

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

WILLIAM TORRES, JR.,  
Appellant

v.

G1-12-163

SPRINGFIELD FIRE DEPARTMENT,  
Respondent

Appearance for Appellant:

Marshall T. Moriarty, Esq.  
Moriarty Law Firm, Inc.  
34 Mulberry Street  
Springfield, MA 01105

Appearance for Respondent:

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Commissioner:

Cynthia A. Ittleman, Esq.

**DECISION**

The Appellant, William Torres, Jr. (hereinafter “Mr. Torres” or “Appellant”), seeks review of the decision of the Springfield Fire Department (hereinafter “Department”) not to select him for employment as a permanent full-time firefighter at the Department.

This appeal was filed with the Civil Service Commission (hereinafter “Commission”) on May 7, 2012 following the Findings, Conclusions and Orders of the 2010/2011 Review and Selection of Firefighters in the City of Springfield, Docket No. I-11-208, of December 15, 2011

(“Investigation”), pursuant to G.L. c. 31, § 2(a). The Investigation ordered, *inter alia*, that the 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).”

The Appellant is one of the candidates who was among a group of candidates tied with Zachary Prendergast and who was not selected. We consider the instant appeal also pursuant to G.L. c. 31, § 2(a).

A pre-hearing conference in the instant case was held on June 13, 2011 at the Springfield State Building at 436 Dwight Street in Springfield, Massachusetts. On August 8, 2012, a full hearing in this case was held at the Springfield State Building. There were two witnesses at the hearing: the Appellant and Jerrold E. Prendergast, Deputy Chief (hereinafter “Deputy Prendergast”) at the Department. Nine (9) exhibits were offered and entered into evidence. The Appellant submitted a proposed decision following the hearing but the Department did not. For the reasons stated herein, the appeal is allowed.

Based on the arguments made at the hearing, the testimonial and documentary evidence adduced at hearing and reasonable inferences therefrom; and taking administrative notice of all matters filed in the case, including the Investigation,<sup>1</sup> as well as pertinent statutes, regulations, case law, policies and rules; a preponderance of the evidence establishes:

1. At all pertinent times, the Appellant resided at 133 Melville Street in Springfield.  
Appellant’s Testimony (“App. Test.”)
2. On April 26, 2008, the Appellant took and passed the test for the full-time permanent position of firefighter (Announcement number 4546). (Exhibit (“Ex.”) 2)

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<sup>1</sup> The Commissioner took administrative notice of the Commission’s Investigation at the outset of the hearing.

3. The Appointing Authority for the Department at the time of Mr. Torres' application for the position of permanent full-time firefighter was Springfield Fire Commissioner Gary Cassanelli ("Commissioner Cassanelli"), who had been appointed Commissioner in approximately 2006. Prior to that, there was a Board of Fire Commissioners in Springfield, which was the Appointing Authority, but the Board was disbanded. (Investigation; Prendergast Testimony)
4. At all pertinent times, Jerrold Prendergast was one of two Deputy Chiefs of the Department. (Deputy Prendergast ("Prendergast") Testimony; Investigation). At the time of the hearing in this case, Deputy Prendergast had been Deputy Chief of the Department for thirteen (13) years, over which time he had performed numerous managerial duties, and he had been a member of the Department for over twenty-six (26) years. When the Commissioner was not available, Deputy Prendergast would handle certain day-to-day matters. When he was Deputy Chief of Administration, Deputy Prendergast had a close working relationship with Commissioner Cassanelli. (Prendergast Testimony)
5. Deputy Prendergast was involved in processing candidates whose names were on Certification No. 206437, following the examination given on April 26, 2008, and who were being considered for employment as firefighters at the Department. His duties included obtaining background information on the candidates, compiling forms for each candidate's file, making sure the information on each candidate was complete, and to giving the files to Commissioner Cassanelli. Deputy Prendergast had been involved in the hiring process in 2006 and 2009 and in regard to Certification No. 206437 in 2010. (Prendergast Testimony)

6. Zachary Prendergast, Deputy Prendergast's son, also applied for the position of permanent full-time firefighter in Springfield. (Prendergast Testimony; Appellant Testimony; Ex. 8; Investigation)
7. Commissioner Cassanelli testified at the Investigation that Deputy Prendergast notified him "early on" that Deputy Prendergast's son was among the candidates on the eligible list. Commissioner Cassanelli further 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. (Investigation; Prendergast Testimony (instant case))
8. On February 24, 2010, the state Human Resources Division ("HRD") received a Requisition Form 13, dated February 19, 2010, from the Department requesting Certification of eligible candidates from which it may appoint six (6) permanent full-time firefighters. (Ex. 2; Investigation)
9. On April 12, 2010, HRD issued Certification No. 206437 to the Department. Neither the Appellant's name, nor the name of Zachary Prendergast appeared on this Certification at that time. (Ex. 2; Prendergast Testimony; Appellant Testimony; Investigation)
10. On or about April 26, 2010, following numerous email exchanges with HRD, Deputy Prendergast sent a letter to HRD requesting that Certification No. 206437 be increased from six (6) vacancies to twenty (20) as a result of the approval of fourteen (14) additional hires and that the Department intended to grant a lateral transfer request to one

(1) firefighter from West Springfield. (Investigation; Ex. 2) HRD did not receive the Requisition Form 13 in this regard until February 9, 2011. (Ex. 2)

11. At HRD's request, the Department sent a letter to HRD on April 26, 2010, attaching the Certification issued April 12<sup>th</sup> with an indication of who had indicated a willingness to accept employment. 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 Department could consider for six (6) vacancies under the  $2n + 1$  formula for determining the number of candidates who are eligible for consideration. (Investigation – Uncontested)
12. It appears that HRD subsequently reviewed the April 26<sup>th</sup> 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:  $2n + 1 = 41$ ) (Investigation - Uncontested)
13. On April 28, 2010, HRD issued seventy-four (74) additional names to the Department for Certification No. 206437. 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. (Investigation - Uncontested)
14. The names of Zachary Prendergast, the son of Deputy Prendergast, and the Appellant appeared on the April 28, 2010 Certification of names. Their names are on page 3 of 7 and are listed among a group of "C-Tied" candidates indicating that they are minority

candidates (Springfield is among the few cities and towns in Massachusetts still subject to a federal consent decree regarding minority hiring). (Investigation – Uncontested; Ex. 2)

15. As referenced above, thirty-eight (38) individuals had already indicated a willingness to accept employment. Thus, the Department, absent approval from HRD to remove any of those names, could consider the first four (4) highest ranked individuals willing to accept employment from the April 28, 2010 additional Certification, except if there was a tie for those in the last position. (Investigation – Uncontested; Ex. 2)
16. Fifty-eight (58) individuals signed the April 28, 2010 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 and the Appellant are among the fourteen (14) tied minority candidates who signed the Certification as willing to accept appointment. (Investigation – Uncontested; Ex. 2)
17. Deputy Prendergast testified that, based on his review, his son was still not among the “2n+1” candidates that could be considered for appointment. (Investigation - Testimony of Prendergast)
18. On June 7, 2010, the Appellant completed the Department’s application form. (Appellant Testimony; Ex. 5)
19. On July 8, 2010, Commissioner Cassanelli sent written correspondence to HRD stating:  
“We are respectfully requesting a 6-week extension of Certification #206437. We required additional time to certify the residency of the job applicants’ as well (sic) additional time to check employment references.” (Investigation – Uncontested)

20. 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. (Investigation – Uncontested)
21. 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. (Investigation - Uncontested)
22. The above-referenced 9/1/10 Form 16-II indicates that the Department had selected twenty-one (21) candidates for appointment. (Investigation - Uncontested)
23. There were twelve (12) “PAR.09” removal letters from the Department to HRD dated September 1, 2010, but it appears that they were not received by HRD until on or about October 19, 2010. (Investigation - Uncontested)<sup>2</sup>
24. Between October 8, 2010 and October 13, 2010, fourteen (14) candidates signed conditional offers of employment including: Barrera, Basile, Sleeper, Michael Pereira, Lawrence, Piecuch, McGhee, Latta, Pablo Colon, Fallon, Murphy, Lapalm, Howell, and Talmont. (Investigation - Uncontested)
25. On November 1, 2010, two (2) additional candidates signed conditional offers of employment (Tangredi and Casey). (Investigation - Uncontested)
26. Between November 12, 2010 and November 15, 2010, two (2) additional candidates signed conditional offers of employment (Vazquez and Ward). (Investigation - Uncontested)

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<sup>2</sup> Although the Department apparently sent twelve (12) PAR.09 removal requests 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. (Investigation - Uncontested)

27. Deputy Prendergast testified that sometime in “late November”[2010], two (2) candidates who had been offered conditional offers of employment contacted him via phone and told him that they were withdrawing from consideration. (Investigation - Testimony of Prendergast)
28. Deputy Prendergast testified that, upon receiving the phone calls withdrawing the two candidates referenced in the previous Finding of Fact 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. (Investigation - Testimony of Prendergast and Cassanelli)
29. The Appellant was among the fourteen (14) tied candidates to be considered with Zachary Prendergast. (Ex. 2)
30. 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. (Investigation - Testimony of Cassanelli)
31. Deputy Prendergast testified that he then proceeded to complete background checks for all fourteen (14) candidates, including his son. (Investigation - Testimony of Prendergast; Prendergast Testimony (instant case))<sup>3</sup> To the best of his recollection, Deputy

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<sup>3</sup> I take administrative notice of Finding of Fact 17 in the Commission decision in Shelton v. Springfield Fire Dep’t, G1-11-15, dated September 20, 2012, in which the Commission found, “ ... Question D on Page 7 of the Information Form asks: ‘Have you ever used an illegal drug?’ Zachary Prendergast is the only candidate who did not answer this question. There is no documentation to show that Deputy Prendergast, who conducted his son’s background investigation, followed up on this question and/or reported his son’s failure to answer this question to the Fire Commissioner before Zachary Prendergast was appointed. (Investigation Documents)” I take further administrative notice that although the Department eliminated a candidate based on his or her driving record, Deputy Prendergast made a subjective judgment call that his son’s recent speeding ticket did not eliminate him from consideration. (Investigation) I further take administrative notice that on page 5 of Zachary Prendergast’s application, in the section requiring applicants to list three professional references, Zachary Prendergast wrote only



Prendergast found that the Appellant met all the qualifications for the position of firefighter; at the hearing in this case he had no recollection of problems relating to the Appellant's criminal record or residency. (Prendergast Testimony (instant case))

32. 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.

During the Investigation, Chairman Bowman asked the Department to submit a document that Deputy Prendergast was referencing in regard to this portion of his testimony.

Although Chairman Bowman drew no inferences from it, that document contained a spreadsheet with only twelve (12) names on it. (Investigation - Testimony of Prendergast)

33. The spreadsheet submitted to the Commission's Investigation 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.

(Investigation - Testimony of Prendergast)

34. 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 (hereinafter "Deputy 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. (Investigation - Testimony of Prendergast)

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"Oliver" with no first or last name and no address and phone number for "Oliver", and he provided no other references.

35. 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. (Investigation - Testimony of Prendergast)
36. 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. (Investigation - Documents)
37. 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. (Investigation - Testimony of Prendergast)
38. On or about November 30, 2010, the Appellant was also interviewed for the permanent full-time position of firefighter at the Department. (Appellant Testimony; Ex. 5)
39. After the interview on November 30, 2010, Deputy Prendergast and the Appellant met and both signed a letter, dated November 30, 2010, indicating that the Department was putting the Appellant on a "Wait List" for conditional offer of employment if a selected candidate failed to complete the remainder of the application process and if the Appellant fulfilled certain criteria. (Ex. 3)
40. 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. (Investigation - Testimony of O'Shea)

41. 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. (Investigation - Testimony of Rivera)

42. The 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. (Investigation - Documents)

43. Deputy Prendergast testified that sometime during the afternoon of November 30, 2010, he received the application packets back from Deputy 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. (Investigation - Testimony of Prendergast)

44. Commissioner Cassanelli testified that he had some recollection of receiving the candidate 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 Zachary Prendergast to fill the two remaining slots. (Investigation - Testimony of Cassanelli)

45. Commissioner Cassanelli testified that there were several good candidates, but the deciding factor was Zachary 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. (Investigation - Testimony of Cassannelli)
46. As referenced above, the spreadsheet referenced by Deputy Prendergast during his testimony concerning the Investigation only included twelve (12) names. Of these twelve (12) candidates, two (2) were selected (Prendergast and Colon) and ten (10) were not. Chairman Bowman reviewed all of the documents submitted regarding the ten (10) non-selected candidates, including the Appellant. (Investigation - Documents)
47. There is nothing in the Investigation record to suggest that Zachary Prendergast is not qualified for the position of firefighter. (Investigation)
48. According to documents submitted during the Investigation, the Appellant received a GED certificate and attended a local community college where he received an EMT certificate. The Appellant 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 an Assistant Coach for a local youth athletic team. (Investigation - Documents)
49. 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.” (Investigation - Uncontested)

50. On December 14, 2010, Deputy Prendergast faxed 42 pages to Luz Henriques at HRD 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. (Investigation - Uncontested)

51. On January 20, 2011: HRD sent a letter to Commissioner Cassanelli with results of a preliminary review of the selection process. The letter: 1) requests additional information regarding the 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 “Candidate 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.” (Investigation - Uncontested)

52. By letter dated January 25, 2011, signed by Deputy Prendergast, the Department rescinded its conditional offer to the Appellant. (Ex. 4; Appellant Testimony). The letter states, *inter alia*, “Because all of our candidates completed the hiring process please be advised that we are rescinding our conditional offer of employment to you.” (Ex. 4).
53. On February 11, 2011, HRD sent letters to non-selected applicants indicating that it approved their bypass for the permanent full-time position of firefighter. (Investigation - Uncontested)
54. On December 15, 2011, the Commission issued the Findings/Conclusions/Orders in regard to the 2010/2011 Review and Selection of Firefighters in the City of Springfield, I-11-208.
55. The Investigation ordered, *inter alia*, that the Department, “ ... 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).” (Investigation – Orders)
56. The Appellant filed the appeal in the instant case May 7, 2012.

## DISCUSSION

### *Applicable Civil Service Law*

The role of the Civil Service Commission is to determine “whether 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 Service Comm’n., 43 Mass.App.Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). *See* Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). Appeals to the Commission must be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n., 31 Mass.App.Ct. 315 (1991); G.L. c. 31, § 43.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 332 (1983). *See* Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003). 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, 43 Mass.App.Ct. at 304.

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.

### *Analysis*

The Department argues that the appointment process at issue was not inappropriate. Specifically, the Department argued that Deputy Prendergast stepped out of the appointment process when his son was reachable on the Certification list for consideration and that there is nothing indicating that the Appellant did not get fair consideration as a candidate for appointment to the permanent full-time position of firefighter. The Department acknowledged that mistakes were made in the appointment process but stated that the Appellant was not mistreated and was not denied fair consideration for appointment. Just because Deputy Prendergast’s son was appointed does not mean that the Deputy had undue influence on the selection process, according to the Department. Further, the Department asserted that, as an Appointing Authority, it retains the right to appoint appropriate candidates and that the Commission cannot impose its judgment on the Department’s appointment decision. Moreover, the Department has applied for judicial review of the Investigation. In any event, the Department avers, the Investigation provides that appeals resulting from therefrom are to be assessed on a case-by-case basis.



The Appellant asserts that he has dreamed of becoming a firefighter, that he satisfied all the requirements to become a firefighter, and that he was the next candidate on the Certification list to be selected if a candidate selected before him failed to successfully complete the application process. The issue here is whether the Appellant received fair and impartial treatment in consideration of his candidacy which, he avers, he did not. The Investigation, the Appellant argued, is the law of the case, establishing that the appointment process was impermissibly flawed and, as a result, the Appellant is entitled to relief putting his name at the top of the next Certification until he receives at least one fair consideration for appointment and that, if appointed, his seniority should relate back to the date that other candidates from Certification 206437 were appointed.

As indicated in the Investigation, there is no dispute that the Appellant and Deputy Prendergast's son were tied as minority candidates on Certification No. 206437, that Zachary Prendergast was hired from this Certification and that the Appellant was not, and that Deputy Prendergast was involved in the selection process when he should have distanced himself from the process. It is well established that the appointment of one candidate on a Certification who is tied with other candidates does not constitute a bypass of the other tied candidates. *See, e.g. Baldassari, O'Neill, Peni, and Cogliandro v. Revere*, G1-11-312, 330-332 (2011). However, the Commission has jurisdiction to hear this appeal under G.L. c. 31, § 2(a), as stated in the Findings/Conclusions/Orders of the Investigation. When such an appointment is made in a manner that undermines the basic merit principles of civil service and constitutes political influence or objectives unrelated to merit standards or neutrally applied public policy, the appointment presents an appropriate occasion for the Commission to act. Such is the case here. Deputy Prendergast's involvement in the review and selection process involving his son, as

indicating in the Findings herein and as further detailed in the Investigation (which is hereby incorporated by reference), compromised the Department's ability to ensure open consideration of all candidates for the position of firefighter. For example, Deputy Prendergast conducted the background investigation of candidates, including his son and thirteen (13) other candidates who were tied on the Certification, some of which information became the basis for the non-selection of some of the candidates, thereby reducing the number of candidates being further considered for employment with his son. Similarly, Deputy Prendergast appears to have overlooked such information, or the lack of information, in the application of his son to the detriment of others with whom he was tied, like the Appellant. The result of this and other of Deputy Prendergast's actions detailed in the Findings herein and in the Investigation, was that when the last two (2) appointments were to be made among the remaining candidates, Deputy Prendergast's son was appointed and the Appellant was not.

### CONCLUSION

For the reasons stated herein, a preponderance of the evidence establishes that the Department's non-selection of the Appellant was not supported by sound and sufficient reasons and that the appointment process in this regard was not fair and did not uphold the basic merit principles of civil service law. Therefore, the appeal is hereby *allowed* and, pursuant to the Commission's powers of relief inherent in Chapter 310 of the Acts of 1993 and consistent with the Orders/Findings/Conclusions of the Investigation (I-11-208), the Commission orders the following:

- The state's Human Resources Division (HRD), shall place the name of William Torres, Jr. Shelton at the top of any future certifications for the position of permanent full-time firefighter in the City of Springfield until such time as he is appointed or bypassed.
- Deputy Prendergast shall play no role in the background check and/or interview of Mr. Torres and, in regard to the next hiring cycle, any candidates for original appointment to position of firefighter.

- In regard to the next hiring cycle in which Mr. Torres is considered for appointment, (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 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

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Cynthia A. Ittleman, Esq.  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell, and Stein, Commissioners) on November 15, 2012.

A true record. Attest:

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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)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice:

Marshall T. Moriarty, Esq. (for Appellant)

Peter Fenton, Esq. (for Respondent)

John Marra, Esq. (HRD)