

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge St., Suite 200
Boston, MA 02114
(617) 979-1900

MICHAEL SZENDA,
Appellant

v.

WESTFIELD FIRE COMMISSION,
Respondent

Docket Number: G2-24-151

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, the undersigned Chair of the Civil Service Commission (Commission) charged the Commission's General Counsel, Robert L. Quinan, Jr., with conducting a full evidentiary hearing regarding this matter on behalf of the Commission.

Pursuant to 801 CMR 1.01 (11) (c), Presiding Officer Quinan issued the attached Tentative Decision to the Commission on June 27, 2025,¹ and the parties had thirty days to provide written objections to the Commission. Both parties affirmatively stated that they would not be filing objections to the Tentative Decision.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Presiding Officer, thus making this the Final Decision of the Commission. The Westfield Fire Commission's decision to bypass the Appellant for promotional appointment to *permanent* Deputy Fire Chief, and to await the establishment of a new eligible list for making this promotion, is affirmed, and that part of the appeal is ***dismissed***. The appeal is ***allowed in part*** regarding a short-term *temporary* appointment to Deputy Fire Chief between January 2, 2025 and February 11, 2025, for which the Commission ***orders*** the relief recommended by the hearing officer.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein, Commissioners) on August 21, 2025.

¹ The Commission acknowledges the assistance of Law Clerk Jason Walker in the preparation of the Tentative Decision.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Either party may file a motion for reconsideration within ten days of 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Hailey Ferguson, Esq. (for Appellant)

Erik Valdes, Esq. (for Respondent)

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Appearance for Appellant:

Hailey Ferguson, Esq.
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Appearance for Respondent:

Erik Valdes, Esq.
Assistant City Solicitor
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Westfield, MA 01085

Presiding Officer:

Robert L. Quinan, Jr.

Summary of Tentative Decision

The Presiding Officer recommends that the Commission allow this appeal, in part, and order tailored relief based on the Respondent's failure to consider the Appellant, as the top-ranked candidate on the eligible civil service list, for a temporary Deputy Chief position that opened in January 2025. Westfield's Fire Chief erroneously, but in good faith, personally appointed to this temporary position another Captain who had been serving as temporary Deputy Chief covering a separate vacancy. Proper civil service procedures were not followed, and the Westfield Fire Commission, as appointing authority, was not even apprised in advance of the Chief's action. The Presiding Officer also recommends, however, that the Commission affirm the Respondent's bypass of the Appellant in August 2024. The candidate who was selected over the Appellant had performed better in an interview that was well structured and recorded to ensure basic merit principles were followed. Next, the Presiding Officer recommends that the Commission affirm the decision of the Westfield Fire Commission to delay filling a permanently vacated Deputy Chief position for some 36 days, as falling within the appointing authority's prerogative. Finally, the Presiding Officer recommends that the Commission decline to adjudicate any asserted error

regarding the March 17, 2025 permanent promotion of another candidate, because: (1) the Appellant claimed error only in his proposed decision but not in his written complaint or any motion to amend the complaint, (2) the promotion in question occurred three days after this hearing and closure of the evidentiary record, and (3) at the time of the promotion, the selected candidate ranked first on the certification and thus the promotion did not constitute a bypass.

TENTATIVE DECISION

On September 4, 2024, Michael Szenda (Appellant) filed a timely appeal with the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b), contesting the decision of the Westfield Fire Commission (WFC or Respondent) to bypass him for promotion to the position of temporary Deputy Chief in the Westfield Fire Department (the First Claim). This appeal was assigned docket number G2-24-151. A remote pre-hearing conference was held on October 1, 2024. On January 21, 2025, the Appellant moved to amend his complaint to include an additional claim contesting the promotional appointment of a candidate to another temporary Deputy Chief position without following proper civil service procedures (the Second Claim). On January 30, 2025, I granted the Appellant's request to amend his appeal. A full hearing was held on March 14, 2025.² Witnesses, except the Appellant and Fire Chief Patrick Egloff, were sequestered. The hearing was digitally recorded, and both parties were provided with a copy of the recording.³ The parties submitted post-hearing briefs (proposed decisions). For the reasons stated herein, I recommend that the Commission deny the First Claim, affirm the Second Claim, and award the Appellant limited relief on the latter. Additionally, I recommend that the Commission deny or

² Originally, this hearing was scheduled for February 7, 2025, but it was later rescheduled to March 14, 2025.

³ A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

decline to consider two additional claims that the Appellant advanced only in his proposed decision.

FINDINGS OF FACT

Based on the exhibits entered into evidence and the testimony of the following witnesses:

Called by the Respondent:

- Patrick Egloff, Chief, Westfield Fire Department
- Christopher King, then Captain, now Deputy Chief, Westfield Fire Department
- Jeffrey Siegel, Chair, Westfield Fire Commission
- Dr. Brian Sutton, Westfield Fire Commissioner

Called by the Appellant:

- Michael Szenda, Captain, Westfield Fire Department

and taking administrative notice of all matters filed in the case, pertinent law, and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

Background on the Appellant, Others in the Westfield Fire Department, and the WFC

1. Appellant Michael Szenda is a Fire Captain with the Westfield Fire Department (WFD).

He has been with the WFD since 2006 and has been a permanent captain since 2017.

Testimony of Szenda.

2. Christopher King is a Fire Captain with the WFD. He has been with the WFD for 24 years and has been a permanent captain since 2018. Testimony of King.
3. Patrick Egloff is the current Fire Chief of the City of Westfield (City) and has held that position since January 18, 2019. Testimony of Egloff.
4. The Appointing Authority for the WFD is the Westfield Fire Commission, which is currently composed of three Fire Commissioners: Jeffrey Siegel, Esq. (chair), Dr. Brian Sutton, and Dr. Jeffrey Trant. Testimony of Siegel, Sutton, and Egloff.

5. Jeffrey Siegel has been on the Commission since 2016 and its Chair since 2024.

Testimony of Siegel.

6. Dr. Brian Sutton has been on the Commission since approximately February 2024.

Testimony of Sutton.

7. The WFC plays no role in the day-to-day operations of the WFD. Among other responsibilities, however, the WFC makes promotional decisions within the WFD.

Testimony of Egloff.

8. The Chief has two roles in the promotion process: he creates questions for the interviews, and he answers questions by the Fire Commissioners about civil service procedures or about the department. The Chief does not advise the Fire Commissioners as to any preference for a candidate. Testimony of Siegel, Sutton, and Egloff.

9. None of the commissioners have a personal relationship with Chief Egloff. Testimony of Siegel, Sutton, and Egloff.

The August 2024 “Warren” Temporary Vacancy and the Bypass of Appellant

10. On July 1, 2024, Deputy Fire Chief Ben Warren began an extended leave of absence from the WFD (the “Warren Temporary Vacancy”). Resp.Ex.1.
11. Deputy Fire Chief in the WFD is a civil service position. Resp.Ex.4, Art II, § 1.
12. At the time, Captains Szenda, King, and a third captain (pseudonym: FC3) were on the civil service eligible list for Westfield Deputy Fire Chief having previously taken and passed a promotional examination for the position. App.Ex.2.
13. The eligible list for Westfield Deputy Fire Chief was scheduled to expire in September 2024, but HRD extended the eligible list through May 2025, unless a new eligible list from a November 2024 promotional examination was established sooner.

14. On the eligible list in place at the time, Captain Szenda was ranked first, FC3 was second, and Captain King was third. App.Ex.2.
15. Interviews for the temporary Deputy Fire Chief position were held on August 8, 2024, in an open public meeting of the WFC. App.Ex.2.
16. WFC practice prior to approximately 2019 was to request a packet from interviewees, including a resume and references. Testimony of Siegel.
17. Commissioner Siegel had no personal or professional relationship with any of the candidates interviewed. Commissioner Sutton worked with both Captains King and Szenda when the former was EMS medical director at Noble Hospital in the late 1990's and early 2000's. Testimony of Siegel, Sutton, Egloff, Szenda, and King.
18. Prior to the interviews, the commissioners had received no information regarding the potential candidates. All candidate information—including their identities, civil service exam scores and rankings, and backgrounds—were provided the day of the interview. Testimony of Siegel and Sutton.
19. The candidates had not received a request to bring supporting documents, such as a resume or references. Testimony of Szenda and King.
20. Only Commissioners Siegel and Sutton were present for the interviews, as Commissioner Trant was absent that day. As the Fire Commission only has three commissioners, this constituted a quorum. App.Ex.2.
21. Chief Egloff also attended, which is standard practice. Testimony of Egloff.
22. At the interview, each candidate was interviewed separately while the other candidates were out of the room. Each candidate had approximately 15 minutes to make opening and closing statements and answer the same three questions. The commissioners graded each

question and the opening and closing statements from 1 (worst) to 10 (best). Finally, each candidate had the opportunity to ask questions of the WFC members, which the commissioners also graded from 1 to 10. Testimony of Sutton and Siegel; Resp.Exs.6-11.

23. Captain King was the only one of the three candidates to bring a packet containing documentation of his professional accomplishments, including a letter of interest, a resume, and a letter of recommendation. Resp.Ex.5; Testimony of Sutton.
24. After the interviews, the commissioners totaled the scores from each interview portion, giving them a numeric score they could use to compare candidates. Testimony of Siegel and Sutton.
25. The commissioners did not confer with each other or anyone else when scoring the interview portions or tallying the scores. Testimony of Siegel and Sutton.
26. Both commissioners scored Captain King three points above Captain Szenda, and both scored Captain Szenda above FC3. Resp.Exs.6-11; Testimony of Siegel and Sutton.
27. After tallying their scores, Commissioner Siegel asked Chief Egloff whether they had to choose the candidate with the highest rank from the civil service list, unless they had an “extraordinary, justifiable reason.” App.Ex.2.
28. To this question, Chief Egloff responded: “No ... I think your decision should be based on the interview process and who you think would do the best job available based on what you just saw. So, this is not a permanent position. This is a temporary position. I think you have three candidates here that could probably all do the job. It is really up to the two of you to decide who that should be.” App.Ex.10b.
29. Chief Egloff is an open critic of the civil service system, but his intent in offering this response was to convey that the civil service exam scores should be given some weight

alongside “the interview process, and everything they saw in that meeting.” Testimony of Egloff.

30. Commissioners Sutton and Siegel, acting as the Appointing Authority, voted to approve Captain King for the temporary deputy chief position (the Warren vacancy), to commence August 10, 2024. App.Ex.2.

31. Chairman Siegel wrote the bypass letter to Captain Szenda, and he gave the following reasons for the bypass:

- a. Captain King received the highest numerical ranking by both commissioners;
- b. Captain King’s answers were concise, specific, and to the point, in addition to demonstrating administrative experience the commission deemed important;
- c. Captain King gave the commission greatest confidence he was ready to operate as deputy chief on day one, “due to his specific and concise answers, his experience, and overall demeanor”;
- d. Captain King’s experience as an instructor at the Massachusetts Fire Academy showed leadership qualities above and beyond the other candidates⁴; and
- e. Captain King was the only candidate who presented the commission with a letter of interest, his resume, his certifications, and a letter of recommendation written by his superior officer. Resp.Ex.2.

32. On November 16, 2024, the Commonwealth’s Human Resources Division civil service unit held a new deputy fire chief examination. The results were released January 3, 2025, and the new eligible list was established on February 15, 2025. Testimony of Egloff.

⁴ The Appellant alleges that he has experience and certifications comparable to King’s described in the bypass letter, as discussed in more detail in the Analysis to follow. App.Ex.9; Testimony of Szenda.

The January 2025 “Hart” Temporary Vacancy and the Respondent’s Failure to Consider the Appellant for Appointment

33. On November 25, 2024, Chief Egloff received notice that Deputy Chief Hart would retire on January 2, 2025. Testimony of Egloff.⁵
34. Prior to December 9, 2024, the WFC cancelled their scheduled meeting for that day. [City of Westfield website, Agenda Center, Fire Commission.](#)
35. On January 2, 2025, Deputy Chief Hart retired as planned, creating what would become a second temporary vacancy for the deputy chief position, in addition to the Warren vacancy that was being filled via temporary appointment by Captain King. since August. Testimony of Egloff.
36. At this time, Chief Egloff, knowing that temporary Deputy Chief King’s temporary promotional appointment to fill the Warren vacancy would soon be ending due to Deputy Chief Warren’s expected return, assigned King to temporarily replace the retiring deputy chief (“the Hart temporary vacancy”). He made this temporary promotional appointment to fill the new vacancy without regard to the existing eligible list, upon which the Appellant was ranked first, without giving the Appellant the opportunity to be considered for this new temporary vacancy, and without the approval or knowledge of the WFC members.⁶ Testimony of Egloff, Sutton, and Siegel.

⁵ A provision of the collective bargaining agreement between the Respondent and the relevant fire union obligates the Respondent to fill any permanent vacancy in the Deputy Chief rank created due to a retirement no fewer than 30 days before the retirement takes effect. Resp.Ex.4. However, doing so is not a civil service law requirement.

⁶ Chief Egloff testified that, at the time, he believed that in August he had been given a generic temporary Deputy Chief position. He believed that he could move King around to other temporary Deputy Chief positions that might open up without King having been properly appointed each time through the appointing authority. Testimony of Egloff. As discussed in the Analysis section, I am unable to credit this misapprehension as a valid justification for the Chief’s actions.

37. Two days later, on January 4, 2025, Deputy Fire Chief Warren (out since July 1, 2024) returned to duty as anticipated. Testimony of Egloff.
38. At the WFC's January 13, 2025, meeting, the commissioners decided to delay appointing a new *permanent* Deputy Chief, in anticipation of the new eligible list being established sometime between February 15 and March 1, 2025. App.Ex.4; Testimony of Egloff, Siegel, and Sutton.
39. The commissioners decided to postpone filling the Hart vacancy permanently until the new eligible list was established, at least in part to "honor and respect the amount of time they [five participating candidates] put [into] preparing for [the November exam]" and "to use the new list." App.Ex.4.

The Respondent's Decisions to Rescind King's Prior, Impermissible Promotional Appointment to Fill the Hart Vacancy; and Appoint the Appellant to Fill a New Temporary "Bishop" Vacancy

40. In late January, Deputy Chief Bishop commenced a temporary leave from his position. Testimony of King.
41. On January 27, 2025, Chief Egloff notified all eligible captains of the temporary opening for Deputy Chief Bishop's position (the "Bishop temporary vacancy"). They had until February 3, 2025, to officially express interest in the position. The interview would be conducted as part of the February 10, 2025, WFC meeting. App.Ex.6.
42. In early February 2025, after being informed by the law department for the City that he needed to separately follow civil service procedures to fill the Hart temporary vacancy, Chief Egloff removed King from the position of temporary Deputy Chief (the Hart temporary vacancy) and returned him to Captain, effective February 8, 2025. In all, Captain King was impermissibly acting as temporary Deputy Fire Chief to fill the Hart vacancy, with no regard for the eligible list and the Appellant's top ranking, for

approximately five weeks, from January 2, 2025, to February 8, 2025. Testimony of Egloff.

43. At the February 10, 2025, WFC meeting, the commission interviewed the eligible captains to fill the Bishop temporary vacancy. Testimony of Egloff; App.Ex.6.

44. The February 10, 2025 interviews were conducted in the same manner as the August 8, 2024 interviews, but with different questions. Testimony of Egloff.

45. At this interview, unlike in August, Captain Szenda brought a packet of information with his qualifications, similar to the packet that Captain King brought during the August interview. Testimony of Szenda; App.Ex.9.

46. The WFC appointed Captain Szenda to fill this temporary deputy chief (“Bishop”) position, effective February 12, 2025. App.Ex.7.

47. According to Fire Commissioner Siegel, at the February interview, Captain Szenda was the most focused and ready to assume the position. Testimony of Siegel.

48. On February 15, 2025, the new eligible list for Westfield Deputy Fire Chief was established. Captain King was now ranked first on the new eligible list, and Captain Szenda tied for third. FC3 and two other captains also appeared on the eligible list for a total of five potential candidates for any deputy chief openings in the WFD. [Human Resources, Civil Service Division Website](#).

49. On February 19, 2025, Chief Egloff notified the five captains that the new eligible list was active and that a WFC meeting would be held on March 10, 2025, to perform interviews to permanently fill the Hart vacancy. App.Ex.8.

50. On March 3, 2025, Deputy Chief Bishop returned from his absence, and Captain Szenda returned to his rank of Captain. Szenda Testimony.

March 2025 Permanent Promotion of Captain King

51. On March 17, 2025, Captain King, the first ranked candidate on the new eligible list, was permanently promoted to fill the Hart vacancy. The opening had been unfilled from February 8, 2025, when Chief Egloff undid Captain King's temporary holding of the position, until March 17, 2025, for a total of 36 days. [Human Resources, Civil Service Division Website](#).

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions. G.L. c. 31, § 1. The role of the Civil Service Commission in a bypass appeal is to determine whether “on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997).

To become eligible for promotional appointments, civil service employees must complete a competitive civil service examination (or assessment). G.L. c. 31, §11. Typically, every two years, passing examinees are placed onto an “eligible list” by the state administrator. Id. at § 25. The list ranks candidates by exam score, with the highest score ranked at number one. Id. When a municipal appointing authority wishes to make a promotional appointment, it requisitions the state administrator to draw a “certification” list from the members of the current eligible list. Id. The certification comprises the top $2n + 1$ members of the eligible list, where n is the number of positions the municipality seeks to fill. Personnel Administration Rules, PAR.09. An appointing

authority can “bypass” a higher ranked candidate in favor of a lower ranked one, but it must provide written reasons that are specific and consistent with basic merit principles in a “bypass letter” to the bypassed candidate. G.L. c. 31 § 27; PAR.04; PAR.08(4). A bypassed candidate may appeal the bypass decision for review by the Commission. G.L. c. 31, § 2(b).

The Commission’s standard of review for such cases is reasonable justification. Brackett v. Civil Serv. Comm’n, 447 Mass. 233, 241 (2006) (citing G.L. c. 31, § 2(b)). The Commission must uphold the appointing authority’s decision if the appointing authority shows by a preponderance of the evidence “that there was [any] reasonable justification for the action taken by the appointing authority.” See Brackett, 447 Mass. at 241; see also Cambridge, 43 Mass. App. Ct. at 304. The role of the Commission is not to determine “whether it would have acted as the appointing authority had acted.” Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983); see also G.L. c. 31, § 2. Moreover, the Commission “owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification.’” City of Beverly v. Civ. Serv. Comm’n, 78 Mass. App. Ct. 182, 188 (2010). However, the Commission has the authority to reverse the appointing authority’s decision if the appointing authority’s justifications are infected by favoritism, bias, or inappropriate political motives. See Cambridge, 43 Mass. App. Ct. at 304; G.L. c. 31, §§ 2 and 77.

ANALYSIS

By the conclusion of post-hearing briefing in May 2025, the Appellant had attempted to appeal to the Commission four separate actions by either the WFC or Chief Egloff:

- (1) that the August 2024 bypass of the Appellant in favor of Captain King for the position of temporary Deputy Chief was improper because it was not reasonably justified, and the Appellant is entitled to relief;

- (2) that in January 2025, Chief Egloff appointed Captain King to the position of temporary Deputy Chief in violation of civil service law, and the Appellant is entitled to relief;
- (3) that from January 2025, to March 16, 2025, Respondent unlawfully failed to fill the vacant Deputy chief position, and the Appellant is entitled to relief; and
- (4) that the March 17, 2025, permanent promotion of Captain King to Deputy Chief was tainted by prior violations, and the Appellant is entitled to relief.

During the pre-hearing proceedings, both parties stipulated that the January 2025 appointment of Captain King to temporary Deputy Chief was in violation of civil service law. On that claim, I will only analyze what, if any, relief the Respondent owes the Appellant for the failure to follow proper procedure.

In short, I find that:

- (1) The Appellant was harmed by the Respondent's January 2025 improper appointment of Captain King to the Deputy Chief position without following any civil service procedures. Under the circumstances, the Appellant is entitled to the extra pay that he would have received had he been appointed, as the top-ranked individual on the eligible list, temporarily to Deputy Chief from January 2, 2025, to February 11, 2025.

However:

- (2) The WFC's August 2024 decision to bypass the Appellant in favor of Captain King for the Warren vacancy was reasonably justified by Captain King's superior interview performance and was therefore lawful and proper; and
- (3) In the first quarter of 2025, the WFC lawfully exercised its discretion to delay filling the vacant Deputy Chief position.

Therefore:

- (4) Although not formally before this Commission on appeal, the WFC's decision to then promote King to permanent Deputy Chief from the new eligible list, upon which he was ranked first, did not create an appealable bypass.

The Respondent Adequately Justified the August 2024 Bypass of the Appellant.

An appointing authority must show at least one “reasonable justification” that aligns with basic merit principles in order to promote a lower-ranked candidate in place of a higher-ranked candidate. See Brackett, 447 Mass. at 241; G.L. c. 31 § 2(b); see also G.L. c. 31, § 1. However, bypassing a candidate is not evidence, in and of itself, of lack of reasonable justification; indeed, scores derived from a “civil service examination should not be used as the sole determinant when making ... promotional decisions.” Sellon v. Mansfield, 21 MCSR 99, 102 (2008). The appointing authority has discretion “to determine how much weight should be given to [other objective factors that demonstrate merit, such as supervisory experience, education, letters of recommendation and commendation, etc.].” MacMillan v. Mass. Civil Serv. Comm’n, No. 08-4038-D, 2009 WL 3761708, at 1, 6 (Mass. Super. Ct. July 21, 2009). The appointing authority also has discretion to modify its methodology as circumstances change, new oversight commissioners are seated, etc. See id. Past promotion selection practices may be irrelevant, so long as all candidates “went before the same panel under the same circumstances [and process].” Id.

Regarding particular factors, experience and qualifications can reasonably justify a bypass. See MacMillan, 2009 WL 3761708, at 6 (upholding promotion of police sergeant candidate scoring 85 over candidate scoring 86 because former had more experience and qualifications). However, “[if] a candidate’s bypass reason includes the experience and qualifications of the one being selected, then the appointing authority is obligated to also

investigate the [bypassed] candidate's experience and qualifications." McCarthy v. Lawrence Police Dep't, 13 MSCR 144, 148 (2000). Moreover, "arguing that it was the Appellant's responsibility to supply this information ... does not have merit." Id.

Additionally, superior performance during a recorded interview may reasonably justify a bypass. Flynn v. Civil Service Commission, 15 Mass. App. Ct. 206, 208 (1983). While interviews are inherently subjective, this can be minimized if the interviews are "structured in an attempt to protect candidates from arbitrary action and undue subjectivity on the part of the [interviewers]." Id. An interview is more objective if the panelists evaluate the candidates separately, before discussing them together. See Sellon, 21 MCSR at 102. An interview is also more objective if the questions are chosen ahead of time, created through a reasonable process, and are the same for all candidates. See Sihpol v. Beverly Fire Department, 12 MCSR 72, 74-75 (1999) (holding promotional interview fatally flawed because "questions ... chosen in an ad hoc fashion ... [S]upposedly no correct answers ... [S]election criteria ... of an extremely limited nature ... [M]any other reasons for the hires beyond the stated selection criteria were offered in letters ... [And] [t]he candidates had not received scores"). However, promotional interviews must be recorded, absent extenuating circumstances. Perron v. Westfield, 38 MCSR ____ (June 12, 2025). Finally, the Commission may uphold a bypass, even when the appointing authority used flawed procedures, if: "the appointing authority had a reasonable justification on the merits for deciding to bypass a candidate, and the flaws in the selection process are not so severe that it is impossible to evaluate the merits from the record." Sherman v. Randolph, 472 Mass. 802, 813 (2015) (upholding police bypass based on subjective and flawed interview procedure because also based on valid supervisor feedback and job history); see also MacMillan, 2009 WL 3761708, at 6 (upholding interview process otherwise valid, except for notice of interview

procedure).

Here, the letter accompanying the Appellant's August 2024 bypass effectively stated three reasons for selecting Captain King: (1) that Captain King impressed the WFC by his demeanor, confidence, and other subjective qualities; (2) the WFC especially valued the experience and qualifications relayed in the packet that Captain King brought to the interview; and (3) that both fire commissioners scored Captain King highest on their numerical evaluations of the interview. Because either of the latter two reasons would provide sufficient, reasonable justification for the bypass, I need not consider the first reason. See Brackett, 447 Mass. at 241; G.L. c. 31 § 2(b). First, the WFC cites Captain King's commendable experience and qualifications as a reason for his promotion. On its face, this is a reasonable justification. See MacMillan, 2009 WL 3761708, at 6. However, the WFC did not carefully look into the Appellant's qualifications. Because the WFC used Captain King's experience and qualifications without giving similar weight to the Appellant's, those factors cannot alone be relied upon as a reasonable justification. See McCarthy, 13 MSCR at 148. Had the WFC wanted to credit solely some written expression of the candidates' experience and qualifications, it needed to design a standardized process that gave each candidate the same chance to demonstrate his experience and qualifications, such as the process it had employed before 2019. See id.

Separately, however, the WFC cites Captain King's interview performance as a reason for his promotion. For this interview, the WFC asked all of the candidates the same questions. The commissioners separately ranked the answers on a numerical scale before discussing them together. Chief Egloff, a knowledgeable firefighting professional, created the questions in advance of the interviews. The WFC's interview process was well designed to reduce its subjectivity and ensure a decision based on basic merit principles. See Flynn, 15 Mass. App. Ct.

at 208; Sellon, 21 MCSR at 102; Sihpol, 12 MCSR at 74-75. The WFC properly recorded the interview and I detected no biases at play therein. Therefore, Captain King's interview performance is a reasonable justification for the Appellant's August 2024 bypass. See Flynn, *supra*; Perron, *supra*. Though any heavy consideration of Captain King's packet, when the WFC did not elicit similar information from the Appellant, may have been a flaw in the process, nothing in the record suggests that this flaw tarnished the interview. Moreover, nothing in the record suggests that this flaw was due to personal bias against the Appellant. To the contrary, the WFC's consideration of the Appellant's own packet in the February 2025 interview shows that the commissioners were willing to consider any packet put before them. Therefore, the potentially problematic consideration of Captain King's packet does not prevent his interview performance from reasonably justifying his promotion. See Sherman, 472 Mass. at 813; see also MacMillan, 2009 WL 3761708, at 6.

In his proposed decision, the Appellant argues that the WFC's failure to follow its past process is disqualifying. However, this clearly does *not* weigh against the WFC. See MacMillan, 2009 WL 3761708, at 6. Because Captain King's interview performance reasonably justified his promotion, it was within the WFC's discretion to use it as grounds to bypass the Appellant. See id. Therefore, the WFC lawfully bypassed the Appellant when it promoted Captain King to temporary Deputy Chief in August 2024. See Brackett, 447 Mass. at 241; Sellon, 21 MCSR at 102; see also G.L. c. 31, § 1.

The WFC lawfully exercised its discretion to delay filling on a permanent basis the retirement-induced vacant Deputy Chief position.

When a vacancy lasting longer than 30 days arises and there is an existing eligible list in place, appointing authorities can: (1) make a permanent appointment to the position, (2) make a temporary appointment to the position, or (3) leave the position vacant. See G.L. c. 31, § 7. How

to act is within the discretion of the appointing authority, and there is generally no limitation on how long a permanent position can remain vacant. See G.L. c. 31; PAR.01, *et seq.* Because rank orders change as new lists are certified, minute timing of promotions can determine who gets promoted. Nonetheless, “the reality [is] that the expiration of eligible lists ... and the timing of vacancies, will result in perceived winners and losers ... depending on which list ... your name appears on, and in what rank order.” Leduc v. City of Lawrence, 36 MCSR 70, 71 (2023).

However, like any other action of an appointing authority, the Commission can overturn the decision to delay a promotion if the Appellant shows it is “tainted by impermissible personal or political bias to favor – or disfavor – a particular candidate.” Id. A final consideration: Even if a collective bargaining agreement binds the appointing authority to a particular hiring timeline, collective bargaining agreements are not law and do not bind this Commission. See G.L. c. 150E, §7(d); Local 1652, Int’l Ass’n of Firefighters v. Framingham, 442 Mass. 463, 476-77 (2004).

Here, the position of Deputy Chief in question became vacant on January 2, 2025, when Deputy Chief Hart retired. No emergency warranted a 30-day appointment as Chief Egloff had alerted the WFC as early as October 2024 of Hart’s impending retirement. Captain King did fill the position through a Chief-issued temporary appointment, albeit improperly, from January 2, 2025, until February 8, 2025. The position then remained vacant until March 17, 2025, when the WFC permanently promoted Captain King to Deputy Chief from the newly established eligible list, upon which he ranked first. The Deputy Chief position stayed unoccupied for 36 full days in all. The Appellant claims that Chief Egloff instigated this delay because he held a grudge against the Appellant for commencing his appeal in September 2024. However, the only evidence on the record for personal bias against the Appellant was the Appellant’s own testimony. I found his testimony on that point to be vague and unconvincing. No other witnesses besides the Appellant

stated a belief that Chief Egloff begrudged the Appellant or recounted any specific events that could be interpreted as indicative of bias. No exhibits entered into the record convincingly show bias by Chief Egloff against the Appellant. Therefore, I did not find that Chief Egloff held any significant grudge or bias against the Appellant. Moreover, at the January 2025 WFC meeting, the fire commissioners expressed a genuine desire to delay the permanent promotion until the new list came out to honor the hard work all the 2024 applicants had put into preparing for the November exam. There is no evidence to suggest that in February, even though the post was newly vacant, they acted pursuant to different motives. Because there is no evidence that the appointing authority's decision to delay filling a vacancy by a little over 30 days was motivated by ill will or other improper motive, I find it was within the appointing authority's discretion to leave the position vacant temporarily. Further, any issue of whether the delay constituted a violation of the department's CBA is not a controversy over which the Commission has jurisdiction. See G.L. c. 150E, §7(d); Local 1652, 442 Mass. at 476-77.

Formal Review of Captain King's Permanent Promotion in March 2025 Would Be Inappropriate.

The Massachusetts legislature granted the Commission authority to entertain bypass appeals in G.L. c. 31, § 2. Additionally, the Personnel Administration Rules (PARs) are a relevant source of law. Third, unless preempted by G.L. c. 31 or the PARs, the Standard Rules of Adjudicatory Practice and Procedure govern adjudications before the Commission. Rubin v. HRD, 30 MCSR 8, 9 (2017); see also 801 CMR §§ 1.00, *et seq.* To properly present a claim to the Commission, an appellant must "make specific allegations in [a written complaint] that a decision, action, or failure to act [by the respondent] was in violation" of civil service laws. G.L. c. 31 § 2(b) & (c); see also PAR.24. The Commission shall only deem the Appellant aggrieved with respect to the specific claim(s) made in the complaint. G.L. c. 31, § 2(b). Before the

hearing, the Appellant may move to amend the complaint, and the Presiding Officer may allow the motion upon conditions just to all parties. 801 CMR § 1.01(6)(f). At the end of the hearing, the evidentiary record is closed. 801 CMR § 1.01(10)(k)(2). After the hearing, but before the decision, the parties can only introduce new evidence by first moving to reopen the record. See 801 CMR § 1.01(7)(k). Therefore, the Commission can only rule on any claim by the Appellant that Captain King's March 17, 2025 promotion is somehow illegitimate if: (1) this personnel action is specifically challenged in his written complaint (or an approved amendment thereof), and (2) a claim of error is supported by sufficient evidence in the record.

Here, the Appellant initially appealed the August 2024 bypass on September 4, 2024. On January 21, 2025, the Appellant moved to amend his complaint by adding the Second Claim regarding the January 2, 2025 promotion of Captain King to temporary Deputy Chief. On January 30, 2025, I permitted that amendment. The Appellant did not move to amend the complaint after January 30, 2025. On March 14, 2025, the Commission heard this case and the evidentiary record closed. Three days later, on March 17, 2025, the WFC promoted Captain King to permanent Deputy Chief. The Appellant submitted his proposed decision to the Commission on May 6, 2025. The Appellant's proposed decision takes issue with Captain King's permanent promotion. However, merits aside, relief is precluded for several reasons.

First, the Appellant introduced this issue in a proposed decision, which is not an amendment to the complaint. See 801 CMR § 1.01(6)(f). This is not a mere technicality: there are important differences. A motion to amend is submitted before any evidentiary hearing, while a proposed decision is submitted after the hearing. Under normal procedure, the Respondent may respond to a motion to amend, but the Respondent cannot offer a substantive rebuttal to a proposed decision. A motion to amend is made while the record is open, but a proposed decision

is submitted when the record is closed. The Respondent can adjust its strategy for the hearing after receiving a motion to amend, but a proposed decision is submitted after the Respondent has rested. Therefore, the law and just treatment of the parties compel me to not consider the Appellant's belatedly-introduced argument. See 801 CMR § 1.01(6)(f).

Second, any suggestion that undue bias on Chief Egloff's part secured for King his March 2025 promotion founders on a lack of record evidence that the Chief played any significant role in that decision. Even if the Appellant believes that favoritism dictated the outcome, the Respondent had no chance to introduce evidence refuting any allegations of personal bias in connection with *that* discrete personnel action. In his proposed decision, the Appellant appears to justify a claim for relief on the grounds that sufficient evidence was already present in the record to show Chief Egloff's personal bias against him, and this bias is sufficient to prove the perceived impropriety of the March 17, 2025 promotion. As stated above, I did not credit this allegation with respect to events pre-dating the hearing. The Appellant had a chance to introduce such evidence by moving to reopen these proceedings. The Appellant chose not to interrupt the proposed decision-filing process and proceeded instead down the path to final decision. See 801 CMR § 1.01(7)(k).

Third, and most importantly, on March 17, 2025, Captain King ranked first on the current eligible list,⁷ so the promotion was not a bypass. See G.L. c. 31 § 27; PAR.04; PAR.08(4). The Commission generally does not take up cases where no bypass has occurred, because there is generally no claim presented upon which relief could be granted. See, e.g., Polidoro v. City of Pittsfield, 36 MCSR 86, 87 (2023); Savage v. Springfield Fire Dep't, 32 MCSR 104, 105 (2019).

⁷ As pointed out by the Appellant in his proposed decision, I take administrative notice of the operative promotional [eligible list](#) for Westfield Deputy Fire Chief currently published on HRD's website, on which list another candidate still ranks higher than the Appellant.

Therefore, because the Appellant's proposed decision only broadly asserts, *after* the record closed, that the "promotional process culminating in the selection of Captain Christopher King" for the March 2025 promotion was tainted, and he did not properly move to reopen the record, I cannot rule on this claim. Additionally, because the Appellant did not present sufficient evidence to challenge his non-selection, I decline to consider any related argument further.

The Appellant is Entitled to Relief for the Improper Reassignment of Captain King in January 2025.

The Respondent admits that the WFD should have, but failed to, adhere to civil service promotional processes in filling the temporary vacancy occasioned by Deputy Fire Chief Hart's retirement. The Commission has "broad discretion to fashion an appropriate remedy" for the Appellant's legal harm, including the grant of retrospective monetary relief. See Kelley vs. City of Boston Fire Dep't, No. 1984CV03945-F, 2022 WL 2192189, at *1, *4 (Mass. Super. Ct. Jan. 20, 2022). The civil service system confers limited rights on persons who pass an examination. Callanan v. Pers. Adm'r for the Commonwealth, 400 Mass. 597, 601 (1987). Those rights encompass, at a minimum, the right to be considered for promotional appointments if you are ranked highest on the eligible list. See G.L. c. 31, § 2(b).

In its proposed decision, the Respondent argues that the sole relief available to an appellant upon an invalid bypass is the undoing of the invalid promotion, pursuant to G. L. c. 31, § 73. It is true that § 73 states that "[if] ... a person is appointed or employed in a civil service position in violation of the civil service law and rules ... [t]he commission or the administrator shall then file a written notice of such violation. ... The payment of any salary ... to such person shall cease at the expiration of one week after the filing..." However, § 73 does not state that this is the sole remedy available to a bypass appellant, and caselaw contradicts such a claim. See Kelley, 2022 WL 2192189 at *4. Moreover, the purpose of § 73 is not to make a bypass

appellant whole. The Legislature enacted § 73 to balance the state’s interest in enforcing the civil service law against the right of the unlawfully appointed employee (Captain King, in the instant case) to be paid for their work. To support the claim that § 73 was not intended to constitute the universe of relief available to bypass appellants appearing before the Commission, I note that § 73:

- does not mention a bypass appellant or an appellant of any kind,
- is operative even in cases, such as Commission-initiated investigations, where there is no appellant,
- says nothing about harm or remedies therein,
- but does provide a detailed process wherein the government will stop paying the unlawfully appointed employee,
- and does provides a mechanism for the unlawfully appointed employee to appeal the cessation of pay by submitting a writ of mandamus to the Supreme Judicial Court. Id.

Therefore, I find that § 73 does not limit the Commission’s authority to grant appropriate relief. Rather, here G.L. c. 31, § 77 comes to the fore: “The [C]ommission or the administrator may take any necessary and appropriate action to enforce the civil service law and rules.”

Here, the Appellant ranked first on the eligible list during January 2025. He did not have an absolute right to the temporary Deputy Chief position that opened up on January 2, 2025. See Callanan, 400 Mass. at 601. However, he did have the right to due consideration for the position. See Callanan, *ibid.*; G.L. c. 31, § 2(b). Chief Egloff appointed Captain King to the temporary Deputy Chief position on January 2, 2025, with no selection process and without the appointing authority’s imprimatur (or even input). As acknowledged by both parties, this violated civil service law and the Appellant’s right to due consideration for the position. Therefore, I find that the Appellant did suffer legal harm for which he is entitled to relief. See Kelley, 2022 WL 2192189 at *4. Due to the total absence of a selection process, and pursuant to the Commission’s broad discretion to fashion an appropriate remedy, I recommend that the full Commission find

that the Appellant is entitled to monetary compensation equal to the extra pay he would have received had he been promoted to temporary Deputy Chief during the period he was legitimately aggrieved. See id. What remains is to determine when that period began and ended.

On November 25, 2024, Chief Egloff received notice that Deputy Chief Hart would retire on January 2, 2025. The WFC had a scheduled meeting on December 9, 2024, but cancelled the meeting. On January 2, 2025, Deputy Chief Hart did retire, and Chief Egloff transferred Captain King into the new vacancy that day. The WFC's next meeting was on January 13, 2025. On February 8, 2025, Chief Egloff learned that Captain King's temporary position was in violation of civil service law and ordered the position vacated. On February 12, 2025, the Appellant was promoted to temporary Deputy Chief. I find that the Appellant was aggrieved starting on January 2, 2025. First, the Appellant's harm did not entirely consist of being deprived of the position. The Respondent could argue (albeit unconvincingly – see below), that such harm would have begun after January 2, 2025, since it does take some time to fill vacancies. Instead, the Appellant's harm was in not receiving due consideration for the position. That harm certainly materialized on January 2, 2025, when Captain King was promoted to the position. Second, even if the harm could not begin until the Appellant would have likely assumed the position, it is relevant that Chief Egloff had ample notice of the vacancy. Had the vacancy occurred without notice, relief starting on January 2, 2025, might not be appropriate. Nonetheless, it is reasonable to infer that the temporary vacancy would have been filled in any event on or about January 2 had the Respondent followed proper procedures. Though the WFC did not meet between November 25, 2024, and January 2, 2025, I draw the reasonable inference that it could have. Had Chief Egloff been cognizant of the proper procedures, on November 25, 2024, or shortly thereafter, he could have informed the WFC of the need to fill another temporary Deputy Chief

position. The WFC could have held its December 9, 2024, meeting, or rescheduled it for later that month. Enough time elapsed between November 25 and December 9, 2024 to give the eligible candidates the requisite notice period.

Regarding the end date, practically speaking February 11, 2025, must be the last day that the Appellant was aggrieved, because on February 12, 2025, the WFC *did* promote him to temporary Deputy Chief. The other possible date is February 8, 2025, when Captain King returned to Captain rank. But as stated above, the Appellant was not wronged principally because Captain King occupied the position. The Appellant was wronged because he was not duly considered for the position. Therefore, the Appellant's harm could reasonably have outlasted Captain King's tenancy. Moreover, Captain King only left the temporary Deputy Chief position on February 8, 2025, because he had been improperly appointed. Had the Appellant, Captain King, or any candidate been *properly* appointed, then nothing on the record suggests they would have been returned to Captain rank before February 11, 2025. Therefore, I find that the Appellant was aggrieved until February 11, 2025. Accordingly, I determine that the Appellant is entitled to the pay differential that he would have received as a temporary Deputy Chief (over and above what he actually received as a Captain) from January 2, 2025, through February 11, 2025.⁸

⁸ Because the traditional form of relief in improper bypass cases, a Commission order placing the Appellant at the top of the eligible list for the next (temporary or otherwise) promotion to Deputy Fire Chief, would infringe on the interests of the one candidate who has now (as of February 15, 2025) placed above him on that current eligible list, I am recommending to the full Commission, given the unusual facts of this case, this alternative form of relief under G.L. c. 31, § 77.

CONCLUSION

In sum, the Respondent failed to follow civil service law when Chief Egloff directly appointed Captain King to the temporary Deputy Chief position in January 2025. Not only did this infringe on the Appellant's right to be considered (as the number one ranked candidate for the position), but the record shows also that (having *in fact* been selected by the WFC for a cognate vacancy the next month) the Appellant would have been the presumptive pick for that position had proper processes been followed. Therefore, I find that the Appellant is entitled to the pay differential he would have received from January 2, 2025, to February 11, 2025. However, I also find, first, that Captain King's superior interview performance reasonably justified the Appellant's bypass for the August 2024 position. Second, that the Respondent was within its authority to delay filling the vacant Deputy Chief position from February 8, 2025, to March 17, 2025. And third, that I cannot consider any claim regarding Captain King's March 17, 2025 promotion to permanent Deputy Chief because the Appellant claimed to be aggrieved by this action after the record closed and did not present evidence warranting relief.

Civil Service Commission

/s/ Robert L. Quinan, Jr.
Robert L. Quinan, Jr.
General Counsel and Presiding Officer

June 27, 2025