

**The Town of East Hartford's Personnel Appeals Board
Meeting Minutes
October 24, 2016**

Present:

Panel Members

Shaun Jones, Chair
Paul Sousa
Valentine P. Povinelli, Jr.
Lynn L. Kayser

Appellants

Joshua Recker
James Sopelak
Matthew Hannon

For Management

Santiago Malave
Chief Oates
Susan Kyeremateng

Atty. For Management

Atty. Peter Janus

Atty. For Appellants

Atty. Eric Chester

For The Union

Daniel Wasilewski

Additional Firefighters Present

Marcus Rice	John Oczkowski
Judy Geier	Jared Weiner
John Burelle, Jr.	

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TOWN CLERK
EAST HARTFORD

Robert J. Paul

Date of Meeting: Monday, October 24, 2016
Time of Meeting: 6:00 P.M.
Meeting Location: Town Hall, Council Chambers

- 1) Meeting called to order by Chairman Jones at 6:04 p.m.
- 2) Approval of October 4 meeting minutes presented by Mr. Sousa, 2nd by Mr. Povinelli
- 3) Chairman Jones opened the meeting with a statement indicating that the Town had one last witness. After questioning this witness, open discussion would begin between the members of the Personnel Appeals Board with the goal of reaching a conclusion this evening.
- 4) Attorney Janus called Santiago Malave` to testify on behalf of Management.

Question: Atty. Janus	Answer: Santiago Malave`
Introduce yourself and tell Panel who you are.	Santiago Malave`. Director of Human Resources. Employed by the Town of East Hartford for 4 years. Previously employed by the City of Hartford (9 years), and by two State of Connecticut state colleges (13 years).
Did you have involvement with promotional exams prior to this Lieutenant's promotional exam?	Yes

How much experience did you have with prior promotional exams?	In the hundreds.
Were there ever any appeals from the prior promotional exams that you were involved in?	Yes – 5
What did you do when faced with an appeal?	Looked at all exams from all angles. Consulted other HR Directors. Looked for evidence that the test should be invalidated.
Did you have the authority to invalidate a test?	Yes.
There were 6 questions on this test?	Yes, 1 icebreaker, and 5 to be scored.
How many questions in prior exams?	It varied: 6, 7, 8.
There were 4 Panel members?	Yes
After the Appellants reviewed their exam, did you meet with them?	Yes
Was there any mention of Critical Failure?	No
50% Fail rate. Is that high?	Yes
Town Exhibit C, Rating Sheet – How does that work?	The lowest score that a candidate can receive is a 4 (40%). This is built in to the exam to account for a Fire Fighter's experience, years of service, etc.
Why did you bring Dr. Ansah in for this exam?	Because I was not available to proctor the exam. I knew Dr. Ansah from my years in Hartford.
Had you used Dr. Ansah in East Hartford previously?	Yes.
Attorney Chester	
You have been with East Hartford for 4 years?	Yes
You have proctored prior exams?	Yes
You have sat through the test?	Yes
You have reviewed the responses?	I've looked at everything.
Were the notes taken representative of the things the candidates said?	Don't know. I wasn't there.
The number of questions can vary from test to test?	Yes
The score sheet does not change?	Correct.
Exhibit A – is there a seniority exam?	No.
Are test takers told that 40% is the lowest score they can receive?	No
So, the number of questions could be 10?	Yes.
The math changes with 10 questions?	Yes
Test takers come into the oral exam with 40%	Yes
Is that written anywhere?	No. It's internal
Written test must be passed to take the oral	Yes

test?	
Say someone gets 97% on the written test. Does that factor into the oral?	No
Oral exams have been given in the same manner as long as you have been here?	Yes
Do you have any experience with Fire Fighting or the Fire Department?	No
Mr. Povinelli	
The scores for the questions are averaged?	Correct.
That average determines the score?	Correct
You saw nothing to show a problem?	No
How do you tell them what corrective action should be taken?	I tell them to check their scores with other Fire Fighters to see what they did. HR should not offer suggestions.. This would give them an unfair advantage. HR must remain impartial.
Mr. Sousa	
Test takers can't talk to panel members after the exam.	Yes, they can. If they know how to reach them, the can do that.
Chairman Jones	
If a candidate does not want a specific panel member to rate them, may they stipulate that?	Yes. The panel member will remain, but their rating is not used for that candidate in the final scoring.
Is written protocol provided? Is it the same for all testing?	Yes
Town B – 8 paragraphs. Do you use this test “as is” for all your testing?	Yes.
Is it worded the same for all tests?	Yes.
Appellant Purcell said that there was mention of Critical Failure when he was reviewing his exam. Is that true?	I don't recall that happening.
Ms. Kayser	
Would presentation of an answer factor in to the score?	Candidates are rated on their answer to the question. Nothing else.
Mr. Sousa	
You “don't recall” critical failure coming up when speaking with Appellant Sopelak?	Correct.
Chairman Jones	
If a candidate receives a 6 a 5 and a 4, can they pass?	No
Atty. Chester	
If a candidate got 6 on one questions, then got 8 on another, would they pass?	Yes..
Mr. Sousa	
Suzan testified that there no mention of	Yes

Critical Failure when questioned by Atty. Janus.	
Chairman Jones	
Regarding Critical Failure – Certain Questions require certain answers. If the candidate answered a question incorrectly, could they still pass?	Yes. Score is based on an average.
Atty. Janus	
When meeting with Appellant Purcell, did the question of critical failure come up?	No
Closing: Attorney Chester	
<ul style="list-style-type: none"> • Thank you to the Board for your professionalism. • These appellants worked as hard as those • There are a number of glaring discrepancies, primarily the scoring difference between written and oral. • All testified that they did well on written exam. • None of them received an explanation of what was done wrong on the oral exam,. • FF LaPointe even appealed because of the discrepancies in his scoring. • Other discrepancies on all of the documents used for the oral exam: Town B, Instruction sheet indicated there would be 3 examiners, 4 were used. If only 3 had been used, scores would have been different; Town C – 10 point rating scale. Not true that candidates enter the exam with 40%. • General sense that something is wrong when you have a 50% fail rate. • Same questions are used year after year. Time to update how things done. 	
Closing: Attorney Janus	
<ul style="list-style-type: none"> • It is a fact that 50% of candidates failed the exam. • Reviewing the exam does not show a candidate where he/she went wrong with an answer. • Appellants want the exam thrown out based on this discrepancy. • The number of panelists will not produce high fail rate. • 70% Pass rate is required for both written and oral. • 5 Questions v. 6 questions makes no difference in fail rate. This is established procedure. • Examiners notes are simply there as a jog to memory in case of discussion with other examiners after an interview. They do not provide any guidance to candidates as to where they went wrong. Has nothing to do with fail rate. • Scoring Sheet – Candidates did not receive same score from all panel members. That's as should be. Different personalities provide different perceptions. • Nothing exists to invalidate this exam. The appellants must show irregularity that lead to 50% fail rate. 	
Panel Discussion: Chairman Jones, Paul Sousa, Valentine Povinelli, Lynne	

Kayser (alternate)	
Chairman Jones	
5 Appeals, requesting the following action:	
Matthew Hannon	Re-administer oral exam to all 20 candidates, or waive minimum rating of 70 on oral exam.
James Sopelak	Video the oral exam; Have oral panel members from similar departments(Manchester); Have a Captain or Deputy Chief from EHFD to proctor exam and help scoring members.
Steven Purcell	Thorough review of both the failing and passing test scores and results, based on the lack of supporting evidence.
Aaron LaPointe	---
Joshua Recker	Thorough review of the tests. If concerns are valid, test should be invalidated, changes made to the testing process and test be re-administered.
<ul style="list-style-type: none"> • Have heard both opening and closing remarks • Have heard testimony of all appellants, as well as testimony from Management, HR and others • Looking for a smooth back and forth discussion 	
Ms. Kayser	
<ul style="list-style-type: none"> • Inconsistencies should be tightened so there is no question on further testing • Documents should say that the number of examiners may vary from test to test. 	
Mr. Povinelli	
<ul style="list-style-type: none"> • Not 1st time with FD grievance with the same problem. • Should be consistent. • Should reflect 3 – 5 Panel members • Number of –questions is not a problem • Only problem is high fail rate. 	
Mr. Sousa	
<ul style="list-style-type: none"> • Troubled by inconsistencies. • Sat on 3 FD appeals. • Decisions made by HR are inconsistent. • Number of questions varies the weight of the questions. • Troubled that Chief Oates Met with the panel prior to the exam. • Town is in dire straits. Do not want to vote to re-do this test, but may need to. • Sloppiness of HR is a failing 	
Chairman Jones	
<ul style="list-style-type: none"> • Both Counsel's presented strong arguments. • Nothing indicates that 10% points will be added to the candidates score only if they pass the oral exam. • All appellants were eligible to receive the seniority points. 	

<ul style="list-style-type: none"> • Dr. Ansah testified that more than 2 point scoring difference triggered discussion. Is that just 2 points, or 2 or more? 	
Mr. Povinelli	
<ul style="list-style-type: none"> • 70% is cut off. Do not add seniority to reach 70% • Points are weighted as follows: <ul style="list-style-type: none"> ○ 50% Written ○ 40% Oral ○ 10% Seniority • I don't understand the Weighting of the scores (this triggered a 3 way clarifying discussion between Jones, Sousa and Povinelli) • Mr. Malave entered into the discussion to instruct the panel that weighting is part of the bargaining process, determined by the union. • Chief speaking to panel prior to exam may not be problematic. All FF's are trained in the same place (Meriden)m so answers should be based on general knowledge that all CT FF's are taught. 	
Mr. Povinelli	
Using 4 examiners – Arbitrary? Capricious?	
Chairman Jones	
<ul style="list-style-type: none"> ○ 70% on written test to get to the oral test. 70% on oral test to get the additional 10% seniority points. 	
Mr. Povinelli	
<ul style="list-style-type: none"> • No evidence of bias in HR. • Question is why did 50% fail? • Discussion of test panel took place as soon as the candidate left, so no blurring of candidates. <p>All candidates were subjected to the same process.</p>	
Mr. Sousa	
<ul style="list-style-type: none"> • (to HR) You might want to clarify in the future, so we don't need to sit here again. • Discussion of ignoring oral score and putting appellants on the eligibility list with those who passed. • Responsibility of this panel is to determine if oral was administered properly. • We should render a decision 	
Mr. Povinelli	
We have not heard anything that weighs on an improperly administered or scored exam	
Motion by Mr. Sousa 2nd by Mr. Povinelli	Invalidate the entire test. Then re-do the entire test.
Vote produced unanimous NO	
Motion by Mr. Sousa 2nd by Mr. Povinelli	Invalidate only the oral portion of the test and re-do the
Mr. Povinelli	
Why not just grade on the curve? I have heard nothing that indicates exam was not administered properly	
Mr. Sousa	
Did appellants meet burden of proof? In my	

opinion, yes,	
Mr. Povinelli	
Based on what?	
Mr. Sousa	
Weighing testimony of both sides re critical failure. Appellant says it was mentioned, HR says no.	
Chairman Jones	
<ul style="list-style-type: none"> • Testimony of both sides addressed 50% failure rate. • How were instructions given to test takers? How fair? Look at exhibits, testimony and ask if rules mean what they say. • Decision is difficult. Thank you to all non-appellants here for coming. 	
<ul style="list-style-type: none"> • Recommending that oral exam be invalidated and re-done. 	
<ul style="list-style-type: none"> • Vote: 	Paul Sousa – Aye Shaun Jones – Aye (based on testimony of Oral Panel Proctor) Val Povinelli – Nay The Aye’s have it. Test will be invalidated and re-given
Mr. Povinelli	
Wants instructions clarified prior to re-testing.	

Motion to adjourn at 8:55 p.m. by Mr. Povinelli, seconded by Mr. Sousa..

These meeting minutes were filed with the East Hartford Town Clerk and the East Hartford Town Council Clerk. In addition, all Board Members and Appellants were sent a copy via the United States Postal Service.

These meeting minutes were also distributed as follows:

Mayor Marcia Leclerc	Asst. Fire Chief William Perez
Finance Director, Michael Walsh	Chief Training Officer James Silver
Corp. Counsel, Scott Chadwick	Union V.P, Matthew Flor