

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

SAMUEL RICHESSON,  
Appellant

v.

G2-17-062

CITY OF WORCESTER<sup>1</sup>,  
Respondent

Appearance for Appellant:

Gary Brackett, Esq.  
Brackett & Lucas  
19 Cedar Street  
Worcester, MA 01609

Appearance for Respondent:

William Bagley, Jr., Esq.  
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Commissioner:

Christopher C. Bowman

**DECISION**

On March 29, 2017, the Appellant, Samuel Richheson (Mr. Richheson or District Chief Richheson), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Worcester (City) to bypass him for promotional appointment to the position of Deputy Fire Chief in the City’s Fire Department (WFD). On May 2, 2017, a pre-hearing conference was held at the offices of the Commission in Boston. On September 20, 2017, I held a full hearing at Worcester City Hall in Worcester,

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<sup>1</sup> Martin Dyer, the candidate who was selected for promotional appointment to Deputy Fire Chief, was added as an Intervenor in this matter.

MA.<sup>2</sup> The full hearing was digitally recorded and both parties received a CD of the proceeding.<sup>3</sup> On December 8, 2017 and January 3, 2018, the parties submitted post-hearing briefs in the form of proposed decisions.

### **FINDINGS OF FACT:**

Fifteen (15) exhibits were entered into evidence at the full hearing. I left the record open for the City to provide additional documents which I received and entered as Exhibits 16 – 19.

Based on the documents submitted and the testimony of the following witnesses:

*For the City:*

- Edward M. Augustus, Jr., City Manager;
- Kathleen Johnson, Assistant City Manager;
- Martin Dyer, candidate promoted to Deputy Fire Chief;

*For Mr. Richesson:*

- Douglas Courville, District Fire Chief, WFD;
- John Sullivan, Deputy Fire Chief, WFD;
- Samuel Richesson, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, I find the following:

1. The City of Worcester (City) has a population of approximately 185,000.

<https://www.census.gov/quickfacts/fact/table/worcestercitymassachusetts/PST045217>)

2. The Worcester Fire Department (WFD) has a budgeted complement of 427 employees. The executive management team consists of three positions: the Fire Chief and two Deputy Fire Chiefs. (Exhibit 5)

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

3. The Deputy Fire Chief's duties in the WFD are divided between Operations / Suppression and Administrative / Support. The vacancy relevant to this appeal was in the area of Administration / Support which includes the oversight for office administration, fire prevention / inspection, training and facilities maintenance. In addition, the Administrative Division is responsible for personnel, payroll and budgetary support and provides technical support, data collection and analysis for operational review along with processing grant applications. (Exhibit 5)
4. As a result of the vacancy created when then-Deputy Chief Michael Lavoie was promoted to Fire Chief, City Manager Edward Augustus, Jr. conducted the selection process for Deputy Fire Chief, a civil service position in the WFD. (Testimony of Mr. Augustus)
5. In regard to civil service examinations, including promotional examinations, Appointing Authorities may rely on a traditional written, multiple choice examination (administered by the state's Human Resources Division (HRD), an "Assessment Center", usually administered by an outside vendor contracted by the Appointing Authority, or a combination of the two. (Administrative Notice)
6. Here, the City utilized an Assessment Center that consisted of a written examination (40%); a practical section before a panel (40%) and education and experience (20%). (Exhibit 19 and Testimony of Appellant)
7. Two (2) candidates took and passed the promotional examination for Deputy Fire Chief: Mr. Richesson, who received a score of 84; and Mr. Dyer, who received a score of 81. (Exhibits 3 and 4)
8. At the time of the examination, Mr. Richesson was serving as a District Fire Chief, the next lower title to Deputy Fire Chief; and Mr. Dyer was serving as a Captain, two ranks below

Deputy Fire Chief. (Testimony of Appellant and Mr. Dyer) Promotional examinations are open to individuals below the next lower title when an insufficient number of candidates in the next lower title sign up for the examination. (Administrative Notice)

9. The eligible list of two (2) candidates for Deputy Fire Chief is considered a “short list” under the civil service law, meaning that the Appointing Authority has the option of making a permanent promotional appointment from this eligible list *or* making a provisional promotion. (Administrative Notice) Here, the City chose to evaluate the two (2) candidates on the “short list” and make a permanent promotional appointment. (Testimony of City Manager)
10. From the outset, it was the intention of the City Manager to conduct interviews of all eligible candidates, as opposed to relying solely on the rankings established by the civil service “assessment center” examination. (Testimony of City Manager)
11. With a score of 84, Mr. Richesson’s name appeared first on the eligible list (and Certification) for Deputy Fire Chief and Mr. Dyer, with a score of 81, appeared second. (Exhibit 1)

*Background of Mr. Richesson*

12. Mr. Richesson has an Associates degree in Fire Science and a Bachelors degree in Fire / Emergency Management. (Testimony of Appellant and Exhibit 13)
13. Mr. Richesson served as an on-call firefighter for the Town of Northborough from 1987 to 1989; a firefighter / EMT in the Town of Southbridge from 1989 to 1991; and firefighter / EMT in the Town of Northborough from 1992 to 2000. (Testimony of Appellant and Exhibit 13)

14. Mr. Richesson began his employment with the WFD in 2000; he was promoted to Fire Lieutenant in 2005; Fire Captain in 2008; and District Fire Chief in 2010. (Testimony of Appellant and Exhibit 13)
15. As a District Fire Chief, Mr. Richesson's responsibilities include supervision of eleven (11) pieces of apparatus and approximately fifty-two (52) firefighters. He is responsible for attendance and other personnel matters, overseeing fire company drills and serves as liaison between the WFD and UMASS Memorial Medical Center. (Testimony of Appellant and Exhibit 13)
16. Mr. Richesson has the following certifications and training: EMT – B; Firefighter I / II; and 90 hours of Fire Officer I Skills Development. (Exhibit 13)

*Background of Mr. Dyer*

17. Mr. Dyer has a Bachelors degree in Business Administration, with a concentration in Accounting. (Testimony of Mr. Dyer and Exhibit 10)
18. Mr. Dyer served as an Assistant Store Manager at various locations for Shaw's Supermarkets from 1995 to 2000 and was responsible for the hiring and training of more than 160 associates. (Testimony of Mr. Dyer and Exhibit 10)
19. Mr. Dyer served as a General Manager for Staples from 2000 to 2004 where he was responsible for the day to day operations of locations ranging from 12 to 16 million dollars in revenue. (Testimony of Mr. Dyer and Exhibit 10)
20. Mr. Dyer began his employment with WFD in 2004; he was promoted to Fire Lieutenant in 2009; and Fire Captain in 2014. (Testimony of Mr. Dyer and Exhibit 10)

21. As a Fire Captain, Mr. Dyer serves as the Company Commander for Engine 16 and as the Technology Officer for the WPD. As the Technology Officer, Mr. Dyer serves as the liaison with the City's technical services division and played a leadership role in various IT-related projects related to training and fleet maintenance. (Testimony of Mr. Dyer and Exhibit 10)
22. Since 2009, Mr. Dyer has also served as an instructor for the Department of Fire Services in Stow, MA. (Testimony of Mr. Dyer and Exhibit 10)

### *The Interviews*

23. The interviews were conducted by City Manager Edward Augustus and Assistant City Manager Kathleen Johnson. (Testimony of City Manager and Assistant City Manager)
24. At the time of the hearing, Mr. Augustus had served as the City Manager for 3 ½ years. In that capacity, he is the Chief Executive Officer of the City, overseeing a budget of approximately \$650 million and over 2,000 employees. (Testimony of City Manager)
25. Prior to serving as City Manager, Mr. Augustus: served as Chief of Staff for a Member of Congress; and served as a State Senator, Executive Director of the Children's Defense Fund of California, and Director of Government and Community Relations at the College of the Holy Cross in Worcester. (Testimony of City Manager)
26. Ms. Johnson has worked for the City for thirty (30) years and has served as the Human Resources Director for twelve (12) years and as Assistant City Manager since 2012. (Testimony of Assistant City Manager)
27. Both candidates had the opportunity to present themselves during the interview and were asked the same set of ten (10) questions, with follow up questions, geared toward assessing the candidates in the following areas: Preparation for the role of Deputy Chief;

Demonstrated Vision and Priorities for the Department; Leadership; Ability to Manage / Supervise; Decision-making; Customer Service Skills; Communication Skills; and Municipal Finance / Technology Experience. (Testimony of City Manager and Assistant City Manager; Exhibits 11 and 12)

28. Out of a maximum 40 points for the interview, the City Manager gave Mr. Dyer a score of 31 and Mr. Richesson a score of 15. The Assistant City Manager gave Mr. Dyer a score of 24 and Mr. Richesson a score of 16. (Exhibit 11)

29. During Mr. Richesson's interview, Mr. Augustus did not feel that he had really thought through a lot of the opportunities, issues, challenges that the WFD faced, or at least not in a way that he could use, if appointed, to advance his visions and goals, or deal with some of those challenges. Mr. Richesson did not appear engaged in the conversation to Mr. Augustus, providing short answers that wandered from the particular question that was asked. It took effort to try and draw out and engage him in the conversation and lacked a natural flow. For Mr. Augustus, that suggested Mr. Richesson hadn't given much thought to those things or prepared for the conversation. (Testimony of City Manager)

30. Mr. Augustus also noted that Mr. Richesson did not make much eye contact during his interview. (Testimony of City Manager)

31. Ms. Johnson found Mr. Richesson to be "meek" and indicated that he was not a large presence in the room. She found it difficult to get a lot out of the interview, specifically more descriptive or longer answers to the questions. (Testimony of Assistant City Manager)

32. Ms. Johnson also found significant Mr. Richesson's response to a question regarding how he would deal with a policy or decision from City Hall with which he did not agree. Mr. Richesson responded by stating that he would go back to the Department and tell his

subordinates that the policy was the way it was going to be and that he would try to fight for a change. Conversely, Mr. Dyer answered this question by stating that he would return to the Department and present a unified front by explaining the reasons the decision was important to the City, and that he would do what was in the best interest of the City. (Testimony of Assistant City Manager)

33. While Mr. Augustus did not recall the specifics of Mr. Richesson's response to this question during the hearing, he recalled not being very impressed by it. (Testimony of City Manager)

In his notes, Mr. Augustus wrote that Mr. Richesson said "He would go back and tell the Department 'I tried to explain our position but couldn't persuade him' and go from there."

(Exhibit 12) However, like Ms. Johnson, he recalled that Mr. Dyer had demonstrated a clear intent to faithfully implement the policy and to impress upon his subordinates the wisdom of the decision. (Testimony of Mr. Augustus)

34. Like City Manager Augustus, Assistant City Manager Johnson found Mr. Richesson's eye contact to be poor during the interview, which made it difficult for her to see him in a leadership position within the WFD, or presenting in front of City Council or a difficult neighborhood meeting with an angry crowd over fire service issues. (Testimony of Assistant City Manager and Exhibit 11)

35. On February 17, 2017, the City notified Mr. Richesson of the decision to bypass him in favor of the second ranked candidate, Mr. Dyer. The bypass letter stated in relevant part: "Based on a poor interview performance, lack of communication and leadership skills, and the absence of education and experience in administration, finance and technology, it has been determined that [you are] not the best qualified candidate for the position of Deputy Fire Chief." (Exhibit 5)



## *Legal Standard*

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. 300, 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.

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 at 304. 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). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions (City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 814, 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. Beverly. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining

whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited.

### *Analysis*

As part of my assessment regarding whether political considerations, favoritism, or bias played a role in this promotional appointment, I listened carefully to all of the witnesses, including the City Manager and Assistant City Manager. Both Mr. Augustus and Ms. Johnson offered credible and convincing testimony showing that their decision-making process here was fair, impartial and not pre-determined.

Even when an Appointing Authority decides to utilize an assessment center, there is nothing that prohibits that Appointing Authority from interviewing candidates and considering that interview performance as part of the decision-making process, so long as the interviews are not held as part of some pre-determined effort to bypass a higher ranked candidate.

I credit the City Manager’s testimony that, from the outset, he planned on conducting interviews, rather than relying solely on the candidates’ rank on the Certification. He did not reach the decision to interview candidates after the establishment of the eligible list as part of some pre-determined plan to bypass Mr. Richesson, who was ranked above Mr. Dyer based on a three (3)-point differential in civil service examination scores.

The preponderance of the evidence shows that Mr. Richesson performed poorly during his interview. Even Mr. Richesson acknowledges that he was not prepared for the interview, effectively stating that he thought the interview was a mere formality in which he would be informed of his promotion. He did not take sufficient steps to prepare for the interview and failed to even prepare, let alone submit, a resume.

Further, the interviews, while inherently subjective, were not unduly subjective, and the City provided a rational basis for the overall conclusions about the interview performance of each candidate. Each of the interview panelists seemed troubled that Mr. Richesson provided curt answers and was unable to articulate a clear vision for the Department, as opposed to Mr. Dyer who was enthusiastic, provided clear answers and drew connections to his past work history in response to questions.

Assistant City Manager Johnson also expressed concern about Mr. Richesson's response regarding a question as to how he would address a City policy with which he did not agree. Whereas both interview panelists believed that Mr. Dyer's answer demonstrated that he would support City policy and work to bring everyone together in support of it, they were both left with the impression that Mr. Richesson would not support the policy, but indicate to his subordinates that he sought to persuade the Manager to change his mind. Assistant City Manager Johnson testified that her recollection was that he would tell his subordinates that it was the City's decision and he would fight to change it.

In summary, the Appellant's poor interview performance, *standing alone*, provided the City with a valid reason to bypass him for the position of Deputy Fire Chief. (See Town of Arlington v. Civ. Serv. Comm'n & Town of Arlington, Middlesex Sup. Ct. No. 09-0476-H (2009) (An Appointing Authority is justified in bypassing a candidate when any one of the bypass reasons is found to be valid by the Commission.)

In other circumstances, when the evidence is not as convincing as it is here, further proof, including but not limited to video recording interviews, may be necessary to convince the Commission that the indicia of impartial, merit driven decision making was the reason for the bypass.

Finally, to the extent I have not addressed any of the other issues raised by the parties, they “have not been overlooked. . . . [N]othing in them . . . requires discussion.” McCormack v. Department of State Police, 92 Mass.App.Ct. 1103, 2017 WL 3469601 (Rule 1:28), *citing* Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

*Conclusion*

For all of the reasons stated above, the Appellant’s appeal under Docket No. G2-17-062 is *denied*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on August 2, 2018.

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. 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:  
Office of Brackett and Lucas (for Appellant)  
Samuel Richesson (Appellant)  
William Bagley, Jr., Esq. (for Respondent)