

# **CIVIL SERVICE COMMISSION SPECIAL MEETING**

Monday, September 10, 2012, 1:00 p.m.

City Hall, 45 Lyon Terrace, Wheeler A and B, Bridgeport, CT 06604

## **MINUTES**

Commissioner Guedes called the September 10, 2012 special meeting of the Civil Service Commission to order at 1:13 p.m. Present were Commissioners Correa, McBride, Plummer and Rodgers. Also attending were Personnel Director David Dunn, Clerk to the Commission Deborah Brelsford, City Attorney John Mitola, and Lisa Kollman, Civil Service Examiner.

Commissioner Guedes stated that on behalf of the Commission, she wanted to recognize the historical day of September 11 and the firefighters and police officers who protect us every day.

### **1. Attorney Hank Murray Request - DENIED**

The Commission received a petition from Attorney Hank Murray to address the Commission regarding the Fire Lieutenant seniority issues and Fire Captain exam #2319. Attorney Murray is with the law offices of Livingston, Adler, Pulda, Meiklejohn and Kelly in Hartford and represents Fire Lieutenants Andrew Ellis, Ronald Rolfe, Scott Boris, Peter Moratto, David Purcell and Robert Novack. Attorney Murray presented a document to the Commissioners and for the record entitled Time-line of Events for Promotion – List #2230. He explained that his clients are 10 days short of eligibility for the Fire Captain #2319 exam and that nothing they did was wrong. He further explained that under the City Charter there are time limits to establish employment lists and that the list for Fire Lieutenant #2230 was not established in compliance with the Charter.

He also presented 2 letters to the Commissioners and for the record from the Personnel Director, Ralph H. Jacobs: the first, dated July 17, 2008 addressed to Fire Lieutenant Candidate and the second, dated July 18, 2008 to Andrew Ellis. He said that the first scheduled date after July 18, 2008 should be the date they went to work as Lieutenants. His clients, Moratto and Rolfe, scored #1 and #2 respectively on the Fire Captain #2319. He added that he thought Attorney Thomas Bucci would argue that the court judge rejected the eligibility date set by the Commission and said the date was August 1, however, Attorney Murray said that nothing he is asking interferes with the judge's decision.

City Attorney John Mitola presented a copy of the Settlement Agreement to the Commissioners and for the record and called attention to Exhibits A and B. Attorney Mitola said his concern is the City would be in violation of the Settlement Agreement and the fire union was a party to the settlement agreement and added that many people would bring action against the Commission. He explained that the Civil Service Rules do not say promotions must be made "immediately" and referenced Section 2.13 of the Charter. He added that the July 2008 minutes reference disparate impact from the exam. Attorney Mitola continued that then Personnel Director Jacobs was in the process of getting legal advice about EEOC guidelines and this was the reason for the delay. When the weights of the exam were changed the exam ended up in Federal Court. Then there was the Ricci case in New Haven, Connecticut. Attorney Mitola added he was quite confident that the Commission would be sued for violating its own Settlement Agreement.

Attorney Murray stated that his clients were not party to that lawsuit at that time and there was no harm however, now there is harm.

Attorney Mitola stated that the union was a party and when signing off on this the union binds its membership to this Settlement Agreement. Attorney Mitola advised the Commission not to grant the petition of Attorney Murray's clients.

Attorney Murray said that one week makes a difference and that it is a tragedy that the City failed to act and his clients were deprived. He also stated that his client, Lt. Rolfe, did speak very eloquently at the March 2008 Commission meeting.

Attorney Thomas Bucci stated that the Commission cannot amend the Federal Court Settlement and that the only way to amend the seniority date is to move in Federal Court and dispute the Settlement. He said that all parties signed off on the Settlement Agreement and it would have been incumbent upon them to intervene on that action but there were no disputes.

Attorney Murray again stated that it was clear that the list was established on July 18, 2008 and his clients should have gone from provisional to probationary.

Commissioner Correa, McBride, Plummer and Rodgers each respectively voted to deny the petition to change the seniority date.

### **3. Lieutenant Peter Oliva Appeal – DENIED**

The Commission received an appeal from Lt. Oliva regarding the scoring of the Fire Captain Exam #2319. Lt. Oliva spoke about question #25 and told the Commissioners that the questions on the exam should have one correct answer. He also said that some of the source material was not correct. Ms. Lisa Kollman said she checked with the Examiner, Chuck Hale, from Resource Management Consultants, and it was his opinion that there were 2 legitimate answers and everyone got #25 correct. Lt. Oliva spoke about question #68 and said that the Rules and Regulations in the Fire Department were not consistent with the study material. Ms. Kollman explained that Mr. Hale said Lt. Oliva's claim did not matter because rules and regulations can change. Lt. Oliva spoke about question #69 and said that the question was outside the scope of the exam and that he had spoken about inappropriate questions with Mr. Dunn and Ms. Ferreira on a prior exam. Mr. Dunn explained that the Fire Department gave reading materials to the Examiner, Mr. Hale. Ms. Kollman explained that Mr. Oliva had a difference in opinion and not an error in marking.

Mr. Dunn explained that the Examiner meets with the Civil Service staff and also meets with the Chiefs and other Officers. Mr. Hale was given materials, rules and regulations, union contracts and other materials. It is from these meetings and materials that Mr. Hale puts together the written and oral examination. Mr. Dunn further explained that Mr. Hale is well regarded and well respected in the Connecticut Fire Service and other jurisdictions. He said that Mr. Hale is known to members of the department and that he has given other promotional Fire exams in Bridgeport.

Mr. Dunn explained that the City, Fire Chief, and Superior Officers do review the test for accuracy once it is developed. Commissioner Correa inquired about the Best Practices in other municipalities. Mr. Dunn replied that some municipalities have the Fire Chief create the test, however, in Bridgeport, a professional testing company is hired that understands the industry.

Lt. Oliva stated that he told Mr. Dunn and Ms. Kollman that they have done a great job and that more Fire tests have been given in his career under Mr. Dunn as Personnel Director and he has thanked Mr. Dunn publicly and privately. Regarding the 3<sup>rd</sup> situational question, #12, Lt. Oliva

requested material from Ms. Kollman and was told he could not have it because it was proprietary. Lt. Oliva said that Mr. Hale arbitrarily eliminated some of the 14 options. Mr. Dunn said Lt. Oliva got the score of 3.5 but could have gotten a 5. Ms. Kollman explained the interview process. She said that assessors were Captains or higher. Mr. Hale did list 10 of the 14 characteristics for the assessors. She said the criteria required that the answer demonstrate a complete and thorough understanding of most or all; good reasoning and judgment; and poise and self-confidence. Lt. Oliva said he is a man of great faith and this is what he spoke of. Commissioner Correa asked Ms. Kollman if the answers were ranked in order and Ms. Kollman said there was not a ranking.

On written question #68 Commissioner Plummer, McBride, Correa and Rodgers each respectively voted to deny the appeal. On written question #69 Commissioner Correa, McBride, Plummer and Rodgers each respectively voted to deny the appeal. On the oral question Commissioner Rodgers granted the appeal and Commissioner Plummer, McBride, and Correa respectively voted to deny the appeal.

#### **4. Lieutenant James Buck Appeal – DENIED**

The Commission received an appeal from Lt. Buck regarding the scoring of the Fire Captain Exam #2319. Lt. Buck handed out a packet he prepared to the Commissioners and for the record. He stated for the record that he felt the test was multi-faceted, complex, and a great process and he echoed Lt. Oliva. He felt there were 5 unique elements. He was concerned that the panel did not address all 5 elements. Commissioner McBride asked the number of assessors on each panel. Ms. Kollman said that some panels had 3 and some had 4 and that the answer was not reached by averaging however, it was reached by consensus of the panel members within 2 points. Mr. Dunn said that oral boards reach consensus. Lt. Buck felt this portion should be removed from the test. Mr. Dunn explained that panel members were given a 7 hour orientation and training to ensure consistency and candidates rotated through the panels. He also explained that many of the panel members, including Fire Chiefs from Waterbury and Greenwich, for example, have worked with Mr. Hale in the past on tests in other municipalities. He said that assessing is not based on a personal judgment. Ms. Kollman added that the training manual they used with Mr. Hale was very thick. Mr. Dunn stated that the consistency Lt. Buck wants is impossible and complete uniformity won't be achieved, however, the training was complete and ensures some measure of consistency.

Commissioner Correa stated that some very good observations have been made and that the Civil Service office should look at this more thoroughly so it is not problematic in the future. Ms. Kollman said that Mr. Hale's response was that he watched the tape of the assessors and they discussed it all and discussed each piece. She said the tape was clear and the Examiner watched it.

Commissioner Correa, McBride, Plummer, and Rodgers each respectively voted to deny the appeal.

#### **5. Lieutenant Salvatore Emanuel Appeal – DENIED**

The Commission received an appeal from Lt. Emanuel regarding the scoring of the Fire Captain Exam #2319. Mr. Dunn said Mr. Hale evaluated Lt. Emanuel's appeal and recommended that his challenge be denied. Lt. Emanuel submitted a document to the Commissioners and for the record. Lt. Emanuel said the question regarding assignments versus priorities was poorly written and it was a matter of semantics and it was confusing if the answer was 3 parts or 4 parts.

Ms. Kollman explained that during the 7 hour training session the 14-16 assessors talked about the questions and picked 6 they wanted to ask. Lt. Emanuel said they did not read the book and he received zeros. He said that zeros would be the score if he said absolutely nothing. Ms. Kollman read the benchmarks for the question. Commissioner Guedes asked if others taking the test experienced similar confusion and Ms. Kollman replied no one else had the confusion. On oral question #16 Commissioner Plummer, McBride, Correa, and Rodgers each respectively voted to deny the appeal.

#### **6. Lieutenant Frank Bridge Appeal – DENIED**

The Commission received an appeal from Lt. Bridge regarding the scoring of the Fire Captain Exam #2319. Lt. Bridge received a score of 4.5 out of 5 possible points on question #7 and answered the items in order. Mr. Hale said more explanation was needed. On question #17 Lt. Bridge said “fire” was not mentioned at all in the answer. Commissioner Guedes stated that the amount of fire in a structure and the time of search and Lt. Bridge said “extent”. Mr. Dunn explained that Mr. Hale went over all the appeals, reviewed and recommended the appeal be denied. Commissioner Correa asked for clarification and the Examiner had a difference of opinion. Mr. Dunn added that the assessors were professional Fire Chiefs or Assistant Chiefs in rank and that 3 different assessors reach consensus. Lt. Bridge said you can see on the tape that they disagree sometimes. Lt. Bridge wanted the tape but was told it was proprietary. He said this is not so because the same questions would not be given on future tests. Commissioner Guedes asked what percentage of the appeals were overturned by the Examiner. Ms. Kollman replied that 88 appeals were submitted and 16 appeals were granted in a combination of the written and oral exam. On questions #7 and #17 Commissioner Plummer, McBride, Correa and Rodgers each respectively voted to deny the appeal.

#### **7. Lieutenant Kevin Shevlin Appeal – WITHDRAWN**

The Commission received an appeal from Lt. Shevlin regarding the Fire Captain Exam #2319 and his missing DVD from the exam. Attorney Bucci, representing Lt. Shevlin, requested the appeal be heard in executive session because it was a personnel matter. Attorney Mitola said there was nothing sensitive and that he respectfully disagreed. Attorney Mitola said the appeal did not deal with discipline or performance on the job. Attorney Bucci stated for the record that he will bring the Freedom of Information Act next time.

Mr. Dunn said that Lt. Shevlin’s DVD of his performance on the oral questions on the 3<sup>rd</sup> day is missing. Of the entire process, this one DVD was missing. Some of the tapes had to be cleaned up professionally but the Examiner had all the scoring sheets. Mr. Dunn said that Lt. Shevlin believed that because he was unable to review his DVD he is at a disadvantage to the other candidates.

Attorney Bucci said his letter cites a class action lawsuit and his client can’t be legitimately judged by the Examiner. The remedy he was seeking was full credit. Ms. Kollman stated that Lt. Shevlin filed appeals on 3 questions. Commissioner Guedes stated that it is an anomaly that 1 DVD is missing. Mr. Dunn said the DVD of the assessors is available and Mr. Hale reviewed it and denied both appeals. The assessment DVD is not missing. Commissioner Plummer asked who was responsible for the DVD and Mr. Dunn explained the examining company and the individual assessors operated the cameras and they belong to the testing company. Commissioner Correa asked what Mr. Hale looks at when reviewing the other appeals. Mr. Dunn said it depends on the appeal. He would look at both of them if he had to. Ms. Kollman said in general the assessment DVD is looked at for most appeals. Mr. Dunn said there was a mechanical error and most likely a

tape was taped over. Attorney Bucci asked what is the purpose of taping the candidate and that a red flag is raised when the statistical analysis is so out of whack.

Attorney Mitola said there is some record of evidence in the DVD of the panel opinion. Ms. Kollman stated that the reason the candidate is taped is for the future benefit of the candidate. On Good Friday the candidates did review their tapes and Lt. Shevlin watched his own performance. Commissioner Correa stated that Lt. Shevlin did not have the opportunity to review and Ms. Kollman said most important is the assessors and why they scored the candidate the way they scored him. Commissioner Plummer asked who has the DVDs now and Ms. Kollman explained that Civil Service did have them however, they were sent to Mr. Hale for the appeal reviews. Attorney Mitola explained that there is a tape of the assessors assessing Lt. Shevlin. Commissioner Guedes said this is a very distinct situation and Mr. Dunn said the remedy they seek has more impact in that he wants full credit for his questions.

Attorney Bucci suggested that there were 6 appeals granted and an average score could be taken. Ms. Kollman said on the 3<sup>rd</sup> day the average score was 70 and Lt. Shevlin's score was 75 and that he did better than average and this calculation would not help him. Ms. Kollman reported that on day 1 and day 2 Mr. Shevlin scored 100%. Attorney Mitola said this was like negotiating a settlement agreement. Attorney Mitola added that there were 3 panel members and they had nothing to do with the City of Bridgeport and there is a video tape of them discussing Lt. Shevlin's answers. If there is no evidence at all then maybe this would be an issue, however, the tape is enough and we do have the tape. Attorney Mitola added that with all due respect Lt. Shevlin could go to court. Commissioner Correa said there is a frustration because Lt. Shevlin did not have the advantage of looking at himself. Attorney Mitola said that Lt. Shevlin did look at the tape on the day after the exam. Mr. Hale did not have the opportunity to see the tape, however, Mr. Hale did not need to see the performance. Commissioner Correa said we need to take responsibility for technical errors. Commissioner Guedes asked what granting the appeal would mean. Mr. Dunn said that the top 4 would be promoted to Captain. Attorney Mitola said that Lt. Laflamme, Lt. Bridge, and Lt. Oliva are ahead of Lt. Shevlin.

Mr. Dunn recommended that the certification of the list be tabled and Attorney Bucci withdrew the appeal of his client, Lt. Shevlin. Lt. Shevlin stated that he was the lead complainant of the Superior Court ruling and it seemed coincidental that his tape was the only one missing. Commissioner Guedes said more accountability is needed in the office and Mr. Dunn said the office bent over backwards to accommodate Lt. Shevlin. It is stated again for the record that a verbal withdrawal was made by Attorney Bucci for Lt. Shevlin.

## **2. Examiner's Report – Fire Captain Exam #2319 – APPROVED AND CERTIFIED**

The Commission was asked to approve and certify the Fire Captain Examination #2319 Examiner's Report and List. Lt. Rolfe spoke on behalf of Attorney Murray who had to leave the meeting. Lt. Rolfe made a request not to certify the report and list. He informed the Commission that an appeal has been filed in Appellate Court in Hartford. Attorney Mitola said there is no reason not to certify the list. If the case is successful in court then they would be eligible for back seniority, back pay, etc. Commissioner Rodgers, Plummer, McBride, and Correa each respectively voted to approve and certify the Examiner's Report and List for Fire Captain #2319.

**8. Discussion and reconsideration of Daryl Woods vote on August 28, 2012 and if motion to reconsider is approved possible subsequent action on Woods appeal. – RECONSIDERED AND DENIED**

Commissioner Guedes asked Mr. Woods if he would like to have the session in executive session and explained that anybody not involved in his case would leave the room and Mr. Woods chose to have the matter heard in executive session. Attorney Mitola said he would like the Commission to discuss and reconsider the Daryl Woods vote they had taken on August 28, 2012. On a motion made by Commissioner Correa and seconded by Commissioner McBride the Commission entered executive session at 4:00 p.m.

Attorney Mitola made a suggested motion that the Commission move to reconsider its vote of August 28, 2012 where it granted Firefighter candidate Daryl Woods' appeal for failing a portion of the medical exam, for the reasons outlined in the September 10, 2012 letter to the Commission from the City Attorney. On a motion made by Commissioner Plummer and seconded by Commissioner Rodgers the Commission unanimously moved to reconsider the August 28, 2012 vote wherein it granted the appeal of Mr. Daryl Woods for reasons outlined in the September 10, 2012 letter from the City Attorney. On a motion made by Commissioner Correa and seconded by Commissioner Rodgers the Commission unanimously rescinded their August 28, 2012 vote granting the appeal of Mr. Daryl Woods and to deny Candidate Daryl Woods' appeal for failing a portion of his medical examination. Commissioner Correa and Rodgers each voted to deny Mr. Woods' appeal and Commissioner Plummer and McBride each abstained. Commissioner Guedes voted to deny Mr. Woods' appeal. Mr. Woods' appeal was denied for failing a portion of his medical examination.

For the record it is noted that Commissioner Correa and McBride left the meeting at 4:20 p.m. Attorney Mitola stated that at the last meeting there was confusion with the Chair of the Commission and whether or not she could vote. He was misinformed. He misinterpreted the Rule and he apologized. Based on Robert's Rule the Chair can vote to make a tie and can vote again to break a tie. Commissioner Plummer stated that he is a team player and knew the Mr. Dunn was upset and that Commissioner Plummer's always trying to give somebody a second chance. Commissioner Guedes added that the Commission was unaware of the Safer Grant criteria at the time. Lt. Shevlin apologized to Mr. Dunn and the Commission and said he let his emotions get ahead of him.

On a motion made by Commissioner Plummer and seconded by Commissioner Rodgers the special meeting of the Civil Service Commission was adjourned at 4:20 p.m.