**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**
100 Cambridge Street, Suite 200
Boston, MA 02114

MATTHEW WOLANCZYK,
*Appellant*

v.

CITY OF HOLYOKE,
*Respondent*

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| Docket Number: | E-25-179 |
| Appearance for Appellant: | *Pro Se*<br>Matthew Wolanczyk |
| Appearance for Respondent: | Kathleen E. Degnan, Esq.<br>City of Holyoke<br>20 Korean Veterans Plaza<br>Holyoke, MA 01040 |
| Commissioner: | Christopher C. Bowman |

SUMMARY OF DECISION ON RESPONDENT'S MOTION TO DISMISS

The Commission dismissed the non-bypass equity appeal of a Holyoke fire lieutenant as he was unable to show that he was aggrieved by the City's temporary use of an acting-out-of-grade appointment to fire captain.

DECISION ON RESPONDENT'S MOTION TO DISMISS

***Background***

On July 31, 2025, the Appellant, Matthew Wolanczyk (Appellant), a Fire Lieutenant in the City of Holyoke (City)'s Fire Department, filed an appeal with the Civil Service Commission (Commission), contesting the Department's alleged use of "acting out of grade" appointments to fill a vacant Fire Captain position. The City subsequently filed a motion to dismiss the

Appellant's appeal, and the Appellant filed a pre-hearing memorandum which I have deemed an opposition to the City's motion. On September 16, 2025, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the City and the City's Fire Chief at which time I heard oral argument regarding the parties' written submissions.

Based on a review of the documents submitted and the statements of the parties, it is undisputed that the Department, starting on July 1, 2025, relying on provisions in the applicable collective bargaining agreement, began filling a temporary Fire Captain vacancy by using "acting, out of grade" appointments in which the most senior lieutenant, regardless of their rank on a civil service eligible list, would fill the vacant position as needed. When this practice of using acting out of grade appointments commenced on July 1st, the Appellant was tied for first on the eligible list for Fire Captain. The Appellant does not contest that the other candidate tied for first had more departmental seniority. On August 1, 2025, the Fire Captain eligible list expired, and a new list was established, upon which the Appellant was ranked too low to be within the so-called 2N+1 formula to be considered for promotional appointment. At the pre-hearing conference, the Department reported that the Fire Captain vacancy would be filled via a temporary appointment within days, relying on the new eligible list established on August 1st.

The Appellant argues that he is aggrieved by the Department's use of acting out of grade appointments starting on July 1st as, according to the Appellant, the Department should have filled the vacancy on that date, using the then-active eligible list, upon which he was ranked first. The City argues that the Appellant, even when viewing the facts most favorable to him, is not an aggrieved person for two reasons. First, the City argues that no temporary or permanent appointment was required during the 30 days that the Appellant's was ranked first on the now-expired eligible list. Second, the City argues that, even if a promotional appointment had been

made to Fire Captain before August 1st, it is highly likely that the other candidate tied for first on the eligible list would have received the promotional appointment based on his greater departmental seniority.

***Dispositive Motion Standard***

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission seeking, in whole or in part, summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only when, "viewing the evidence in the light most favorable to the non-moving party", the undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". See, e.g., *Milliken & Co. v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008); *Lydon v. Massachusetts Parole Bd*., 18 MCSR 216 (2005). *See also Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited ("The notion underlying the summary decision process in administrative proceedings parallels the civil practice").

***Applicable Civil Service Law***

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" 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 most important mechanism for ensuring adherence

to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a "certification" which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L. c. 31, §§ 6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the "2n+1" formula. G.L. c. 31, § 27; PAR.09.

Section 2(b) of Chapter 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the Human Resources Division (HRD) or, in certain cases by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

> No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

***Section 2(b) Bypass Appeals***

To deviate from the rank order of preferred hiring and appoint a person "other than the qualified person whose name appears highest", an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L. c. 31, §§ 1, 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a "reasonably thorough review" of the background and qualifications of the candidates' fitness to perform the duties of the position and was "reasonably justified". *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688 (2012), *citing Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *Brackett v. Civil Service Comm'n*, 447 Mass. 233, 543 (2006) and cases cited; *Beverly v. Civil Service Comm'n*, 78 Mass. App. Ct. 182 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission has consistently construed the plain meaning of the language in G.L. c. 31, § 27 to infer that selection from a group of tied candidates is not a bypass of a person whose "name appears highest", for which an appeal may be taken as of right to the Commission. *See*, *e.g.*, *Edson v. Town of Reading*, 21 MCSR 453 (2008), aff'd sub nom., *Edson v. Civil Service Comm'n*, Middlesex Sup.Ct. No. 2008CV3418 (2009) ("When two applicants are tied on the exam and the Appointing Authority selects one, the other was not bypassed"); *Bartolomei v. City of Holyoke*, 21 MCSR 94 (2008) ("choosing from a group of tied candidate does not constitute a bypass"); *Coughlin v. Plymouth Police Dep't*, 19 MCSR 434 (2006) ("Commission . . . continues to believe that selection among a group of tied candidates is not a bypass under civil service law"); *Kallas v. Franklin School Dep't*, 11 MCSR 73 (1996) ("It is well settled civil service law that a tie score on a certification . . . is not a bypass for civil service appeals"). *See also Cotter v.*

*City of Boston*, 193 F.Supp.2d 323, 354 (D.Mass. 2002), rev'd in part on other grounds, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie score, and the appointing authority . . . promotes some but not all of the tied candidates, no actionable 'bypass' has taken place in the parlance of the Civil Service Commission.")

***Section 2(b) Non-Bypass Equity Appeals***

Individuals may also file a "non-bypass equity appeal" with the Civil Service Commission under Section 2(b) to contest an action or inaction (not involving a bypass) by the state's Human Resources Division (HRD), or, in certain cases by appointing authorities to whom HRD has delegated its authority, and which actions or inactions have abridged their rights under the civil service law.

***Background related to Acting Out-of-Grade Appointments***

To provide context for the issues central to this appeal, a brief overview of the civil service promotional process and the practice of civil service employees serving in a higher grade for a limited period of time is warranted.

In order to appear on an "eligible list" of candidates who are eligible for a permanent or temporary promotional appointment, a civil service employee takes and passes a promotional examination. Once that occurs, their name would appear on the eligible list (i.e. – Fire Captain) for a set period of time, which is often two years. If, during the life of that eligible list, a civil service community seeks to make a permanent or temporary promotional appointment, that community must create a certification of names from the eligible list, and then promote someone from within the top three 3 ranked candidates willing to accept the promotional appointment. If there is no eligible list in place, or the list contains less than three 3 names, which is known as a

"short list", the community may make a "provisional" promotional appointment, which ends upon the establishment of a new eligible list.

For decades, civil service communities have also relied on provisions in local collective bargaining agreements (CBAs) to facilitate employees working in a higher grade for a limited period of time.

The following are two examples:

Example 1 – "Acting, out-of-grade appointments"

A Fire Captain is out injured for six months. At the time of their injury, there is an eligible list in place with at least three names of firefighters seeking promotion to Captain. Instead of making a "temporary promotional appointment" and having one of the top three candidates certified from the eligible list perform the duties and responsibilities of the Fire Captain position for six months, the community, relying on provisions in the CBA, has the "senior person" in a group or station perform the duties and responsibilities of the Fire Captain, regardless of whether they are one of the top three candidates on a civil service eligible list or Certification. In short, while this "senior person" does perform the duties and responsibilities of the higher position for the six-month period, the civil service law states that the community should have had a different person, someone who is one of the "top three" on the eligible list or Certification, perform those duties after receiving a temporary promotional appointment for a six-month period.

Quite often, there is agreement among management and the employees that the provisions in the CBA are a better practice for filling short-term vacancies such as this, and the practice is never challenged via an appeal to the Civil Service Commission. When the practice is challenged, however, the Commission, consistent with precedent-setting judicial decisions, has

ruled that these "acting, out-of-grade appointments" are not consistent with civil service law and orders the community to adhere to the civil service law, as opposed to the CBA provisions.

Example 2 – Routine coverage

A Fire Captain is on vacation for two weeks. Relying on provisions in the CBA, the civil service community has the "senior person" (i.e. – senior lieutenant) in a group or station perform the duties and responsibilities of the Fire Captain for this two-week period.

The Commission has found that the provisions in the CBA regarding this routine coverage do not conflict with the civil service law as there is no actual vacancy which requires a civil service appointment.

Generally, the Commission has long held that appointing authorities run afoul of the civil service law when they eschew certifications in filling actual vacancies, generally defined by the Commission as positions not filled by an incumbent for *thirty or more days*. In response, the Commission has generally required the appointing authority to take remedial action to end the practice of these "acting, out-of-grade appointments on a going-forward basis. This longstanding Commission precedent is consistent with the provisions of the civil service law that allow for emergency appointments for up to 30 days based solely on notification, as opposed to approval, by HRD. *See* G.L. c. 31, § 31.

***Analysis***

As a preliminary matter, it is undisputed that no bypass occurred here as no candidate ranked below the Appellant on the eligible list active at the time was then promoted. Rather, this appeal was filed as a non-bypass equity appeal.

As part of his non-bypass equity appeal, the Appellant specifically contests the City's use of an acting out-of-grade appointment to fill a Fire Captain vacancy starting on July 1, 2025. For the Appellant to be an aggrieved person here, he must show the following:

1. The City violated the civil service law.
2. As a result of the City's violation, the Appellant's employment status was harmed.

Even when viewing the facts most favorable to the Appellant, which I am required to do when ruling on the City's motion, the Appellant has been unable to meet this two-pronged requirement, nor would he be able to do so as part of a full evidentiary hearing.

While the City acknowledges that acting out-of-grade appointments were used for more than 30 days, the Appellant's name was only high enough on an eligible list for 31 of those days, one day outside the statutory requirement that allows for emergency appointments. More importantly, the Appellant was *tied* for first on that then-active eligible list for Fire Captain, which expired on July 31st. If the City were required to make a permanent or temporary promotion on the 31st day (July 31st), it is speculative, at best, that the City would have promoted the Appellant on July 31st. In fact, the Department's longstanding practice regarding temporary promotional appointments when there is a tie is to promote the candidate with more departmental seniority. Since the candidate tied with the Appellant had greater departmental seniority, the possibility that the Appellant would have been promoted is not just speculative, but, rather, highly unlikely.

***Conclusion***

Given that the Appellant is unable to show, even when viewing the facts in the light most favorable to him, that he would succeed in showing that, even if an aggrieved person, he was

deprived of a guaranteed promotion, the City's motion to dismiss is allowed and the Appellant's appeal under Docket Number E-25-179 is dismissed.

Civil Service Commission

*/s/ Christopher Bowman*
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley and McConney, Commissioners [Stein, Markey – Absent]) on October 2, 2025.

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:
Matthew Wolanczyk (Appellant)
Kathleen Degnan, Esq. (for Respondent)