

Privileged and Confidential - Attorney Work Product

MEMORANDUM

TO: Mario F. Coppola, Esq

FROM: Craig T. Dickinson

DATE: July 20, 2020

RE: Report re Investigation into Allegations of Cheating on Norwalk Fire Department Exam

Introduction

On Tuesday, June 16, 2020, Dr. Mark Tawney, V.P. of Testing Services for Industrial/Organizational Solutions ("IOS"), contacted Mayor Harry Rilling and Ray Burney, Director of Human Resources and Labor Relations for the City of Norwalk regarding allegations of possible cheating on the part of Norwalk employees in connection with the 2020 Firefighter exam. The City promptly requested an investigation into those allegations by outside counsel. This is a report of the outcome of that investigation.

Upon being retained to conduct the investigation, the following steps were undertaken:

- All materials received from IOS (e.g. correspondence, exam material, and videotaped interviews) were reviewed.
- Dr. Tawney was interviewed on June 23, 2020.
- Lt. Robert Zajac from South Fire District in Middletown was interviewed on June 23, 2020.
- Firefighter Christopher Melite from Farmington was interviewed on June 24, 2020.
- Battalion Chief Kevin Engle was interviewed on June 24, 2020.
- Chief Gino Gatto was informed and interviewed on July 7, 2020.
- [REDACTED] was interviewed on July 7, 2020; he was accompanied by Union President Larry Manzi.
- [REDACTED] was interviewed on July 7, 2020.
- [REDACTED] was interviewed on July 7, 2020.
- Chief Denis McCarthy from Fairfield was interviewed July 9, 2020.

Facts and Impressions from Investigation

Historically, municipalities have administered independent exams for Firefighters. In an effort to control testing costs and increase the diversity of the eligible candidate pool, a number of municipalities formed a consortium to administer a Firefighter exam that would generate a common candidate list. In 2018, 11 municipalities participated in the consortium.

IOS developed and administered the 2018 Firefighter exam for the consortium. The examination involved a written test and an oral interview by a panel. Candidates who passed the written test were scheduled for scored panel interviews. In 2018, approximately 300 oral interviews were conducted over 5 days in

Privileged and Confidential - Attorney Work Product

multiple locations. Those in-person interviews lasted approximately 16 minutes, immediately after which the panel spent 16 minutes scoring the candidate on their answers to the interview questions. Passing the written test only determined whether or not a candidate would be permitted to take the interview portion; it did not factor into their rank on the list. Only the candidate's score on the interview determined their rank on the candidate list.

Following the 2018 process, the consortium invited other municipalities to join for the 2020 Firefighter examination process. The number of municipalities that participated in the 2020 consortium exam increased from 11 to 16. The City of Norwalk was one of the municipalities that joined the consortium for the 2020 Firefighter exam.

In advance of the 2020 exam, IOS invited Chiefs from the consortium departments to participate in discussions about the upcoming exam. On January 16, 2020, a virtual, on-line meeting was held to review the 2018 exam and solicit input for the upcoming exam. The plan at the time was to largely utilize the 2018 interview questions for 2020. The primary push was to add another question to the interview regarding candidate background and the reason for their interest in becoming a firefighter. There is no information suggesting that anyone from Norwalk participated in that meeting.

On February 13, 2020, ██████████ requested that Chief McCarthy, a primary organizer of the testing consortium, add him to the distribution list. He was added to the consortium distribution list and began receiving communication directly from the consortium from that point on.

On February 27, 2020, another virtual meeting was conducted during which the modified oral examination question and answer scoring materials were displayed and discussed extensively. Chief Gatto and ██████████ were invited to participate. No attendance is taken during these calls and there is no system in place to track who accessed the meeting. Chief Gatto did not participate; ██████████ admitted attending multiple calls and meetings, but not this one specifically.

The written examination was administered in early March. ██████████ was involved in this process in terms of: 1) contacting churches and other community centers to promote and encourage more members of the community to take the test, and 2) arranging logistics for a testing location and distribution and collection of the written test materials. Again, the written test is essentially pass/fail because scores from the written test are not used in the candidate ranking process. Candidates who pass the written exam are permitted to participate in the oral examination process; candidates who fail the written test are not. Grades for the written exam were released in late March. There has been no suggestion of any improprieties with respect to the administration of the written exam.

Due to the COVID-19 outbreak, the consortium determined that the oral interviews could not be administered in the traditional, in-person fashion. Instead, IOS retained Spark Hire to develop and deliver an on-line, virtual interview and scoring system. The system developed required all candidates to log-in on the same date and take a video interview. The interview was composed of 8 questions; seven from the 2018 exam and one new question. The candidates would listen to the question and then have 2 minutes to record their answer. Candidates were given 5 minutes to prepare before recording their responses to questions 1, 3, 5, 6, and 8. Candidates were required to respond to questions 3, 4, and 7 immediately after it was delivered to them.

On May 1, 2020, another virtual meeting was held where the oral interview questions and answer scoring criteria were reviewed. Chief Gatto did not participate in this meeting. ██████████ admits that he

Privileged and Confidential - Attorney Work Product

participated in this meeting and that what was discussed during that meeting appeared to be the actual interview questions and answer rating form that was used during the interviews. [REDACTED] denies using any method of printing or otherwise duplicating the actual testing material, but didn't recall whether he took notes during the meeting. [REDACTED] admits inviting [REDACTED] to attend this meeting and [REDACTED] admits being in the office during the call. [REDACTED] explained that he was in the room because [REDACTED] was to secure volunteers to serve as interview panelists. He claims that he could not clearly see the screen during the session because he was on the other side of [REDACTED] desk. He denies taking any notes during that call but could not recall whether or not [REDACTED] did so. He also denies receiving any hard copy of the test material or capturing an image of that material during the session.

On May 4, 2020, the final version of the interview questions was distributed to all consortium Chiefs, as well as [REDACTED]. While they were provided the interview questions, the answer scoring guide developed and discussed during earlier virtual meetings was not distributed at this time.

The video interviews were conducted on May 22, 2020. All 530 candidates were expected to complete their video interviews on that date, although a few exceptions were made for candidates who had "technical difficulties." All candidates signed a confidentiality agreement prohibiting them from using their phones during the session and discussing the content of the test with anyone.

On May 25, 2020, after the oral examination video interview process was completed, the Oral Examination Questions and Assessor Rating Form Booklet was distributed to the volunteer panelists. There were 35 panels composed of 3 members each. (Four members of the Norwalk Fire Department served as panelists. In view of the fact that they did not receive the test material until after the interviews and they did not score anyone from Norwalk, there was no indication of any impropriety on their part.) Each panel was assigned a pool of 35 to 40 candidates to score. Each panel member watched every interview and used the consortium Assessor Rating Form Booklet to score the interviewees. The Assessor Rating Form Booklet has specified content that the candidates were expected to touch upon during their interviews. The more of the expected material the candidate covered, the higher the score they received. If the scores for the individual panel members deviated by more than two points for any given candidate, they were required to review any such candidate during a conference call to reach an agreed upon score. Some panels had to reconcile a large number of scores, while others only had to do that for a few candidates. Critically, the interview score determined where each candidate would rank on the consortium list.

The panelists scoring [REDACTED] were Christopher Melite, Robert Zajac, and Kevin Engle. Melite is a longtime volunteer but relatively new professional firefighter from the Farmington Fire Department. In fact, Firefighter Melite had taken the consortium exam in 2018. Scoring the 2020 interviews was his first experience serving as an interview panelist. Zajac is a Lieutenant and 25 year veteran of the South Fire District in Middletown. He has done many in-person panel interviews over the years, but not the 2018 consortium interviews. Engle is a Battalion Chief and 24 year veteran of the Torrington Fire Department. He is also a longtime volunteer in Terryville. Like Zajac, Engle has done many in-person panel interviews over the years, but not the 2018 consortium interviews. Melite, Zajac and Engle were not acquainted with each other before this panel assignment. Melite and Zajac have no connection with the Norwalk Fire Department. Engle occasionally teaches with Albie Bassett, another Deputy Chief from Norwalk, at the Connecticut Firefighting Academy. Bassett is not implicated in this matter. The Melite, Zajac and Engle panel was designated "panel 6" and assigned 35 candidate interviews to review and score. They only needed to reconcile 6 of their scores.

Privileged and Confidential - Attorney Work Product

Melite was the first to complete his review and scoring, starting promptly after receiving the material on May 25th. [REDACTED] was the last candidate in their pool. Melite was immediately struck by how closely [REDACTED] answers tracked the Assessor Rating Form in his response to question 1. After viewing 34 other candidate interviews, Melite described [REDACTED] response to questions 1 as “perfect.” The responses to questions 2 and 3 were also concerning because they included language verbatim out of the Assessor Rating Form Booklet. [REDACTED] response to question 4 “cinched” Melite’s concerns because the response mirrored the Rating Form criteria for question 7. Given the method of delivery, [REDACTED] shouldn’t have known what question 7 was much less the criteria for answering it. After completing his Rating Form Booklet for [REDACTED], Melite reached out to Zajac and Engle. Zajac had not yet reviewed the interview because he had responded to a major incident, but Engle advised Melite that he had the same impression and concern and thought they should inform IOS. Melite contacted IOS regarding the panel’s concerns on June 1, 2020.

When Zajac reviewed his candidate pool, he found that other candidates were good, but no one else was “spot on” the way that [REDACTED] was. He explained that it was common for candidates to have taken prior exams and interviews and to prepare through friends and professional coaches. Even considering those possibilities, he remarked that no one else he had seen was “as perfect” as [REDACTED] responses to all the questions except question 4. He also noted that [REDACTED] appeared to be reading in response to all the questions, not just the ones where the candidates had five minutes to prepare their answers, and how closely [REDACTED] answers tracked the Assessor Rating Form Booklet. After his review of [REDACTED] interview, he contacted Melite to express his agreement that [REDACTED] interview was just “too good.” Zajac contacted IOS about his concerns on May 29, 2020.

Although he was the highest ranking member of this panel, Engle made clear he did not participate in the interview question and answer development process and only became involved when his department asked for volunteers to participate in the panel interview process. He reviewed the assigned interviews over the course of three days. When Melite contacted him, he responded: “I already know what you’re going to say.” Engle was personally inclined to give [REDACTED] the benefit of the doubt because they didn’t have actual proof of cheating and he was aware that some candidates put a great deal of effort into preparing for their interviews. In fact, he admitted that he assisted members of his volunteer department in those preparation efforts, which echoed Zajac’s acknowledgment that some degree of coaching and preparation was common practice. Notwithstanding that equivocation, Engle acknowledged that [REDACTED] [REDACTED] responses struck him as “too good” and “nailing answers.” In that connection, he noted [REDACTED] response to Question 8, which involved describing how you would responded to a father and daughter who came to the department because the father wanted someone to talk to the daughter about texting and driving. Engle believed the only way [REDACTED] could have gotten so many of the Rating Form criteria correct was if he had taken the test before or had help from someone familiar with the questions because it appeared he was reading a script.

The Melite, Zajac and Engle panel only had six candidates for whom they needed to reconcile scores. One of them was [REDACTED] because they hadn’t addressed the question 4 answered with the criteria for question 7 issue. They agreed that the failure to provide a response properly to question 4 should result in no points for that answer. Notwithstanding the fact that they discounted [REDACTED] answer to question 4 completely, he ended up having the 35th highest score overall on the oral interview.

IOS contacted Mayor Rilling and Director Burney on June 16, 2020, expressing concern that a Norwalk resident submitted a video interview that “shows that the resident was clearly abetted by someone with access to our secure and confidential grading materials – essentially, the answer key.” Director Burney

Privileged and Confidential - Attorney Work Product

responded to Dr. Tawney on June 17, 2020. After some preliminary exchanges, Littler was retained to conduct an investigation and the author promptly commenced that investigation.

Dr. Tawney was interviewed first. Thereafter, the correspondence, testing materials and video interview were reviewed. The review of [REDACTED] interview while also reviewing the Assessor Rating Form Booklet raised a number of concerns. Not only does it look like he is reading throughout the interview, as opposed to just the questions where time to prepare was provided, but it also reveals dozens of quotes directly out of Rating Form.

During that initial phase of the investigation, it was learned that [REDACTED], son of [REDACTED] had also performed very well on the oral interview. A review of his video interview reveals a much better performance than [REDACTED] generally, as well as a few phrases that are reflected in the Rating Form. When asked, Dr. Tawney made clear that the panel who scored [REDACTED] had not raised any flags and he did not think the interview raised any concerns other than the fact that there were already concerns over [REDACTED]

After completing this initial phase of the investigation, arrangements were made to speak with Chief Gatto, [REDACTED], [REDACTED], and [REDACTED] in the Norwalk Human Resources Department on July 7, 2020. Chief Gatto was the only one given an advance invitation to the discussion. None of them were provided any advance notice of the subject of the discussion.

Chief Gatto was advised about the concerns raised by IOS. He explained that he had never participated in the consortium question and answer calls or video conferences. He acknowledged that [REDACTED] had to have some involvement in the process because he was the [REDACTED], but that he had warned both [REDACTED] and [REDACTED] about becoming overly involved in the process because of the appearance of impropriety created by their son's taking the test. Because he had not been actively involved with the consortium testing process, he was advised of the interview process. Chief Gatto was then shown the [REDACTED] Interview and the Rating Form. He quickly recognized how closely [REDACTED] answers followed the Rating Form content and language. He asked if [REDACTED] interview presented similar issues. He was told that there were concerns with him, too, that they did not rise to the same level as those presented by [REDACTED] and that they were also going to be inquired about. Chief Gatto made apparent his displeasure about what the circumstances revealed and remained present for the balance of the interviews.

[REDACTED] was then summoned from [REDACTED] and Union President Larry Manzi was made aware of the situation. They both arrived in a matter of minutes. Director Burney provided [REDACTED] a Garrity warning before the interview continued. [REDACTED] was obviously unnerved during the interview. He advised that he had taken the interview in his home, that he had been coached by his father, and that he had relied on a notebook while taking the interview. Before he was shown the video, he asked to go back to his office to inform his boss where he was. After he was gone for what appeared to be longer than necessary, Mr. Manzi went to get him. Upon his return, [REDACTED] remarked that if there was an issue, he could just be taken off the candidate list. He was advised that he still had to complete the interview. When shown the video, he was shown each question one at a time, asked to compare his answer to the Rating Form, and explain how his answer so closely tracked the Rating Form. He asserted that he had taken several other police and firefighter tests. When pressed on how his answers quoted the language on the Rating Form, he claimed that the phrases came out of his notes from his discussions with his father. When confronted how he could answer question number 4 with language from the Rating Form for question number 7, he suggested that he got his notes out of order. Ultimately, he denied ever receiving a copy of

Privileged and Confidential - Attorney Work Product

the questions and Rating Form, repeatedly attributing the suspicious similarity to the notes from his discussions with his father. Accordingly, he was asked if he still had the notebook. When he suggested that he might, he was directed to go home and return with the notebook. Although he went home, he did not return that day. When pressed about that failure the next day, he claimed that he had become sick and didn't return to work. Because he was at work the next day, he was asked why the notebook hadn't been provided and directed to go home and get it. The "notebook" he provided that day did not support his explanation. It was only a few pages of notes and did not reflect the language he provided during the interview that so closely matched the order and language from Rating Form. The impression from [REDACTED] interview is that he was not honest about the extent of information he was provided beforehand and that the notes to which he ascribed his success did not corroborate his explanation.

[REDACTED] was next summoned to be interviewed. While he was not advised of the reason for the impromptu meeting, there is no way to know whether or not [REDACTED] tipped him off. When he arrived, he was also clearly unnerved. When asked about his involvement in the consortium test process, he admitted that he had been on conference calls and at least 2 video conferences. He admitted that one of the conferences he attended was the May 1st session where the final version of the questions and Rating Form were discussed. He admitted that he had seen material that looked identical to the Interview Rating Form containing the questions and sought after answer language. He acknowledged that [REDACTED] was in his office during that video conference, but didn't know if he had taken any notes during the session. When initially asked about what, if any, role he had taken in helping [REDACTED] prepare for the oral interview, he claimed to have only engaged in typical coaching relying on past experience to present him with hypotheticals and important points to cover. He initially stated that he hadn't "crossed the line." When shown the video of [REDACTED] interview along with the Rating Form, he silently shook his head. When asked why he shook his head, he acknowledged that the video "spoke for itself." [REDACTED] clearly followed the order and used key phrases from the Rating Form. Although he persisted in his denial of printing or otherwise capturing an image of the Rating Form to share with [REDACTED], he admitted that he violated the trust placed in him, that he shared more information about the interview material with [REDACTED] than he should have, and that it clearly appeared like an integrity/ethics violation. While it is unclear whether or not [REDACTED] provided [REDACTED] with an actual copy of the Rating Form Booklet because they both deny that occurred, [REDACTED] admits that he had complete access to that interview material during consortium video conferences and that he shared details from what he learned from his participation in that process with [REDACTED] to assist [REDACTED] prepare for the interview. Likewise, [REDACTED] admits that he took notes from conversations with his father about the process and relied on those notes during the video interview. As previously noted, however, the notes that [REDACTED] produced suggest that he had had access to and utilized more material than either of them admits to. Given the admissions from [REDACTED] and [REDACTED] interviews, IOS was advised that [REDACTED] should be removed from the 2020 consortium firefighter candidate list.

[REDACTED] was next summoned for an interview. Again, he was not advised of the reason for the meeting. While there is no way to know whether or not he spoke to [REDACTED] before he arrived, he appeared prepared to talk about different topics and was clearly taken aback when the conversation probed his involvement with the consortium testing process and what [REDACTED] had done to prepare. [REDACTED] admitted that he had had some involvement with the process because [REDACTED]. He explained his involvement with promoting the exam in the community, administering the written exam, and arranging for members of the department to serve on interview panels. While he admitted to being in [REDACTED] office on May 1st during the video conference about the interview questions and Rating Form, he adamantly denied seeing or taking notes about the Rating Form Booklet. When shown [REDACTED] video interview and the Rating Form, [REDACTED]

Privileged and Confidential - Attorney Work Product

adamantly denied any wrong doing. He explained that [REDACTED] had taken 8 firefighter tests, including the 2018 consortium test. He stated that his only involvement was paying for [REDACTED] to receive help from 2 professional tutors and constantly prompting him to study for the test and interview. He opined that [REDACTED] good performance on the interview was the result of [REDACTED] prior experience testing, the work with the professional tutors, and his hard work polling other firefighters about their experience with interviews. He added that when he returned home the day of the video interview, he asked [REDACTED] how it went and [REDACTED] said that it went well and that almost all of the questions were the same ones he had been asked in the 2018 consortium interview. (This is accurate. Question 1 was added to the 2020 interview because of requests made during the consortium conference calls in January and February. Questions 2 through 8 were recycled from that earlier test.) Given the apparent effort that [REDACTED] had put into preparing for the interview, and the money spent on professional tutors (which is apparently a known and permitted practice), [REDACTED] became agitated that his son would be denied a lifelong ambition of joining the department because of these suspicions. He was advised that the investigation had raised a concern that needed to be followed through, but no determination had been made. He expressed understanding that the investigation needed to be complete and apologized for getting upset. While there is no dispute that [REDACTED] had exposure to the interview question and answer guidelines because he was in [REDACTED] office on May 1, he provided a credible explanation for [REDACTED] superior performance on the interview. Coupled with Dr. Tawney's impressions of [REDACTED] interview, no steps were taken to remove him from the 2020 consortium firefighter candidate list.

Conclusion

Contrary to Chief Gatto's directive to avoid the 2020 consortium firefighter testing process to avoid any appearance of impropriety because his son was taking the test, [REDACTED] affirmatively inserted himself into the process. Despite having no apparent job duties linked to the process, he had himself added to the consortium distribution list and attended multiple discussions about the 2020 exam. As a result, [REDACTED] had complete access to the 2020 consortium interview questions and interview rating criteria. While he denies providing an actual copy of that material to his son [REDACTED], he admits that he provided extensive coaching and that he violated the trust placed in him by sharing more confidential information than he should have to assist [REDACTED] prepare for and take the interview. [REDACTED] admits that he was coached by his father and that he used notes from those coaching discussions during the interview. While he also denies having an actual copy of the questions and rating form, the notes provided by [REDACTED] call that assertion into question. The content of the notes provided suggest that [REDACTED] either discarded portions of the notes that revealed the full extent of the coaching he received from his father or that he was, in fact, provided a copy of the questions and Rating Form. In any event, the video of the interview makes clear that [REDACTED] is reading from something that permitted him to provide answers that closely tracked the Rating Form to the point of quoting actual phrases from the Rating Form approximately 60 times. In [REDACTED] words: "It speaks for itself."

Also contrary to Chief Gatto's directive, [REDACTED] was involved in the 2020 consortium firefighter exam. He claims, however, that his involvement was limited to promoting and administering the written portion of the exam and securing volunteers to serve as panel members for the oral interview process in connection [REDACTED]. Whatever the asserted justification, [REDACTED] had exposure to the interview questions and answers because he was present during the May 1st consortium video conference. [REDACTED] interview does not, however, track the Rating Form as conspicuously as [REDACTED] [REDACTED] had the benefit of answering 7 of the 8 questions because he went through the consortium testing process in 2018, and [REDACTED] had the benefit of considerable prior experience and (permissible) professional tutoring.

Privileged and Confidential - Attorney Work Product

Craig Thomas Dickinson
Attorney at Law
Littler Mendelson, P.C
265 Church Street - Suite 300
New Haven, CT 06510
Telephone: 203-974-8700
cdickinson@littler.com