

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston MA 02114

(617) 979-1900

MATTHEW BOTELHO,

Appellant

v.

TOWN OF FAIRHAVEN,

Respondent

Docket number:

G2-23R-193

Appearance for Appellants:

Joseph G. Donnellan, Esq.

Rogal & Donnellan, P.C.

100 River Ridge Drive, Suite 203

Norwood, MA 02062

Appearance for Respondent:

Richard Massina, Esq.

Clifford & Kenney, LLP

31 Schoosett Street, Suite 405

Pembroke, MA 02359

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission affirmed the decision of the Town of Fairhaven to bypass a candidate for Police Chief based on the selected candidate's superior performance during a well-designed, structured interview process, which demonstrated that the selected candidate was the better choice to lead the Police Department and serve the needs of the community over the next several years.

DECISION

On October 3, 2023, the Appellant, Matthew Botelho, appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b), to contest the decision of the Town of Fairhaven (Fairhaven) to bypass him for promotion to the position of Police Chief of the Fairhaven Police Department (FPD) (CSC No. G2-23-193 [[Botelho I](#)]).¹ On May 5, 2024, the Commission

¹ 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.

entered an order of dismissal nisi in [Botelho I](#) in that the present Police Chief was not expected to retire until August 2024 and no appointment of a successor had been made. The Commission's Order contained the directive that, by agreement of the parties, Fairhaven shall proceed to promote a candidate pursuant to civil service law and rules from the current civil service eligible list to assume the position of permanent FPD Police Chief on or before the retirement of the incumbent and that, if a candidate other than the Appellant were selected, the Appellant would receive written reasons for the bypass and be afforded an expedited bypass appeal to the Commission.

On August 9, 2024, the Appellant moved to reopen the appeal after receiving written notice that Fairhaven had, in fact, bypassed him for the position of Police Chief in favor of a lower-ranked candidate. The motion was allowed and the Commission held a full hearing on the merits of the bypass (CSC No. G2-23R-193 [[Botelho II](#)]) on September 26 & 27 and October 18, 2024 at the UMass. School of Law in Dartmouth, and on November 7, 2024 by remote videoconference.² The Commission received proposed decisions from the parties on January 13, 2025. For the reasons stated below, the Appellant's appeal is denied.

FINDINGS OF FACT

The Commission received 41 exhibits into evidence (*Jt.Exhs.1 through 29; App.Exhs.1 through 10; Resp.Exhs.1 &2*). Based on the documents submitted and the testimony of these witnesses:

Called by Fairhaven:

- Andrew Saunders, Member of Town of Fairhaven Select Board
- Tara Kohler, Superintendent of Schools, Fairhaven, Massachusetts

² The UMass.-Dartmouth hearings were digitally recorded and copies of the recordings were provided to the parties; the videoconference hearing was audio/video recorded and a link to the recording provided to the parties. If there is a judicial appeal of the Commission's decision in this matter, the plaintiff in the judicial appeal shall supply the court with a transcript of this hearing to the extent that they challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the Commission's recordings shall be used to create the written transcript.

- Jason King, Chief of Police, Town of Mattapoisett, Massachusetts
- Angeline Lopes Ellison, Former Town Administrator, Fairhaven, Massachusetts

Called by the Appellant:

- Daniel Dorgan, FPD Chief of Police³
- Michael Myers, former FPD Chief of Police (retired)
- Matthew Botelho, Appellant

and taking administrative notice of all matters filed in [Botelho I](#) and [Botelho II](#), pertinent law and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Town of Fairhaven (Fairhaven) is a municipal corporation organized under the laws of the Commonwealth and located within Bristol County, MA. (*Administrative Notice* [[Home - Town of Fairhaven, MA](#)])

2. The Fairhaven Town Administrator (TA) is the appointing authority for the FPD Police Chief, subject to approval of the Fairhaven Select Board. (*Jt.Exh.24*[[Select Board 6/10/24](#) @2:40-3:16]; *Testimony of Ellison*; *Administrative Notice* [[Acts of 2014, Chapter 381, Section 2\(i\)](#)])

3. Pursuant to a ballot vote in 1938, Fairhaven adopted Chapter 116 of the Acts of 1938, which “authorized the placing of the office of chief of police in the town of Fairhaven under the civil service laws.” (*Administrative Notice* [[Acts of 1938, Chapter 116](#)])

4. The Appellant, Matthew Botelho, is a sworn police officer with over twenty years of tenured service with the FPD. Since 2012 he has held the permanent civil service title of police sergeant. He has received numerous awards and recognitions for his work as an FPD officer. He has no record of discipline. (*Testimony of Appellant & Chief Meyers*; *App.Exh.3*)

³ On the day he testified, Chief Dorgan appeared with counsel and I granted his motion to intervene, which had been filed prior to his testimony, for the limited purpose of protecting his rights to maintain the confidentiality of his medical history to the extent it was not already a part of the public record.

5. During his tenure with the FPD, the Appellant earned an associate's degree in criminal justice (2018) and a bachelor's degree in criminal justice (2024). (*Jt. Exh.1; Testimony of Appellant; Administrative Notice [App,Exh.1 – [Botelho I](#)]*)

The 2023 Process for Selection of Police Chief

6. In or about August 2021, after more than a decade in the position, Fairhaven Police Chief Michael Myers announced that he intended to retire effective August 10, 2024. (*Testimony of Ellison & Chief Myers; Administrative Notice [[Botelho I](#)]*)

7. In January 2023, the newly appointed Fairhaven Town Administrator (TA) Angelina Lopes Ellison, on behalf of the FPD, entered into a Delegation Agreement with the Massachusetts Human Resources Division (HRD) for a Sole Assessment Center, to be used as the sole basis for scoring and ranking candidates on an eligible list for FPD Police Chief. (*App.Exh.4*)

8. Pursuant to the Delegation Agreement, a panel of experts (seven current or retired Massachusetts police chiefs) selected by a consultant engaged by Fairhaven conducted a Police Chief Assessment Center examination on June 10, 2023. The Police Chief Assessment Center examination consisted of five exercises (Meeting with Local Officials, Community Meeting, Employee Harassment, Staff Meeting, and Panel Questions) designed to test the Knowledge, Skills, Abilities and Personal Traits deemed appropriate to the position of FPD Police Chief. (*App.Exhs.5 & 6*)

9. Six candidates participated in the Police Chief Assessment Center examination. The Appellant received the highest score (87.96) overall as well as the highest score in four of the five individual exercises. The Appellant achieved the third highest score (86.80) in the fifth category (Panel Interview). (*App.Exh.6*)

10. Sergeant Daniel Dorgan received an overall score of 82.56 on the Police Chief Assessment Center examination but claimed the highest score (87.60) on the Panel Interview component. He

scored third in the Social Justice Exercise (Meeting with Town Official) with a score of 79.60 (9.60 points fewer than Botelho); he scored fifth in the Community Meeting Exercise with a score of 81.00 (7.20 points fewer than Botelho); he scored fourth in the Harassment of a Co-Worker (Employee Meeting) Exercise with a score of 82.20 (4.60 fewer points than Botelho); he scored last, fifth out of five, in the Staff Meeting Exercise with a score of 82.40 (6.40 fewer points than Botelho). (*App.Exh.6*)

11. Based on his Police Chief Assessment Center score, rounded to 89, the Appellant's name appeared first on the FPD Police Chief eligible list issued by HRD on August 1, 2023, and Sergeant Dorgan's name appeared tied for third with the fourth lowest overall non-rounded score:

Rank	Candidate	Assessment Center Score	Rounded Score
1	Botelho	87.96	88
2	Kohza	86.52	87
3	Joseph	82.72	83
3	Dorgan	82.56	83
5	Souza	80.48	82
5	Gordon	82.32	82

(*App.Exh.6; Administrative Notice [[Fairhaven Police Chief 8/01/2023 Eligible List](#)]*)

12. After the Police Chief eligible list was issued, on or about August 22, 2023, TA Ellison decided to make an independent assessment of all six candidates on the 8/1/23 eligible list by conducting an (unrecorded) interview with each candidate at which the Fairhaven HR Director was also present. (*Testimony of Ellison; Administrative Notice [[Botelho I](#)]*)

13. On or about September 13, 2023, TA Ellison informed Sergeant Daniel Dorgan that she had selected him to succeed the current Police Chief and informed the Fairhaven Select Board to that same effect on September 18, 2023. (*Testimony of Ellison; Administrative Notice [[Botelho I](#)]*)

14. On or about September 15, 2023, TA Ellison verbally informed the Appellant that he would not be chosen to become the next Police Chief. (*Testimony of Ellison; Administrative Notice [[Botelho I](#)]*)

15. At the time she made these decisions, TA Ellison was not well-versed in civil service procedures. The results of the Police Chief Assessment Center did not figure into TA Ellison's decision to choose Sergeant Dorgan over Sergeant Botelho. (*Testimony of Ellison*)

16. TA Ellison took no action to document the reasons for selecting Sergeant Dorgan to become the next Police Chief or to provide the Appellant with the reasons and notice of his right to appeal to the Commission. (*Testimony of TA Ellison; Administrative Notice [[Botelho I](#)]*)

17. The Fairhaven Town Administrator's actions were based on the understanding that, at the time of the decision, Fairhaven had taken the necessary steps through a Town Meeting vote in May 2023 to remove the position of Police Chief (as well as all other Fairhaven police and fire service personnel) from the civil service system, and that the process for selecting a new Police Chief did not have to comply with the requirements of civil service law. (*Testimony of Ellison; Administrative Notice [[Botelho I](#)]*)

18. In October 2023, the Appellant appealed to the Commission to contest what he considered to be his unlawful bypass for promotion to the position of FPD Police Chief. (*Administrative Notice [[Botelho I](#)]*)

19. Effective December 1, 2023, Police Chief Meyers recommended, and TM Lopes appointed Sergeant Dorgan to the position of temporary Captain to fill a vacancy in that position created by retirement of the prior Captain. Acting Captain Dorgan was assigned to work on preparing budgets and training as future Police Chief. (*Testimony of Meyer & Dorgan;; App.Exh.9*)⁴

⁴ As noted above, Fairhaven believed that, as of May 2023, all FPD positions had been removed from civil service. Although this assumption would turn out to be erroneous, at the time of Sergeant Dorgan's promotion to temporary Captain, there was no current eligible list for FPD Police Captain, so the temporary (or provisional) promotion was within the authority of the Police Chief and Town Manager either under civil service law or the non-civil service appointing authority under the town charter. (*Testimony of Chief Meyers*)

20. On December 4, 2023, and confirmed on January 5, 2024, HRD informed the Commission and the parties that, after review of the documentation provided to it, HRD had determined that Fairhaven had not followed the lawfully required procedure to remove its police and fire service personnel from civil service and that, in particular, HRD considered that the FPD and the position of FPD Police Chief was still “in Civil Service.” (*Administrative Notice* [[Botelho I](#)])

21. Ultimately, Fairhaven agreed that the position of FPD Police Chief remained subject to civil service law and that further proceedings would be conducted to select the person to succeed the incumbent Police Chief from the current eligible list in accordance with the requirements of civil service law. (*Jt.Exhs.3 & 24* [[Select Board 6/10/24 @2:40-3:16](#)]; *Administrative Notice* [[Botelho I](#)])

22. By Decision dated May 2, 2024, the Commission dismissed the Appellant’s initial appeal nisi, to become effective on August 10, 2024, with the proviso that “Fairhaven shall use its best good faith efforts to conduct a fair and transparent process, consistent with this Decision and civil service law and rules, to select a candidate for permanent promotion from the current civil service eligible list to assume the position of FPD Police Chief . . . in such a manner that, if a candidate other than the Appellant is selected, the Appellant shall be provided detailed reasons for the bypass and afforded the right to an expedited bypass appeal to the Commission under civil service law and rules.” (*Administrative Notice* [[Botelho I](#)])

The 2024 Selection of Police Chief

23. At the open session of the Fairhaven Select Board on June 10, 2024, town labor counsel briefed the Select Board on the Commission’s decision in [Botelho I](#). A discussion ensued as to the next steps to select a new police chief using a process and “fresh pair[s] of eyes” that would (1) “pass muster” under civil service law and [Botelho I](#); (2) ensure compliance with the requirements of the town charter for appointment of department heads by the Town Administrator with approval

of the Select Board based on “fitness and merit”; and (3) satisfy the candidates and citizens of a “fair” and “transparent” process. The Select Board tasked TA Ellison to develop a plan that met these criteria and to follow-up with the Select Board. (*Jt.Exh.24* [[Select Board 6/10/24 @2:40-3:16](#)])⁵

24. TA Ellison submitted her plan for the FPD Police Chief selection process by memorandum to the Select Board dated June 21, 2024. The memorandum noted that “in accordance with the Civil Service decision and the order of dismissal nisi effective August 10, 2024, the Town must adhere to Civil Service guidelines in appointing its next Chief” and “to ensure a fair, transparent, and objective process for the Chief position”, the following steps will be taken:

1. **Formation of a Five-Member Panel:**

A panel consisting of the following members will oversee the hiring process:

- **Standing Police Chief:** As an experienced professional familiar with the responsibilities and requirements of the position.
- **Select Board Member:** Representing the executive branch of the Town.
- **School Superintendent:** Providing insights from an independent administrative body that works directly with the police
- **DPW Superintendent:** Bringing expertise from another crucial operational area of the Town and independent body.
- **Town Administrator:** Acting as the appointing authority.

2. **Role of the Panel:**

The panel will collectively conduct interviews, and recommend candidates along with areas of strengths, merit and fitness. Each panel member will contribute their unique perspective to ensure a comprehensive assessment of the candidates.

3. **Interviewing Candidates from Civil Service List:**

The three highest-ranking individuals from the Civil Service list will be invited to interview for the Chief position. Their qualifications and suitability will be assessed alongside the civil service guidelines in a fair and impartial manner.

This approach aims to uphold the principles of fairness, transparency, and objectivity mandated by the Civil Service system while leveraging the expertise of key stakeholders within the Town.

(*Jt.Exh.3*)

⁵ The Select Board considered placing a question on the ballot to remove the police chief’s position from civil service but determined that the timing of the current Police Chief’s retirement in August 2024 and the need to have a new permanent police chief in place by then dictated that the position be filled as a civil service position, and so it deferred a decision on whether to put removal of the position to the voters for the time being. (*Jt.Exh.24* [[Select Board 6/10/24 @2:40-3:16](#)])

25. At its June 24, 2024 open session, the Select Board discussed the TM's June 21, 2024 memorandum and authorized her to proceed with the plan she recommended to ensure that a new Police Chief would be appointed in time to assume the position on or before August 10, 2024. The Select Board requested that candidate interviews be videotaped. Select Board member Andrew Saunders was appointed as the Select Board's representative on the interview panel. (*Administrative Notice* [[Select Board 6/24/24 @2:08-2:24](#)])

26. On July 3, 2024, Fairhaven's HR Director notified the top four candidates on the FPD Police Chief eligible list that a new certification had been created and they were invited to sign the certification on or before July 10, 2024 if they were willing to accept the appointment. (*Jt.Exh.26*)

27. Only two candidates – the Appellant and Daniel Dorgan -- signed the certification and were notified to appear for recorded interviews before a five-member interview panel on July 16, 2024. (*Jt.Exhs.2 & 26 through 28*)

27. The interview process included three elements: (1) a 90-minute, structured interview consisting of twenty questions plus a brief extemporaneous "Select Board" presentation; (2) an evaluation of the candidate's demeanor (appearance, attitude, communication and self-confidence); and (4) four essay questions provided to the candidates who were given an hour to provide written answers after the oral interview. (*Jt.Exh.4; Testimony of Kohler & Saunders*)

28. TM Ellison solicited input from the panel for the interview questions and procedures. The questions were designed to focus on eliciting a candidate's understanding of the operations, situational, and long-range challenges specific to the job of FPD Police Chief and how the candidate would manage them. In addition, Mattapoisett Police Chief King provided suggestions for essay questions and a scoring matrix used for promotional exercises in his (non-civil service) department. (*Jt.Exhs. 4&21; App.Exh.9; Testimony of Chief King, Kohler & Saunders*)

29. On July 12, 2024, due to the unavailability of Fairhaven’s Director of Public Works and TM Ellison, only three panel members participated fully in the interviews – Fairhaven Superintendent of Schools Tara Kohler, Select Board Member Andrew Saunders, and Mattapoisett Police Chief Jason King. The three panel members had the candidates’ resumes but not their personnel files. (*Jt.Exhs.6 through 20; Jt.Exh.22 [FPD Chief Interview:7/16/24-Daniel Dorgan]; Jt.Exh.23 [FPD Chief Interview: 7/16/24-Matthew Botelho]; App.Exh.8; Testimony of Ellison, Chief King, Kohler & Saunders*)⁶

30. The panel members kept written notes on each candidate and individually scored each interview question, characteristic and essay answer using a matrix from “1” – unsatisfactory to “5” – superior. (*Jt.Exhs.5 through 18; Testimony of Chief King, Kohler & Saunders*)

31. The candidates’ overall scores were as follows:

	<u>Botelho</u>	<u>Dorgan</u>	<u>Botelho</u>	<u>Dorgan</u>	<u>Botelho</u>	<u>Dorgan</u>
Chief King	68	76	16	16	11	14
Saunders	66	67	12	13	10	14
Kohler	75	83	17	16	12	15

(*Jt.Exhs.5 through 15*)

32. On July 16, 2024, Superintendent Kohler reported to TM Ellison:

On behalf of Chief King and Mr. Saunders, we would like to let you know that we have finished the panel portion of the process today. The town is fortunate to have both Mr. Botelho and Mr. Dorgan as qualified candidates. Through a one-and-a-half-hour interview, which included over 20 questions, including an impromptu speaking requirement, and an additional hour-long task to complete four essay questions, we unanimously recommend Daniel Dorgan for the position of Chief of Police. Please let me know if you have any questions or concerns.

(*Jt.Exh.21; App.Exh.8; Testimony of Kohler*)

⁶ TM Ellison observed the interviews in real time via videoconference but did not ask questions or score the candidates’ interview performance. She had been provided with the candidates’ personnel files prior to her previous, private 2023 interviews with the candidates. (*Jt.Exh.22 [FPD Chief Interview: 7/16/24-Daniel Dorgan]; Jt.Exh.23 [FPD Chief Interview:7/16/24-Matthew Botelho]; Testimony of Chief Meyers*)

33. By letter to the Select Board dated July 30, 2024, presented at the Select Board's open session on that date, TA Ellison reported her recommendation to promote Daniel Dorgan, and bypass the Appellant. TM Ellison's letter stated:

On July 16, 2024, a panel selected by the Town conducted recorded interviews of Dorgan and Botelho. The interview also included a written component where candidates were given a chance to provide detailed, thought-out answers. . . . Following the interviews, the panel deliberated and unanimously recommended Dorgan's promotion. . . .

During the interview, Dorgan shared his vision for community driven policing in the Town of Fairhaven and shepherding the Department into the future with the assistance of new technology, while ensuring the human element of policing drives the mission of the Department. Dorgan's answers to the interview panel's questions showed a candidate who is open to and appreciative of collaboration and competing points of view; Dorgan believes this openness is essential to developing a police force that can meet the needs of a diverse population. Dorgan noted that diversity is essential to building that police force, but that diversity should be an inclusive term not just used to refer to race or identity, but also metrics like diversity of ideas and socioeconomic status. . . . When asked the same question about community policing, Botelho stressed the importance of "open communication" several times, but was unable to provide a clear plan to address that goal. When asked what Dorgan has done or will do to promote diversity internally, he informed the panel how he promotes equal opportunity and fairness in all aspects of his job. In contrast, Botelho stated that he has not had the opportunity to promote diversity within the department, despite his more than twenty (20) years working for the Town, a substantial portion of which he worked as a Supervisor.

With respect to education and relevant training, Dorgan's interview answers demonstrated a robust financial understanding derived from his Bachelor's Degree in Finance. Beyond that knowledge being useful when it comes time to prepare a budget, Dorgan has already utilized his financial studies to assist the Department in seeking out and applying for grants. When asked about the financials and budgeting, Dorgan was able to provide substantive solutions, once again pointing out specific grants he helped the Department secure.

. . . .
With respect to the written component of the interview, Dorgan's answers were much more substantive, thought-out and contained measurable outcomes and tangible plans to achieve specific goals. In contrast, Botelho's written answers were . . . not indicative of a true plan or vision for the Department.

. . . . Dorgan provided . . . a detailed, written strategic plan regarding his goals if appointed Chief. Botelho also provided a prepared presentation to the interview panel, however it was mostly a recitation of his résumé – a fact pointed out by one of the panel members during the presentation.

Based on his answers and overall presentation, Dorgan presented a clear vision to move the Department forward with a plan of how he intends to achieve those goals. In contrast, Botelho's interview was more indicative of a police chief that would maintain the status quo without consideration for how his particular leadership will affect the future of the Department.

For all of the reasons stated herein, I adopt the recommendation of the interview panel and hereby recommend that the Select Board select Daniel Dorgan as the Town's next Police Chief.

(*Jt.Exhs.2; Jt.Exh.25*[[Select Board 7/30/24 @00:15-00:25](#)])

34. Without further inquiry, the Select Board voted unanimously to approve TM Ellison's recommendation to promote Daniel Dorgan as the FPD Police Chief and to issue the proposed bypass letter to Sergeant Botelho. (*Jt.Exh.25* [[Select Board 7/30/24 @00:15-00:25](#)])

35. After the vote, the Chair recognized Daniel Dorgan, who thanked the Board for their support; she also acknowledged the presence of the Appellant and thanked him for his prior and anticipated future service with the FPD. (*Jt.Exh.25*[[Select Board 7/30/24 @00:15-00:25](#)])

36. By letter dated August 6, 2024, from Select Board Chair and TM Ellison, Daniel Dorgan was officially informed that he was promoted to FPD Police Chief. (*Jt.Exh.29*)

37. By letter dated August 6, 2024, from Select Board Chair and TM Ellison, the Appellant was informed that he had been bypassed for promotion to Police Chief and advised of his right of appeal to the Commission. The August 6, 2024 bypass letter, contained a three-page statement of the reasons for the bypass, identifying the distinctions that each candidate presented during the July 16, 2024 interview process, with citations to the recorded interviews. (*Jt.Exh.1*)

38. During the current appeal, on or about September 16, 2024, the Appellant was promoted to the position of Administrative Lieutenant, in charge of special assignments, including the marine division, detectives, school resource officers, and training. (*Testimony of Appellant; Administrative Notice* [[Fairhaven Neighborhood News 9/18/2024](#)])⁷

⁷ As noted above, Fairhaven believed that the Appellant's position, along with all other FPD positions (other than the Police Chief) had been removed from civil service and made the promotion, along with others, using a non-civil service promotional process. As set forth in an Interim Decision issued today in a related appeal, the Commission has declared that Fairhaven's May 2023 town meeting vote was ineffective in removing FPD officers from civil service. The effect of that determination on the promotion and civil service status of the Appellant and others

Chief Dorgan's Background and Prior Disciplinary History

39. Chief Dorgan began employment with the FPD immediately after graduation from college on a part-time basis in 2005 and became a sworn permanent patrol officer in 2010. (*Testimony of Chief Dorgan*)

40. Prior to his employment with the FPD, he earned a bachelor's degree in finance. He earned a master's degree in 2017. (*Testimony of Chief Dorgan*)

41. Chief Dorgan has a history of discipline with the FPD as an FPD Sergeant including:

- Sergeant Dorgan received a letter of counseling and mandatory training for a July 2018 unauthorized communication with FPD members urging them to avoid signing up for an assignment as "Traffic Enforcement Officer" until the "union has received further clarification."
- In November 2019, members of the FPD command staff met with Sergeant Dorgan to discuss "concerns we had in regards [sic] to your sobriety", having been unable to complete department training on two occasions in recent weeks and the FPD having received "anonymous information that you may have been drinking excessively". At the time, Sergeant Dorgan attributed the situation to a "medical condition" and no discipline issued at that time.
- Sergeant Dorgan received a written reprimand for his failure to properly perform his duties as a shift supervisor on February 14, 2020, which impaired the response to a motor vehicle incident that left the responding officers without proper equipment or backup.

will be address by further proceedings in that related appeal. See Darmafol, et al. v. Town of Fairhaven, CSC Nos. B2-25-12 & B2-25-14.

- On March 3, 2020, Sergeant Dorgan drove to work and appeared with a strong odor of alcohol and seemed to be impaired. He agreed to a breathalyzer test which tested over the legal limit. At this time Sergeant Dorgan “admitted to struggling with sobriety” and voluntarily entered in-patient treatment on March 4, 2020. Further discipline was held in abeyance pending the completion of treatment.
- Upon completion of four weeks of inpatient treatment, Sergeant Dorgan returned to duty under a “Return to Work Settlement Agreement” by which he agreed to maintain his treatment plan and permit the FPD to monitor his compliance for a period of three years, with the proviso that the agreement would be removed from his file if there were no further disciplinary incidents.
- On September 17, 2020, Sergeant Dorgan entered into a second “Settlement Agreement” by which he acknowledged two incidents of poor judgment in violation of FPD rules and regulations (a July 1, 2020 failure to properly supervise and investigate an arrest and a July 2, 2020 incident in which he allowed a subordinate to use a private boat to attempt a water rescue of a stranded dog). He served a 10-day suspension for this misconduct and agreed that any future incident of “poor judgment” within the next five years would result in his demotion to patrol officer.

*(App.Exh.2; Testimony of Chief Dorgan)*⁸

⁸ The POST record states that Sergeant Dorgan’s misconduct involved a suspension of “6 to 29 days” for both “alcohol or drug abuse” and “failure to response to an incident according to established procedure.” I note, however, that the September 2020 discipline was triggered solely by the two July 2020 incidents of poor judgment and the record is ambiguous as to what part, if any, of the 10-day suspension was imposed as a “claw back” for the prior alcohol incident, although Chief Dorgan believed the suspension “covered both offenses.” (*App. Exhs. 1 & 2; Resp.Exh.1*)

42. The September 2020 discipline was reported to the Police Officers Standards and Training Commission (POST) and appears on the public list of “Sustained Allegations and Disciplinary Actions.” (*App.Exh.1*)

43. In October 2023, following the original announcement that Sergeant Dorgan was in line to become the next FPD Police Chief, SouthCoast TODAY, the on-line arm of the New Bedford Standard Times, published an article entitled “Fairhaven police chief-elect suspended for misconduct involving alcohol in 2020”. The article contains a thorough review of the POST record and quoted at length from interviews of Sergeant Dorgan and TM Ellison. Of particular relevance are the following statements based on those interviews:

- Sergeant Dorgan was entirely candid and forthcoming about his alcoholism and “journey to sobriety” and he wouldn’t “hide his past or run from it” because that would be a disservice to the people who helped him get sober. “Everyday I just try to be better than the day before and pay back the help that was given to me.”
- TM Ellison acknowledged that she was aware of Sergeant Dorgan’s struggle with alcohol and his disciplinary record but stated: “He made a mistake, and it was corrected.”

(*Resp.Exh.2*)

44. At the Commission hearing, Chief Dorgan’s testimony corroborated what the Standard Times reported. He reiterated that he “does not shy away” from his history as an alcoholic. He identified a number of examples of his dedication to sobriety and serving the needs of others who need help to battle addiction. He acknowledges that he did once lapse in the fall of 2020, but has been sober since then. He is a “Certified Recovery Coach” who counsels other alcoholics. He speaks publicly to various community groups about alcohol abuse and the warning signs of the disease. (*Testimony of Chief Dorgan*)

45. Select Board Member Saunders was generally aware of Chief Dorgan's prior issues with alcohol but did not know all of the details or that the issue had been reported to POST. He considered the matter to be "in the past" and was not disqualifying in his opinion. (Testimony of Saunders)

46. Superintendent Kohler had worked with Sergeant Botelho in his school resource officer oversight capacity. She had no knowledge of Chief Dorgan's past disciplinary history. She testified at the Commission hearing that being placed on a so-called "Last Chance Agreement" was not disqualifying. (*Testimony of Kohler*)

47. Chief King knew both candidates through work-related contacts with them. He came into the interview process with no preferences and knew that "my credibility is also on the line" in his evaluation of the candidates. He had been a panel member in other promotional assessment centers, both involving civil service and non-civil service communities. In his department, he would "look at" a candidate's personnel history and disciplinary record, but the degree to which it was a factor varied from one department to another. (*Testimony of Chief King*)

48. Retired Chief Meyers was fully aware of Chief Dorgan's alcoholism and discipline for poor judgment and failure to supervise in 2018 and 2020 when he recommended then Sergeant Dorgan for promotion to temporary Captain and found neither matter a basis to decline to recommend him for that promotion. (*Testimony of Chief Meyers*)

49. Chief Meyers was not involved in the selection of his successor, other than to help set up the 2023 assessment center. (*Testimony of Chief Meyers & Ellison*)

50. At some point during the promotional process, TM Ellison asked Chief Meyers to investigate a report she had received that Sergeant Botelho may have made unauthorized use of FPD drones by a private party. Chief Meyers asked her for the specifics, but she did not provide them and he did nothing further to investigate the matter. (*Testimony of Chief Meyers*)

51. At the Commission hearing, I showed him the candidate's answers to the four essay questions, which he had not seen before then, without identifying which candidate's answers were those of the Appellant and which were those of Acting Captain Dorgan, and asked him to rate the answers as "Exceptional", "Satisfactory" or "Unsatisfactory." He assessed Sergeant Botelho's four essays as "Satisfactory", noting that in some cases there was "not a lot there"; he assessed one of Dorgan's answers as "Satisfactory", two answers as "Exceptional" (showing "more substance" and a "better understanding") and one answer "High Satisfactory/Low Exceptional). (*Testimony of Chief Meyers*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Basic merit principles in promotion call for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences. Appointments are then made, generally, in rank order, from a "certification" of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. In order to deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority had shown, by a preponderance of the evidence, that it has "reasonable justification" for the bypass after an "impartial and reasonably thorough review" of the relevant background and qualifications bearing on the candidate's present fitness to perform the duties of the position. Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 474-78 (2019); Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

"Reasonable justification . . . means 'done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law'". Brackett v. Civil Service Comm'n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons "more probably than not sound and sufficient").

The governing statute, G.L. c. 31, § 2(b) gives the Commission's de novo review "broad scope to evaluate the legal basis of the appointing authority's action" and it is not necessary that the Commission find that an appointing authority acted "arbitrarily and capriciously." City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission ". . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations" by an appointing authority, but, when there are "overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission." Id. (*emphasis added*) The broad scope of the Commission's jurisdiction to enforce basic merit principles of civil service law encompasses the responsibility to ensure that all forms of unlawful bias do not

influence personnel actions, which includes intentional and unconscious class-based or personal bias (positive or negative) formed about any civil service employee. See G.L. c. 31, §1, ¶4. See generally Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

ANALYSIS

Fairhaven has proved by a preponderance of the evidence that the decision to select Daniel Dorgan to become the FPD’s Police Chief and to bypass the Appellant was made in compliance with civil service law and was reasonably justified. Although the process was not perfect, the shortcomings “are not so severe that it is impossible to evaluate the merits from the record” and Fairhaven “comported with the fundamental purpose of the civil service system . . . to ensure decision-making in accordance with basic merit principles.” Sherman v. Town of Randolph, 472 Mass. 802, 812-13 (2015), citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264–265 (2007).

First, the record established that, after it was determined that Fairhaven’s initial promotional process was erroneously conducted on the assumption that the selection of the FPD Police Chief was not subject to civil service law, Fairhaven made a good faith effort to conduct a de novo selection process that complied with the requirements of civil service law as required by the Commission’s Decision in Botelho I. Specifically, the July 2024 interview process was thoughtfully designed and executed with the required level of transparency, objectivity and fairness. After a thorough review of the record, I conclude that the unanimous recommendations that Daniel Dorgan was the superior candidate are duly documented and supported by the evidence.

Public safety agencies are properly entitled to, and often do, conduct interviews of potential candidates as part of the hiring process, especially in the case of promotional appointments of superior officers. See Sherman v. Randolph, 472 Mass. at 811 (“An appointing authority may

conduct oral interviews of candidates who have been certified to it from the eligible appointment list.”) In an appropriate case, a properly documented interview performance may justify bypassing a higher-ranked candidate for one deemed more qualified as the result of the latter’s objectively superior interview presentation. See, e.g., Grenier v. Civil Service Comm’n, 34 MCSR 228 (2021), *aff’d*, 245 N.E.2d 1076 (Mass. App. 2024) (Rule 23); Dorney v. Wakefield Police Dep’t., 29 MCSR 405 (2016); Cardona v. City of Holyoke, 28 MCSR 365 (2015).

Some degree of subjectivity is inherent (and permissible) in any interview procedure, but care must be taken to preserve a “level playing field” and “protect candidates from arbitrary action and undue subjectivity on the part of the interviewers”, which are the lynchpin elements of the basic merit principle of civil service law. See, e.g., Malloch v. Town of Hanover, 472 Mass. 783, 796-800 (2015); Flynn v. Civil Service Comm’n, 15 Mass. App. Ct. 206, 208, *rev. den.*, 388 Mass. 1105 (1983); Pilling v. City of Taunton, 32 MCSR 69 (2019); Conley v. New Bedford Police Dep’t, 29 MCSR 477 (2016); Phillips v. City of Methuen, 28 MCSR 345 (2015); Morris v. Braintree Police Dep’t, 27 MCSR 656 (2014). The Commission gives especially heightened scrutiny to subjective interviews when they are used to nullify the results of a duly administered, independent Assessment Center form of examination. See Blanchette v. City of Methuen, 34 MCSR 431 (2021); Connor v. Andover Police Dep’t, 30 MCSR 439 (2017); Daley v. Town of Wilmington, 28 MCSR (2015), *aff’d sub nom., Town of Wilmington v. Civil Service Comm’n*, Suffolk Sup. Ct. C.A. 2015CV2963 (2016).

Fairhaven’s interview process met the foregoing standard. The interview panel was comprised of two key town stakeholders and one outside police chief, none of whom had been involved in the original 2023 appointment process. The planned participation of TM Ellison as a member of the interview panel was problematic, but, as it turned out, the interviews were conducted and scored independently without her input. The interviews were videotaped and made available to the

public. The interview process was thoughtfully designed to elicit information relevant to successfully discharging the duties of FPD Police Chief, the candidates' specific goals for the department, and their plans for how they would accomplish them. The oral interviews took 90 minutes and the essay exercise another hour. The questions and essays were more supplemental, and specific to the job of FPD Police Chief, than duplicative of the prior 2023 assessment center exercises. Moreover, the April 2023 assessment center was more than a year old when the July 2024 interviews were conducted, and the second process was a result of this Commission's orders.

Fairhaven's interview process is distinguishable from other more problematic situations in which an appointing authority used a subjective interview process as a means to nullify a prior assessment center result. *See, e.g., Blanchette v. City of Springfield*, 34 MCSR 432 (2021) [interviews lasted 20 minutes and were not recorded, panel members were city personnel (including non-public safety subordinates of the Mayor), first interviews held a month after the assessment center and second promotions made a year later without additional interviews]; *Connor v. Andover Police Dep't*, 30 MCSR 439 (2017) (fifteen minute interviews not recorded, not all panelists took notes and only ranked the candidates overall performance based on largely subjective assessments reported verbally to the appointing authority). *See also Allender v. City of Amesbury*, 37 MCSR 247 (2024) (unrecorded interviews announced and held a few months after the assessment center results, generic questions, subjective and inconsistent scoring); *Daley v. Town of Wilmington*, 28 MCSR (2015), *aff'd sub nom., Town of Wilmington v. Civil Service Comm'n*, Suffolk Sup. Ct. C.A. 2015CV2963 (2016) (interviews not recorded; interview performance assessed by "consensus scoring" by panel with a final "gut check" comparison of the interview scores with the assessment center scores; problematic singling out of appellant on subjective, trivial issues—*e.g.*, calling one of the superior officers on the panel, whom the appellant had known for years, by his first name instead of his title).

I have reviewed the videotaped interviews multiple times and read the competing candidates' essays. The conclusions drawn by the interview panelists are supported by the tapes. Chief Meyers confirmed that Dorgan's essays were superior to the Appellant's and contained "more substance" and showed a "better understanding" of key issues than those of the Appellant. Each of the interview panelists credibly testified that their conclusions were based on their honest judgment of the candidates.

In sum, the interview process was conducted in a verifiable, transparent and objective manner. Moreover, the bypass relied on undisputed factors that distinguished the two candidates, including Chief Dorgan's superior academic credentials (bachelor's degree in finance and master's degree in criminal justice as opposed to the Appellant's very recent bachelor's degree). The appointment of Daniel Dorgan and the bypass of the Appellant meets the standard of a reasonably thorough review and reasonable justification under basic merit principles of civil service law.

Second, I do not find that the 2024 selection process was unfairly tainted by the clearly erroneous process used in 2023 which resulted in the designation of Sergeant Dorgan as the successor to Chief Meyers. To be sure, there is a fair argument that TM Ellison was predisposed to appoint Dorgan after she made the initial decision to select him in 2023 and that her elevation of him to an Acting Captain status afforded him an advantage over the Appellant. However, the actual process that resulted in the independent panel's unanimous recommendation provides sufficient comfort that the panel's evaluation was made on a "level playing field" and whatever predisposition TM Ellison may have had, it did not enter into the objective assessment and credible conclusions of the panel. Thus, any failure to more specifically inoculate the process (which would be difficult when TM Ellison is the appointing authority under the town charter) does not make it "impossible to evaluate the merits" as prescribed by Sherman v. Town of Randolph, 472 Mass. at 813.

While it would have been preferable if the interview panel had been fully informed about Dorgan's prior disciplinary history, it was no secret that Chief Dorgan was a recovering alcoholic. Both Select Board Member Saunders and TM Ellison had knowledge of that fact. Neither of them were swayed that a record of discipline "in the past" was disqualifying. I conclude that it is unlikely that any of the panel members, or the Select Board, would (or lawfully could) have reached any different conclusion even if all of the details of that history (including Dorgan's candor, his record of sobriety, and work as a certified recovery coach) had been presented to them. See generally, Steinkamp v. Town of North Attleborough, 37 MCSR 88 (2024) (discipline appeal allowed, in part, due to failure of Appointing Authority to consider the compelling evidence of the Appellant's pre-termination rehabilitation); Burns v. Fall River Public Schools, 24 MCSR 117 (2011). See also Mammone v. President and Fellows of Harvard College, 446 Mass. 657 (2006) (distinguishing lawful termination for egregious alcoholism-related misconduct as opposed to discriminatory termination for the handicap of alcoholism itself); Ward v. Mass. Health Research Institute, Inc., 209 F.3d 29 (1st Cir. 2000) (distinguishing termination "because of tardiness" from termination "because of disability"); Town of Plymouth v. Civ. Serv. Comm'n, 426 Mass. 1, 7 (1997) ("Allowing an employee to be reinstated after completion of an alcohol rehabilitation program and demonstration of satisfactory job performance is consistent with ameliorating deficient job performance.").

Third, I address the issue of bias. Although the Appellant raised the specter of discriminatory and personal bias on the part of TM Ellison during the Commission hearing, the Appellant did not press the matter in his Proposed Decision. The allegations appear to stem from the initial October 2023 interview process during which TM Ellison noted that Sergeant Dorgan's wife was of Cape Verdean descent. (*App.Exh.10; Resp.Exh.2; Testimony of Appellant, TM Ellison and Dorgan*). Suffice it to say that the nexus of personal or racial bias by TM Ellison, if any, to the 2024 interview

process that resulted in the unanimous decision to bypass the Appellant was not proved in the hearing before this Commission. The Appellant also filed a separate complaint filed with the Massachusetts Commission Against Discrimination (MCAD) which would be the appropriate forum for any further adjudication of that issue. (*Resp.Exh.2*)

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Matthew Botelho, under CSC Docket Number. G2-23R-193, is ***denied***.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on May 15, 2025.

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:

Joseph G. Donnellan, Esq. (for Appellant)

Richard Massina, Esq. (for Respondent)

Ashlee Logan, Esq. (HRD)