component or question during the interview, an overall ranking of the candidates, and a description of

any unique positive and/or negative qualities or experience noted about any of the candidates.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, and Stein, Commissioners [Marquis – Absent]) on December 15, 2011.

A true record. Attest:

Commissioner

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)(1), 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:

Jeffrey Krok, Esq. (for Springfield Fire Department)

Tsuyoshi Fukuda, Esq. (HRD)

John Marra, Esq. (HRD)

Louis Shelton (Appellant in CSC Case No. G1-11-15)

Christopher Benevento (Appellant in CSC Case No. G1-11-69)

Alonzo Hardnett (Appellant in CSC Case No. G1-11-128)

Mark E. Draper, Esq. (for Appellant Gelson Laguerre in CSC Case No. G1-11-53)

Jason Ramos (Appellant in Case No. E-11-80)