



division currently serving and having an aggregate of one year of continuous permanent service as of the closing date as a Battalion Fire Chief. Permanent service is gained from a regular appointment and the completion of a working test period. In this case, the petitioners had approximately 10 months of permanent service as of the closing date. They request admittance to the examination based on the release. The appointing authority submits a letter in support of their admittance to the examination based on the terms of the release. Ten candidates passed the examination for Deputy Fire Chief (PM2161R), but the list has not yet been certified.

*N.J.A.C.* 4A:4-2.6(a) (Eligibility for promotional examination) states in pertinent part that applicants for promotional examinations shall, by the closing date, meet the criteria of having one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open.

Moreover, *N.J.A.C.* 4A:4-1.10(c) provides:

When a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

## CONCLUSION

A review of the release indicates that it substantially complies with Civil Service law and rules. The policy of the judicial system strongly favors a settlement, or a release. See *Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W. T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there's fraud or other compelling circumstances. See *Nolan, supra*. In this matter, no such compelling circumstances exist. Therefore, the Commission orders that the employment records for the petitioners record their appointment in the title Battalion Fire Chief as September 10, 2010 for seniority purposes only.

However, as to the petitioners' eligibility for the examination for Deputy Fire Chief (PM2161R), the petitioners must have actually served in and performed the duties of the title Battalion Fire Chief during the requisite time-in-grade in order to be eligible. The power to award, based on administrative error, delay, or other good cause, retroactive seniority to individuals who have in some way been harmed with the concomitant right to sit for promotional examinations, implicitly recognizes the principle of merit and fitness for promotion. In this regard, the underlying purpose of time-in-grade requirements, as reflected at *N.J.A.C.* 4A:4-2.6(a)1, is to promote and advance those individuals who, through their service, have gained the needed

experience and knowledge to warrant promotion. Thus, absent administrative error or delay, any award of retroactive seniority that includes, as an additional remedy, the right to sit for a promotional examination without having the actual time-in-grade in the title to which the examination is open would undermine this important public policy. Nowhere is this public policy more important than in the field of public safety, where Deputy Fire Chiefs are entrusted with a high level of responsibility, requiring at times split second decisions affecting the lives of the personnel under their charge and the public they serve. It has been established that a candidate must have actually served in and performed the duties of the position sought for the required one year in order to be eligible. *Compare, In the Matters of David J. Barrett, Fire Captain (PM3511E) and Robert F. O'Neill and Anthony J. Verley, Deputy Fire Chief (PM3590D)* (MSB, decided November 19, 2003) (Individuals who had received retroactive appointment dates to the Fire Captain title solely on equitable considerations but who did not meet the time-in-grade service requirements as of the closing date of the announcement were not entitled to sit for the examination for Deputy Fire Chief). Accordingly, the term in the release referring to "time-in-grade" is unenforceable and cannot be relied on by the petitioners for admittance to the subject examination.<sup>1</sup>

#### ORDER

Therefore, it is ordered that this request be granted in part, and Matthew Hyman and Brian Rathbone be granted retroactive permanent appointments to Battalion Fire Chiefs, effective September 10, 2010, for seniority purposes only. It is further ordered that the personnel records of these employees be amended in accordance with this decision.

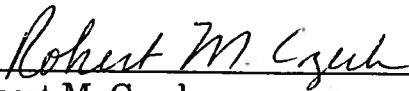
The petitioners' request for admittance to the Deputy Fire Chief (PM2161R), Paterson promotional examination is denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>1</sup> It is noted that the settlement and release was regarding a matter filed in Superior Court, where the settlement and release were not presented to the Commission for acknowledgement of the terms. Had such a request been made, the Commission would not have acknowledged the settlement and release as they pertain to "time-in-grade."

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 16<sup>th</sup> DAY OF JULY, 2014

  
\_\_\_\_\_

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: Matthew Hyman  
Brian Rathbone  
Charles Thomas  
Dan Hill  
Kenneth Connolly  
Joseph Gambino

# ***Release***

This Release, dated April 8, 2013, is given

BY the Releasor(s): **Brian Rathbone and Matthew Hyman**

Referred to as "I",

TO: **City of Paterson and Mayor Jeffrey Jones**

Referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. Release: I release and give up any and all claims and rights which I may have against You. This releases all claims, including those of which I am not aware and those mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:


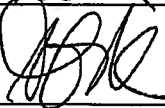
**As against the City of Paterson and Mayor Jeffrey Jones and as more particularly delineated in an action pending in the Superior Court of New Jersey, Law Division, Passaic County, under Docket No. PAS-L-0233-12.**


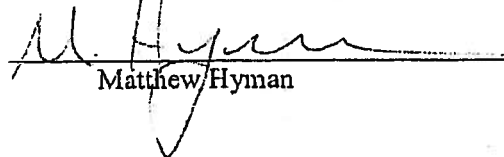
**In no way shall this Release be deemed an admission of liability by any defendant herein.**

2. Settlement: The terms of the agreed upon settlement are as follows:
  - A) I will be promoted to the rank of Battalion Chief within thirty (30) days.
  - B) Once promoted, I will receive the three-step increase in salary immediately, bringing me to top pay grade as Battalion Chief, as Battalion Chief's three-step increase is completed in 2 1/2 years. The promotions are retroactive to 9/10/10 for purposes of seniority, pension and time in grade.
  - C) Legal Fees in the amount of \$12,000.00 will be paid directly to the Toscano Law Firm, LLC, as and for my LAD claims pursuant to fee shifting statutes.
3. Who is bound: I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. Signatures: I understand and agree to the terms of this Release. If this Release is made by a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witness or Attested by:

  
\_\_\_\_\_  
  
\_\_\_\_\_

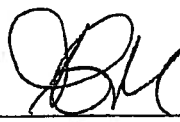
  
\_\_\_\_\_  
Brian Rathbone  
  
\_\_\_\_\_  
Matthew Hyman

STATE OF NEW JERSEY, COUNTY OF ESSEX  
I CERTIFY that on April 9, 2013

SS:

Personally came to before me and stated under oath to my satisfaction that this person (or if more than one, each person): Brian Rathbone and Matthew Hyman

- (a) was the maker of the attached instrument; and,
- (b) executed this instrument as his or her own act.

  
\_\_\_\_\_  
Notary Public  
ARTHUR G. MARGOTES  
ATTORNEY AT LAW - N.J.

From:

To: 9732790614


03/12/2013 11:20

#112 P.002/002


**THE TOSCANO LAW FIRM, LLC**  
 80 Bloomfield Ave.  
 Suite 101  
 Caldwell, NJ 07006  
 Phone: 973-226-1691  
 Facsimile: 973-226-1693  
 Attorney for Plaintiffs Brian Rathbone and Matthew Hyman

BRIAN RATHBONE and MATTHEW HYMAN,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION -PASSAIC COUNTY
	:	
Plaintiffs,	:	DOCKET NUMBER: PAS-L-0233-12
	:	
v.	:	Civil Action
	:	
CITY OF PATERSON and MAYOR JEFFREY JONES,	:	
	:	
Defendants.	:	STIPULATION OF DISMISSAL, WITH PREJUDICE


The above matter having been settled as to all issues, this Stipulation of Dismissal, with Prejudice, is hereby entered and filed, without costs as to any party.

  
 \_\_\_\_\_  
 Patrick P. Toscano, Jr.  
 Attorney for Plaintiffs

Dated: March 12, 2013

  
 \_\_\_\_\_  
 John Marotta, Esq.  
 Attorney for Defendant City of Paterson

Dated: March 16, 2013

  
 \_\_\_\_\_  
 Kenyatta Stewart, Esq.  
 Attorney for Defendant Mayor Jeffrey Jones

Dated: March 27, 2013