

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place Room 503

Boston, MA 02108

(617) 727-2293

PATRICK M. BURKE,
DAVID W. O'BRIEN &
MICHAEL T. WALSH,
Appellants

G1-07-45

G1-07-46

G1-07-47

v.

HUMAN RESOURCES DIVISION
AND CITY OF FALL RIVER,
Respondents

Appellants' Attorney:

John M. Becker, Esq.

Sandulli Grace, PC

One State Street: Suite 200

Boston, MA 02109

Human Resources Division's Attorney:

Martha O'Connor, Esq.

Human Resources Division

One Ashburton Place: Room 211

Boston, MA 02108

City of Fall River's Attorney:

James W. Clarkin, Esq.

Special Labor Counsel

City of Fall River

One Government Center

Fall River, MA 02722

Commissioner:

Christopher C. Bowman

**DECISION ON THE HUMAN RESOURCES DIVISION'S
MOTION FOR SUMMARY DECISION**

Procedural Background

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellants, Patrick M. Burke, David W. O'Brien and Michael T. Walsh (hereinafter "Appellants") filed an appeal in which they asked the Civil Service Commission (hereinafter "Commission") to exercise

its equitable powers pursuant to Chapter 310 of the Acts of 1993 (hereinafter “310 Relief”) to 1) revive a civil service eligibility list that expired in 2006 for the purpose of allowing the Commonwealth’s Human Resources Division (hereinafter “HRD”) to issue a certification and receive the certification back from the Fall River Fire Department with the names of the appointed individuals; or 2) place the names of the Appellants at the top of the existing civil service eligibility list until the Fall River Fire Department has an opportunity to consider them for appointment as firefighters.

A pre-hearing conference was conducted by the Commission on April 6, 2007. HRD filed a Motion for Summary Decision on May 16, 2007 seeking to dismiss the Appellants’ appeals and the Appellants responded with an answer filed on June 8, 2007. On February 8, 2008, the Commission joined the City of Fall River as a party to the instant appeal and scheduled a motion hearing for April 7, 2008. Counsel for all parties offered oral argument at the April 7, 2008 motion hearing before the Commission. The hearing was recorded and there is a written transcript of the proceeding.

Factual Background

1. Chapter 31 of the General Laws, which sets forth the rights and duties of those within the Commonwealth's civil service system, charges HRD with administering, enforcing and regulating the civil service system in accordance with civil service law and the Personnel Administrator Rules. See G.L. c. 31, § 1 et seq.
2. Under this authority, HRD conducts civil service examinations for the purpose of establishing eligible lists and issuing certifications for appointment to appointing authorities governed by civil service law.

3. Chapter 31 provides the Personnel Administrator discretion over the creation, maintenance, expiration and revocation of an eligible list and consequently the issuance of certifications for appointment that are established from the eligible list. See G.L. c. 31, § 3 et seq.
4. Persons on an eligible list shall be eligible for certification from such list for such period as HRD shall determine, but in any event not to exceed two years, unless HRD is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order. G.L. c. 31, § 25.¹
5. An eligible list contains the names of those who have passed the examination and have been ranked according to statutory preferences and examination marks and is established in accordance with time frames determined by HRD. G.L. c. 31, § 1; Personnel Administration Rules (“hereinafter PAR”) .08
6. Open competitive examinations for public safety positions are held every two years. G.L. c. 31, § 25.
7. When an appointing authority has a vacancy to fill, it must file a requisition with HRD for a certification stating, among other things, the position and the number of vacancies it wishes to fill. *See* Affidavit of Sally McNeely, ¶ 9.
8. PAR .08 provides that appointing authorities are given a minimum of twelve weeks in which to make and notify the administrator of appointments from the

¹ In its Motion for Summary Decision, HRD stated that, pursuant to G.L. c. 31, § 25, an individual’s eligibility, by law, is effective for a minimum of two years. (emphasis added) Subsequent to the motion hearing before the Commission, HRD forwarded correspondence to the Commission, copied to all parties, stating that HRD had erred on this point and asked the Commission to amend the record to reflect that an individual’s eligibility from an eligibility list is not to exceed two years unless a statutory exemption exists. The Appellants, also via written correspondence to the Commission, strongly objected to this HRD request,

names certified. Many appointing authorities request an extension of time in which to complete the appointment process. *See* PAR.

9. When faced with an open competitive list that is due to expire in less than twelve weeks, HRD decides if requisitions for that particular title should be issued from the current list or the list that will be established in the near future. McNeely Affidavit ¶ 11, Murphy Affidavit ¶ 11.
10. Upon receiving a requisition for appointments, HRD notes how many weeks will lapse before the current eligibility list expires. If less than twelve weeks will lapse before the expiration of the current eligibility list, HRD contacts the appointing authority to discuss the feasibility of issuing a certification from the current eligibility list. McNeely Affidavit ¶ 12, Murphy Affidavit ¶ 12.
11. HRD will issue a certification from an eligible list that will expire in less than twelve weeks if the appointing authority is confident that conditional offers of employment can be given to the candidate(s) and supplied to HRD before the date that the eligibility list expires. HRD works with the appointing authority because the appointing authority is in charge of the employment process and knows how much time is needed to complete the necessary steps prior to making conditional offers of employment. McNeely Affidavit ¶ 13, Murphy Affidavit ¶ 13.
12. If an appointing authority informs HRD that it can make conditional offers of employment and supply such information to HRD by the date the eligible list expires, HRD will provide a certified list of candidates (certification) from the

arguing that HRD's attempt to change positions on an important agreed-upon fact at this point in this proceedings was "improper as well as disingenuous".

- eligible list according to civil service law and the PAR. McNeely Affidavit ¶ 14, Murphy Affidavit ¶ 14.
13. When the certification is issued, HRD mails applicants a civil service card instructing each applicant to appear in person at the appointing authority to sign the certification “willing to accept appointment.” Applicants typically are given eight business days from the issue date of the certification to sign the list. McNeely Affidavit ¶ 15, Murphy Affidavit ¶ 15.
14. After the signing deadline, the appointing authority may begin to conduct all steps of the employment process to determine whether applicants may be given a conditional offer of employment. McNeely Affidavit ¶ 16, Murphy Affidavit ¶ 16.
15. These steps include, but are not limited to: obtain, complete, and return all employment applications; hold all orientation sessions; schedule and conduct interviews; and complete extensive background and CORI screenings, as well as schedule the medical examination and PAT. McNeely Affidavit ¶ 17, Murphy Affidavit ¶ 17.
16. In cases when HRD has issued a certification to an appointing authority from an eligible list due to expire in less than twelve weeks, once the appointing authority makes conditional offers of employment, it must submit a written report to HRD indicating the names of individuals who have been given such offers. McNeely Affidavit ¶ 18-19, Murphy Affidavit ¶ 18.
17. The names of the candidates who received conditional offers must be submitted to HRD before the expiration of an eligible list. Conditional offer candidates not

- received by HRD before the expiration date of the eligibility list shall be void by law. M.G.L. c. 31, § 25 (“Failure to submit such report on or prior to the date of expiration of the eligibility of a person on such list shall nullify an appointment of such person.”) *See also*, McNeely Affidavit ¶ 19, Murphy Affidavit ¶ 19.
18. On April 24, 2004, an open competitive examination was held for the position of firefighter. The eligible list from the April 2004 examination was established on November 1, 2004. McNeely Affidavit ¶ 20, Murphy Affidavit ¶ 20.
 19. Appellants David O’Brien, Patrick Burke and Michael Walsh all took and passed the above-referenced 2004 open competitive examination for the position of firefighter. Becker Affidavit.
 20. The Fall River Fire Department sought a certification from the list on January 20, 2005. Attachment 7 to Appellants’ Opposition to Motion for Summary Decision. It is undisputed that none of Appellants’ name appeared on this certification as they were ranked too low to be considered.
 21. On May 15, 2005, Fall River returned the certification, making nine appointments from the list. Attachment 7 to Appellants’ Opposition to Motion for Summary Decision.
 22. On June 5, 2006, the Fall River Fire Department requested a certification to hire 16 firefighters. Attachment 7 to Appellants’ Opposition to Motion for Summary Decision.
 23. HRD provided the Department with a certification (number 26021) dated June 20, 2006, containing 33 names, consistent with the statutory “ $2n + 1$ ” formula. Attachment 7 to Appellants’ Opposition to Motion for Summary Decision.

24. Appellant O'Brien's name was 32nd on that list. He was tied for 15th place.
Attachment 7 to Appellants' Opposition to Motion for Summary Decision.
25. On June 20, 2006, O'Brien received a card asking him if he was willing to accept a position as a firefighter in Fall River. In response to the card, O'Brien reported to the Fall River Fire Department and signed a certification indicating willingness to accept a firefighter position. O'Brien Affidavit.
26. Twelve individuals did not sign the certification, making O'Brien 20th of those who signed, tied for 8th place. Attachment 7 to Appellant's Motion for Summary Decision.
27. Soon after O'Brien signed the certification, he was sent a packet from the Fall River Fire Department asking for his life history, the reasons he wanted to become a firefighter and other information. He completed the packet and returned it within the one-week deadline. O'Brien Affidavit ¶ 6.
28. On July 7, 2006, O'Brien received a notice stating that he was one of 16 candidates for full-time firefighter and that he was scheduled to be interviewed on July 13, 2006. O'Brien Affidavit ¶ 7.
29. O'Brien attended the interview on July 13, 2006 with Fire Department officials. According to O'Brien, he was told it went well and that he would be notified. O'Brien Affidavit ¶ 8.
30. The City subsequently hired 14 candidates for the position of firefighter, effective October 16, 2006, including two individuals who had been tied with O'Brien on the certification list. Attachment 7 of Appellants' Opposition to Motion for Summary Decision.

31. The 2004 firefighter eligible list was scheduled to expire on October 31, 2006. However, due to pending litigation in regard to Bradley et al. v City of Lynn and HRD, results from the June 6, 2006 open competitive examination could not be released until November 1, 2006 and the list from this exam could not be established until December 1, 2006. McNeely Affidavit ¶ 21, Murphy Affidavit ¶ 21.
32. In late October-November 2006, Fire Department officials spoke with HRD regarding 10-12 vacancies in the fire department. Affidavit of Murphy at ¶ 27.
33. In the course of these conversations, HRD told the City that appointments could only be made off the current list “if the appointing authority could state with confidence that it would return the names of the given conditional offers of employment to HRD on or before November 30, 2006.” Affidavit of Murphy at ¶ 27.
34. These conversations were memorialized in a series of emails between HRD and the City’s Fire Chief. The Fire Chief forwarded one of the emails from HRD to the then-Mayor’s Chief of Staff, who had formerly been involved in a romantic relationship until 2001 with Appellant O’Brien. Attachment 4 of Appellants’ Opposition to Motion for Summary Decision.
35. On November 29, 2006, Appellant O’Brien entered into an agreement with the City of Fall River in which the City agreed to make a requisition to HRD to certify a list of applicants for the position of firefighter from the civil service exam administered in 2004. Release and Covenant Not to Sue (hereafter “release”) ¶ 3.

36. As part of the above-referenced release, the parties “acknowledge[d] that [HRD] previously informed the City that it will not certify applicants from the 2004 civil service list because a new civil service list is being prepared and is due to be established in early December 2006.” Further the parties agreed that the release was intended to be “a full and final settlement of the matters addressed herein and is not conditional on HRD’s decision to certify or to refrain from certifying applicants from the 2004 civil service list.” Release ¶ 4.
37. Further, the release stated that if HRD did certify applicants from the 2004 civil service list, “O’Brien may not ultimately receive employment if he fails to pass a physical examination or for other legitimate cause.” Release ¶ 5.
38. One day later, on November 30, 2006, the 2004 eligible list expired and the 2006 eligible list compiled from the June 6, 2006 open competitive examination for firefighter was established on December 1, 2006. McNeely Affidavit ¶ 21-22, Murphy Affidavit ¶ 22.
39. HRD did not issue a certification to Fall River from the 2004 examination on November 29, 2006.
40. Had HRD issued a certification to Fall River on November 29, 2006 for ten firefighters based upon the list from the 2004 examination, O’Brien’s name would have been listed as 19th and Burke’s name would have been listed as 20th. Given the statutory “ $2n + 1$ ” formula (in this case $2(10) + 1 = 21$), Walsh’s name would not have been included on a certification issued on November 29, 2006. In regard to O’Brien and Burke, it is undisputed that the names of 18 other candidates, including 7 veterans, would have been listed ahead of them had HRD issued a

certification to Fall River on November 29, 2006 based on the 2004 examination.

Attachment E of HRD's Motion for Summary Decision.

41. Rather than issuing a certification on November 29, 2006 from a list generated from the 2004 exam, HRD, upon establishment of the firefighter list from the June 2006 examination, issued a certification (261153) to Fall River on December 12, 2006. Murphy Affidavit, ¶ 31 and O'Connor letter dated April 10, 2008.
42. David O'Brien did not take the June 20, 2006 examination from which the 2006 list was established, so his name did not appear on certification 261153, nor any future certification generated from the June 2006 examination. O'Connor letter dated April 10, 2008.
43. Neither Patrick Burke nor Michael Walsh's name appeared on certification number 261153, issued in December 2006, as both of their names were too far down the list. O'Connor letter dated April 10, 2008.
44. HRD uniformly applies its practice regarding requisitions submitted less than twelve weeks before the expiration of an eligibility list. For example, the New Bedford Fire Department requested a certification for permanent firefighters in mid October 2006. Since there was only a seven week interval in which to complete the process for conditional offers of employment, HRD informed New Bedford that it would issue the certification only if such offers could be returned to HRD by November 30, 2006. The New Bedford Fire Department assured HRD that it could comply in such a short window, consequently HRD issued the certification, and the New Bedford Fire Department was able to make offers to 6 firefighter candidates from the 2004 list. Murphy Affidavit ¶ 23.

45. The Taunton Fire Department presents another example. That town requested a certification for permanent reserve firefighters in late October 2006. Since there was only a five week time period to complete the process for conditional offers of employment, HRD insisted that the names of those given such offers had to be returned by November 30, 2006. The town stated that it could meet the deadline, consequently HRD issued the certification, and the Taunton Fire Department was indeed able to make offers to three firefighters from the 2004 list. McNeely Affidavit ¶ 23.

46. In contrast, Fall River did not requisition a certification until the day *before* the eligible list was due to expire. Attachment C to HRD's Motion for Summary Decision.

47. HRD determined that it could not issue an entry-level certification to Fall River from a list that was due to expire in one day. HRD found that twenty-four hours presented an impracticable time frame in which to carry out all the steps necessary to issue conditional offers to ten applicants. It was not possible in twenty-four hours to issue a certification, mail it to candidates who it turn will have to sign it and return it to HRD in addition to passing a full background/CORI check and going through an interview. Rather than issuing the certification, and then voiding all conditional offers received by HRD after twenty-four hours, HRD waited to issue a certification from the eligible list that would be established two days after the receipt of Fall River's requisition. *See* McNeely Affidavit, ¶ 24, Murphy Affidavit ¶ 24.

48. As of April 10, 2008, Patrick Burke's name is number ninety-six (96) and Michael Walsh's name is number one hundred twenty-seven (127) on the current eligibility list for the position of firefighter in Fall River. 22 veterans are among the candidates ranked above them. O'Connor letter dated April 10, 2008.

HRD's argument in support of Motion for Summary Decision

HRD argues that by not issuing a certification to Fall River on November 29, 2006 - one day prior to the expiration of the 2004 exam-based eligibility list - it acted within its discretion in a reasonable, non-arbitrary or non-capricious manner in accordance with civil service law. Moreover, HRD argues that since its decision was not in violation of c. 31, the civil service rules, or basic merit principles, the Appellants can not be considered "persons aggrieved" pursuant to G.L. c. 31, § 2(b). Therefore the Commission should allow its Motion for Summary Decision and dismiss the Appellants' instant appeals.

Appellants' Argument in opposition to HRD's Motion for Summary Decision

The Appellants argue that the question regarding whether HRD's failure to issue the certification in question violated basic merit principles is a mixed question of law and fact that cannot be resolved without a full hearing.

More substantively, the Appellants argue that HRD's failure to act caused actual harm to their employment status because they lost the opportunity to be considered for employment during the life of the list compiled from the 2004 exam. The Appellants further argue that HRD's action (in not issuing a certification to Fall River one day prior to the expiration of the eligibility list in question) should be overturned because it violates the statutory guarantee, pursuant to G.L. c. 31, § 25, that each individual on an eligible

list compiled from an open competitive civil service examination must have a minimum of two years of eligibility.

Conclusion

The Commission has the authority “to hear and decide appeals by a person aggrieved by any decision, action or failure to act by the administrator...” G.L. c. 31 § 2(b). A person is defined as aggrieved when “such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator 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.” Id.

Chapter 310 of the Acts of 1993 allows the Commission to provide relief only if the individual has been prejudiced through no fault of his own.

More than 90 individuals, including 22 veterans, are ranked higher than Appellants Patrick Burke and Michael Walsh on the current civil service eligibility list being used to fill vacancies within the Fall River Fire Department. These rankings were established based on the scores of individuals, including these two Appellants, who took the 2006 civil service exam for the position of firefighters. Other factors, including statutory preferences, were granted to veterans. It appears that neither of the Appellants is ranked high enough on the current eligibility list to be reached for consideration in the current hiring cycle. Since the third Appellant David O’Brien did not take the June 2006 exam, his name is not included on the current eligibility list of 369 candidates. As part of the instant appeal, the Appellants are asking the Commission place them at the top of the

current eligibility list pursuant to Chapter 310 of the Acts of 1993, or to alternatively revive a prior eligibility list and place them at the top of that list.

As grounds for this relief, all three Appellants argue that they were aggrieved by HRD's decision not to issue a certification to Fall River on November 29, 2006, one day prior to the expiration of the eligibility list that was generated from the 2004 civil service exam for firefighter.

Importantly, the Appellants do not argue that they were aggrieved as a result of actions taken and/or decisions made by the City of Fall River. In fact, one of the Appellants (O'Brien) released the City from all liability arising in any way from the City's failure to appoint him as a firefighter.

The above-referenced release, signed by Appellant O'Brien, also provides some insight regarding the underlying issue of this appeal: whether or not HRD was obligated to issue a certification to Fall River on November 29, 2006, and whether by not doing so, the three Appellants in this case were aggrieved.

Paragraph 4 of the November 29, 2006 release between the City and Appellant O'Brien states in relevant part:

“the parties acknowledge that the Massachusetts Human Resources Division has previously informed the City that it will not certify applicants from the 2004 civil service list because a new civil service list is being prepared and is due to be established in early December 2006”.

Thus this release, which was not presented to HRD before the motion hearing on April 7, 2008, makes clear that HRD would not be issuing a certification based on the 2004 civil service list.

Had HRD issued a certification to Fall River on November 29, 2006 for ten firefighters based upon the list from the 2004 examination, Appellant O'Brien's name would have been listed as 19th and Burke's name would have been listed as 20th. Given the statutory "2n + 1" formula (in this case $2(10) + 1 = 21$), Appellant Walsh's name would not have been included on a certification issued on November 29, 2006. In regard to O'Brien and Burke, it is undisputed that the names of 18 other candidates, including 7 veterans, would have been listed ahead of them had HRD issued a certification to Fall River on November 29, 2006 based on the 2004 examination.

In deciding the instant appeals, the Commission addresses the following straightforward questions: 1) Was HRD required to issue a certification to Fall River on November 29, 2006; and 2) If so, did their failure to issue the certification in question cause harm to the Appellants' employment status?

HRD was not required to issue a certification to Fall River on November 29, 2006 from a civil service eligibility list that was scheduled to expire the next day. G.L. c. 31, § 25 states in relevant part:

'Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: (1) such eligibility is extended by law because such persons are in the military or naval service; (2) the administrator is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order; or (3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established; provided, however, that the administrator may revoke the eligibility of the entire list or of any persons on such list subsequent to said two-year period if he shall determine

that the effective maintenance of the merit system so requires such revocation and, provided further, that a written notice and explanation for said revocation is sent to the clerks of the senate and house of representatives.”

It is undisputed that the eligibility list in question was extended for 30 days as a result of a court order in an unrelated case. The parties, up until and through the motion hearing regarding the instant appeals, had also accepted as an undisputed fact that an individual’s eligibility from an eligible list, pursuant to G.L. c. 31, § 25 was effective for a minimum of two years. Shortly after the motion hearing, HRD submitted correspondence to the Commission indicating that it had erred on this point and asked that the record be amended to reflect that an individual’s eligibility from an eligible list, absent a court order, was not to exceed two years. Although the Appellants strenuously objected to what it labeled an “improper and disingenuous” change in position, the Commission is not required to accept a stipulated fact of the parties when the stipulated fact in question is contrary to the plain language of the statute, as is the case here. The plain reading of the statute provides a maximum time period regarding an individual’s eligibility from an eligibility list, not a minimum. Moreover, HRD, as the personnel administrator, is statutorily charged with setting the time period for eligibility within that maximum two-year period.

As referenced in the factual background section of this decision, after issuing a certification to a city or town, HRD allows the City or Town a minimum of twelve weeks for the screening and selection process prior to submitting a list of selected candidates to for approval. All individuals on the certification list have eight days to sign the certification list in question indicating a willingness to accept the civil service position if offered. This initial step is followed by the traditional process of background

investigations, interviews, etc. The names of the candidates who ultimately receive conditional offers must be submitted to HRD before the expiration of an eligible list. The conditional offers of candidates whose information is not received by HRD before the expiration date of the eligibility list shall be void, pursuant to G.L. c. 31, § 25. (“Failure to submit such report on or prior to the date of expiration of the eligibility of a person on such list shall nullify an appointment of such person.”)

Applying the above-referenced standards to the instant matter, the Appellants argue that HRD should have issued a certification on November 29, 2006, from an eligibility list scheduled to expire one day later. Hence, any conditional offers of employment received after November 30, 2006, would by law be void. Had HRD issued the list on November 29, 2006, the names of Appellants O’Brien and Burke would have appeared 19th and 20th respectively, Appellant Walsh’s not at all. The Appellants appear to argue that had the list issued: Fall River would have potentially bypassed 18 other individuals and made conditional offers of employment to Appellants O’Brien and Burke all *within a twenty-four hour period*. The Appellants have presented no explanation to the Commission in regard to Appellant Walsh’s participation in this “selection process” absent his name on a November 29, 2006 certification.

The November 29, 2006 release between Appellant O’Brien and Fall River states in relevant part: “If HRD does certify applicants from the 2004 civil service list, the City shall consider O’Brien’s application in *the normal course*. The City will treat O’Brien fairly, *on an equal basis with other qualified applicants*, in accordance with Massachusetts law. However, this agreement is *not a guarantee of employment*.” (*emphasis added*)

It is clear from the release that Fall River had no intention of submitting O'Brien's name within 24 hours of receiving a certification from HRD without considering all other applicants on an equal basis. It is reasonable that providing O'Brien with a conditional offer of employment, prior to offers to other candidates - including the 18 candidates ranked above him, and without their having a full 8-day period to indicate their willingness to accept the position if offered - is not consistent with treating all applicants on an "equal basis." Any attempt by Fall River or HRD to partake in such an exercise would have been inconsistent with basic merit principles, and a cause for the Commission to initiate an investigation under G.L. c. 31, §§ 2(a) and 72. If only for sake of argument HRD was required to issue the certification list - which the Commission does not believe it was - none of the Appellants could have been offered a conditional offer of employment without violating basic merit principles.

A Motion for Summary Decision is properly allowed where "there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law." 801 CMR 1.01 (7)(h). The Commission's standard of review 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." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). The Commission must decide whether HRD had reasonable justification for the action it undertook at the time that it did so. Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003).

HRD was not required to issue a certification to the City of Fall River from an eligibility list that was scheduled to expire the next day. To do so could only have been arbitrary and capricious. If HRD had issued the list in question, the Appellants (two of them ranked 19th and 20th and one of them not on the list) could not have been offered conditional offers of employment without violating basic merit principles. Therefore, the employment status of the Appellants was not harmed and they are not considered aggrieved persons under G.L. c. 31, § 2(b).

For all of the above reasons, HRD's Motion for Summary Decision is allowed; the Appellants' request for relief under Docket Nos. G1-07-45; G1-07-46; and G1-07-47 is denied; and the appeals are hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a 3-1 vote of the Civil Service Commission (Bowman, Chairman; Marquis and Taylor, Commissioners [Henderson – No; Guerin – Absent]) on April 17, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice:

John M. Becker, Esq. (for the Appellants)
Martha O'Connor, Esq. (for HRD)
James Clarkin, Esq. (for the City of Fall River)