

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Suffolk, ss

**One Ashburton Place: Room 503
Boston, MA 02108
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**NICHOLAS YANDELL,
MICHAEL S. FLEMING,
PATRICK M. YANOVITCH,
JOSEPH P. RYAN, and
MICHAEL J. FORD,**

Appellants,

v.

**CITY OF MALDEN and
MASSACHUSETTS HUMAN
RESOURCES DIVISION**

Respondents

Case No.: E-20-102

**DECISION ON JOINT MOTION FOR RELIEF UNDER
CHAPTER 310 OF THE ACTS OF 1993**

The Appellants appeal to the Civil Service Commission (the Commission) for equitable relief, pursuant to Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, seeking a retroactive adjustment to their civil service seniority date as Firefighters with the Fire Department of the City of Malden (MFD). The Commission held a Pre-hearing Conference (via remote video) on July 20, 2020, at which the MFD Fire Chief and counsel, counsel for the Massachusetts Human Resources Division (HRD), and four of the five Appellants appeared. Based on the information provided by the Appellants, the MFD and HRD, the following facts are not in dispute.

1. The five Appellants were duly selected for appointment after certification from an eligible list for civil service positions of permanent, full-time Firefighters with the MFD, subject to completion of the required Physical Abilities Test (PAT), which is a prerequisite to appointment on March 26, 2020, to be administered by HRD.
2. Due to the State of Emergency declared by the Governor caused by the COVID-19 pandemic, prior to March 26, 2020, HRD cancelled all future PATs until further notice.
3. The MFD concluded that a delayed employment of the Appellants would seriously impede the MFD's mission as first responders when the public's need for those services was especially important.
4. Accordingly, on April 19, 2020, in view of these unforeseen circumstances, the MFD exercised its discretion to make "emergency" appointments of the Appellants pursuant to M.G.Lc.31, §31.
5. On June 14, 2020, HRD again was able to administer the PAT. All five Appellants took and passed the PAT that day and forthwith were appointed to the positions of Permanent Full Time Firefighters with the MFD, effective June 14, 2020.
6. The Appellants, with the support of the MFD, now seek to have their civil service seniority dates adjusted retroactively to the date on which they would have been duly appointed as permanent firefighters, had the March 26, 2020 PAT been administered..
7. HRD does not oppose this relief.

Accordingly, pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, the Commission finds that the Appellants' civil service rights have been infringed by the unforeseen consequences of the COVID-19 State of Emergency and through no fault of their own and orders the Human Resources Division (HRD) and/or Malden, to take the following action:

- A. HRD shall retroactively adjust the civil services seniority dates of the Appellants, NICHOLAS YANDELL, MICHAEL S. FLEMING, PATRICK M. YANOVITCH, JOSEPH P. RYAN, and MICHAEL J. FORD, as Permanent, Full-Time Firefighters, to the date of their initial "Emergency" Appointments on April 19, 2020 on which they had been scheduled to take the PAT that was cancelled by HRD due to the COVID-19 State of Emergency.
- B. Nothing in this Decision is intended to affect the independent rights, if any, of the Appellants to relief under any other laws or regulations over which the Commission is without jurisdiction.

Civil Service Commission
/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners on July 30, 2020.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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:
Nicholas Yandell (Appellant)
Michael S. Fleming (Appellant)
Patrick M. Yanovitch (Appellant)
Joseph P. Ryan (Appellant)
Michael J. Ford (Appellant)
Chief William P. Sullivan. (for Respondent)
Emily Sabo, Esq. (for HRD)
Regina Caggiano (HRD)