

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

PAUL BRIGHAM, JR.,
Appellant

v.

G1-12-128

TOWN OF SCITUATE,
Respondent.

Appearance for Appellant:

Joseph Sulman, Esq.
185 Devonshire Street #502
Boston, MA 02110

Appearance for Respondent:

Tim Norris, Esq.
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Norwood, MA 02062

Commissioner:

Christopher C. Bowman

DECISION

On March 29, 2012, the Appellant, Paul Brigham, Jr. (Mr. Brigham), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Scituate (Town) to bypass him for original appointment to the position of permanent, full-time police officer in the Town's Police Department (Department). A pre-hearing conference was held on May 18, 2012 at the UMASS School of Law in Dartmouth. A full hearing was conducted over two days on October 26, 2012 (in Dartmouth) and on December 19, 2012 (at Scituate Town Hall). The hearing was digitally recorded and both parties were provided with CDs of the hearing. Proposed decisions were submitted by both parties.

FINDINGS OF FACT:

Twenty (20) exhibits were entered into evidence at the hearing and an additional document, referenced during the full hearing, was submitted and entered as Exhibit 21. Based on those exhibits, the stipulated facts, and the testimony of:

Called by the Town:

- Patricia A. Vinchesi, Town Administrator, Town of Scituate;
- Brian E. Stewart, police chief, Town of Scituate;
- Natalie Quinn, police officer, Town of Scituate;
- Suzanne McDonough, police officer, Town of Scituate;
- Alison Steverman, police officer, Town of Scituate;
- Brendan McAuley, police officer, Town of Scituate;
- Michael Stewart, police lieutenant, Town of Scituate;

Called by the Appellant:

- Paul Brigham, Jr., Appellant;
- Jeffrey Harrison, police officer, Town of Scituate;
- Alfred Coyle, police lieutenant, Town of Scituate;

I make the following findings of fact:

1. Mr. Brigham is forty-nine years old and resides in Scituate. (Exhibit 6) He graduated from Scituate High School in 1981 and enlisted in the United States Air Force shortly thereafter. After twenty-four (24) years of service, Mr. Brigham retired from the Air Force on September 1, 2005. He held the rank of Master Sergeant at the time of his retirement. He served a tour of duty in Somalia and four (4) tours of duty in Iraq. (Testimony of Mr.

Brigham) He received numerous decorations, medals, badges, citations and campaign ribbons. (Exhibit 6)

2. After retiring from the Air Force, Mr. Brigham worked as a correction officer for the Suffolk County Sheriff's office from 2006 to 2007. (Testimony of Mr. Brigham and Exhibit 6)
3. Mr. Brigham was appointed as a permanent, *intermittent* police officer by the Town on December 15, 2006. (Exhibit 19)
4. Intermittent officers in Scituate typically perform detail duties and fill-in, as needed on regular shifts when permanent, full-time police officers are not available, which occasionally occurs on weekends and holidays during the midnight to 8:00 A.M. shift. Mr. Brigham works approximately five (5) detail shifts per week and less than a dozen regular shifts per year. (Testimony of Mr. Brigham)
5. The Town also uses the intermittent police officer roster to make appointments to the position of permanent, full-time police officer. (Stipulated Fact)
6. On July 20, 2012, the Town created a roster certification in order to fill two (2) vacancies for permanent, full-time police officer positions. Mr. Brigham's name appeared second on the roster certification among those willing to accept appointment. (Stipulated Facts)
7. Mr. Brigham's supervisors describe his performance as very good; that he conducts himself in a professional and competent manner at all times; that he is capable of performing all aspects of patrol functions with little supervision; and that he is always prompt and prepared for duty. (Exhibit 6)
8. Lt. Coyle has been a police officer in Scituate for twenty-five (25) years. He was on the track team with Mr. Brigham while attending Scituate High School. He believes that Mr.

Brigham “looks good in uniform”, would be a good police officer and is someone he’d be glad to have as his “wing man”. (Testimony of Lt. Coyle)

9. Approximately two (2) to three (3) years ago, Mr. Brigham, while filling in for a regular police officer, made an arrest of a dangerous individual who was known to the Scituate police because he had previously held four (4) police officers at bay using a “Molotov cocktail”. (Testimony of Mr. Brigham and Lt. Coyle)
10. Intermittent officers ranked first (Natalie Quinn) and third (Edward Gibbons) on the roster certification were selected for appointment. Mr. Brigham was not selected for appointment. Since an individual ranked below him (Mr. Gibbons) was selected, this constituted a bypass, which triggered the instant appeal before the Commission. (Stipulated Facts)
11. The Town provided two reasons for bypassing Mr. Brigham: 1) incidents revealed in the background investigation; and 2) performance in the interview. (Exhibit 2)

Incidents revealed in the background investigation

12. Lt. Michael Stewart is responsible for overseeing the background investigations for police officer candidates. He assigned a police officer by the name of Detective Rappold to conduct the background investigation on Mr. Brigham. (Testimony of Lt. Stewart)
13. As part of the background investigation process, Lt. Stewart became aware of three (3) alleged interactions between Mr. Brigham and female police officers that would ultimately be included in the reasons that Mr. Brigham was bypassed. A fourth incident involving a male police officer was also investigated and included as a reason for bypass. It appears that two of the incidents were investigated prior to an interview panel interviewing the candidates and two (2) others were investigated after the interviews, but prior to the final decision to bypass Mr. Brigham. (Testimony of Lt. Stewart)

Incident 1

14. Suzanne McDonough has been a police officer in Scituate for twenty-one (21) years.

(Testimony of Officer McDonough)

15. Sometime during the end of 2006 or the beginning of 2007, Officer McDonough was working the Midnight to 8:00 A.M. shift at the police department. Mr. Brigham, who was not then employed by the Town, came to the police department looking for paperwork to complete his application for an intermittent police officer position. When Officer McDonough told Mr. Brigham that the Police Chief was not in the office and that no documents had been left for pick-up, Mr. Brigham became very upset and began yelling, asking Officer McDonough, “What am I supposed to do, I have to get to work?” Mr. Brigham was waiving his arms and pointing at Officer McDonough. Officer McDonough felt that Mr. Brigham’s response was “out of proportion” and that he would not have responded in this manner if he had been talking with a male police officer. She informed the Police Chief about the incident at the time. Officer McDonough has not had any negative encounters with Mr. Brigham since he was appointed as an intermittent officer. (Testimony of Officer McDonough)

Incident 2

16. Brendan McAuley was appointed as a permanent intermittent officer by the Town in April 2012. He currently serves as a dispatcher and he served as a special police officer in Scituate for several years prior to this intermittent appointment. (Testimony of Mr. McAuley)

17. Approximately six (6) years ago, Mr. McAuley was assigned to work as a special police officer during a fundraiser at the local high school that was being sponsored by a parents' group. Prior to the event, the Police Chief met with some of the police officers, including Mr. McAuley, that were assigned to the event. The Police Chief wanted to ensure that all of the officers understood what their role was at the event and to stress the need to be professional. Mr. Brigham was not present at this meeting. (Testimony of Mr. McAuley)
18. As Mr. McAuley was leaving the police department, the Police Chief asked him to pass on information to Mr. Brigham regarding what his (Brigham's) role would be at the event. About thirty (30) minutes into the event, Mr. McAuley saw Mr. Brigham and conveyed the information from the Police Chief. Mr. Brigham responded in an angry, aggressive manner and told Mr. McAuley that he doesn't take orders from special police officers. The two men both began yelling with several parents in close proximity. They parted ways after a few minutes. At some time later that night, Mr. Brigham attempted to apologize for his earlier response, but Mr. McAuley told him he wasn't prepared to discuss the matter while the event was still ongoing. Mr. McAuley expressed his concerns at the time to a police lieutenant. Mr. McAuley has not had any further negative encounters with Mr. Brigham since that time. (Testimony of Mr. McAuley)

Incident 3

19. Natalie Quinn, who was ranked first and was appointed from the Certification that was used to make these two (2) most recent appointments (Mr. Brigham was second), has served the Town as an intermittent officer since 2005. (Testimony of Officer Quinn)
20. On August 1, 2007, Officer Quinn and Mr. Brigham were working a detail duty directing traffic. She was senior to Mr. Brigham and it is undisputed that, as someone with more

seniority, she had the authority to direct Mr. Brigham during the detail. (Testimony of Officer Quinn and Mr. Brigham) At some point, Officer Quinn saw Mr. Brigham talking to one of the construction workers and directed him to return to his assigned location. In response, Mr. Brigham told Officer Quinn that he was not going to take orders from a 23-year old female. Mr. Brigham's exact response stuck in Officer Quinn's mind partly because she recalls that she was actually 24 at the time. Officer Quinn has not had any other negative interactions with Mr. Brigham since that time. (Testimony of Officer Quinn)

Incident 4

21. Alison Steverman has been a permanent, full-time police officer in Scituate for nine (9) years. (Testimony of Officer Steverman)
22. On or around St. Patrick's Day in March 2011, Officer Steverman was working on a computer in the office at the police department. She was aware that another permanent, full-time police officer had been forced to work overtime because no intermittent officers were available to cover the shift of someone who had called out. She was also aware that Mr. Brigham, instead of covering the shift, was working a detail that night. (Testimony of Officer Steverman)
23. Based on the testimony of Officer Steverman, I have inferred that she needled Mr. Brigham about his decision to work a paid detail that night instead of covering the overnight shift in question. (Testimony of Officer Steverman and inferences drawn)
24. In response to Officer Steverman's comments, Mr. Brigham said something to the effect of "it's no secret that you don't like me and I don't like you; I don't know why we even talk to each other." When Officer Steverman told Mr. Brigham that she was just joking, he pointed his index finger at her and said, "you better pray that I never get on full-time." When an

another officer by the name of Jeff Harrison, who at some point served as union president, came into the room and asked what was going on, Officer Steverman told him that she was apparently being threatened by Mr. Brigham. Officer Harrison responded by saying, “why can’t we all just get along?” (Testimony of Officer Steverman)

Interview Performance

25. Patricia Vanchesi has been the Town Administrator in Scituate for three and a half (3 ½) years. Prior to that, she served as the Deputy Executive Director of the City of Springfield’s Financial Control Board and Town Administrator in South Hadley, Massachusetts. She has a masters in public administration and is very familiar with the civil service appointment process. (Testimony of Ms. Vanchesi)
26. When two (2) vacancies for police officer arose, she decided to establish an interview panel that consisted of herself, Scituate Police Chief Brian Stewart, former Milton Town Administrator Kevin Mearn, Chelsea Police Chief Brian Keyes and Lowell Police Superintendent Kenneth Lavallee. (Testimony of Ms. Vanchesi)
27. Ms. Vanchesi prepared twenty-five (25) possible questions to be asked of the candidates along with suggested criteria for evaluating the candidates. (Testimony of Ms. Vanchesi)
28. Shortly before the interviews, Chief Stewart informed her of at least two (2) of the incidents referenced above. References to at least two (2) of the incidents were also contained in the background investigation packets that were given to all members of the interview panel prior to the interviews. (Testimony of Ms. Vanchesi)
29. At the time of his interview, Mr. Brigham was unaware that the background investigation, which all of the interview panelists had reviewed, contained references to these incidents. (Testimony of Mr. Brigham)

30. Ms. Vanchesi observed that Mr. Brigham appeared professional, had good posture and that his answers were not too long and not too brief. However, she observed that he did not have much enthusiasm and lacked knowledge regarding certain topics. (Testimony of Ms. Vanchesi)
31. Mr. Mearn, another member of the interview panel who served as the Milton Town Administrator for five (5) years and as the Milton Police Chief for fifteen (15) years, also observed that Mr. Brigham lacked enthusiasm and appeared to come into the interview with an attitude “as if the position was [already] his” as opposed to believing that he had to “earn” the position. (Testimony of Mr. Mearn)
32. At some point during the end of Mr. Brigham’s interview, he was asked whether he had any problems with fellow officers. When he responded that he did not, members of the interview panel questioned him about the incidents referenced in the background investigation. (Testimony of Mr. Mearn) Mr. Brigham appeared “blind-sided” when he was questioned about these incidents. (Testimony of Lt. Stewart)
33. Ms. Vinchesi and Mr. Mearn found Mr. Brigham’s responses regarding the incidents to be evasive, dismissive and non-responsive. (Testimony of Ms. Vinchesi and Mr. Mearn)
34. At the conclusion of the interviews, the members of the interview panel had a discussion regarding the candidates. Members of the interview panel told Ms. Vinchesi that they were concerned about the incidents referenced in the background investigation of Mr. Brigham as they could be indicative of someone who has trouble taking orders from female officers. The panel members encouraged Ms. Vinchesi to investigate the matter further before making any final decision regarding Mr. Brigham’s appointment. (Testimony of Ms. Vinchesi)

35. One day after the interviews, Ms. Vinchesi met with two (2) of the female officers referenced in the background investigation of Mr. Brigham: Officer Steverman and Officer McDonough. (Testimony of Ms. Vinchesi and Exhibits 13 and 14)
36. Based on the incidents as reported in the background investigation, the concerns she had after meeting with two (2) female officers about these incidents in addition to what she considered a poor interview performance by Mr. Brigham, Ms. Vinchesi decided to bypass Mr. Brigham, the second ranked candidate, and appoint Officer Gibbons, who was ranked third (in addition to the appointment of Officer Quinn, who was ranked first.) (Testimony of Ms. Vinchesi and Exhibit 2)
37. No negative issues had been raised regarding the background investigation of Officer Gibbons. (Testimony of Ms. Vinchesi) Mr. Gibbons performed well on his interview, appearing enthusiastic, providing good responses and showing a willingness to be a team player. (Testimony of Mr. Mearn) In addition to being an intermittent officer, Mr. Gibbons has been employed as the Town's Assistant Harbormaster since 2007. (Exhibit 2)

LEGAL STANDARD

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to

merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited.

ANALYSIS

The primary reason for bypassing Mr. Brigham for appointment as a permanent, *full-time* police officer related to four (4) incidents, three (3) of which occurred since Mr. Brigham has been employed by the Town as an *intermittent* officer. While most of these incidents, in which misconduct by Mr. Brigham is alleged, occurred while he was a civil service employee, the Town is not required to show, by a preponderance of the evidence, that these incidents actually occurred. . Such a high standard would apply if Mr. Brigham was appealing a disciplinary action. (See Beverly and Stratton). The Town “enjoys more freedom in deciding whether to *appoint* someone as a new police officer than in *disciplining* an existing tenured one.” Beverly at

191. (*emphasis added*) Consistent with Beverly, the Commission's role here is to determine whether the Town put forth a "sufficient quantum of evidence to substantiate its legitimate concerns" about Mr. Brigham.

Based largely on the credible testimony of the Town's witnesses, including the four (4) individuals involved in the incidents described in the findings, the Town has demonstrated that it had reasonable justification for bypassing Mr. Brigham.

All four of the Town's percipient witnesses involved in the incidents with Mr. Brigham offered straightforward, credible testimony. Their version of events was plausible and did not sound exaggerated or geared toward painting Mr. Brigham in a bad light. They candidly acknowledged that, other than the incident described in their testimony, they had not had any other negative interactions with Mr. Brigham.

Officer McDonough, a police officer for twenty-one (21) years, offered credible testimony regarding the incident in 2006 in which Mr. Brigham began yelling, waving his arms and pointing his finger after she told him that the Police Chief was not in the office and that she wasn't aware of any paperwork that had been left for Mr. Brigham. While Mr. Brigham acknowledged during his testimony that he was upset that day, he insists that his anger was not directed at Officer McDonough. He seemed unwilling – or unable – to fully understand the inappropriateness of his actions that day, particularly considering that he was speaking to a veteran police officer from the very same Department where he was seeking employment as an intermittent officer.

Officer Quinn, who was ranked first on the Certification during this hiring round, and who was selected for appointment, offered credible testimony regarding the incident in 2007 in which Mr. Brigham told her that he doesn't take orders from a 23 year-old female. She had a vivid

recollection of the interaction and Mr. Brigham's exact words, partly because she remembers that she was 24 at the time he made the comment to her. Mr. Brigham flatly denies making the comment. Rather, he testified that, upon receiving direction from Officer Quinn that day, he simply replied, "fine" and followed her instructions. I credit the testimony of Officer Quinn over Mr. Brigham. She did not appear to have any reason to fabricate this story. She has no personal animus against Mr. Brigham. Further, she reported her concerns at the time to a police sergeant, which tends to support her version of events, as opposed to Mr. Brigham's testimony that he never made any comment other than "fine" and that he was in no way upset about receiving the directive. Mr. Brigham's testimony regarding this incident did not ring true to me – at all.

Officer Steverman, a police officer in Scituate for nine (9) years, also offered credible testimony about an interaction with Mr. Brigham in March 2011. While she was somewhat hesitant to acknowledge it, which I considered in assessing her credibility, Officer Steverman decided to verbally needle Mr. Brigham for working a detail on the night in question instead of covering a regular shift, which caused another officer to work forced overtime. Mr. Brigham's response, however, was disproportionate. To Officer Steverman's surprise, Mr. Brigham, with his finger pointed, told her that the two of them don't get along and that she better pray that he never gets appointed as a full-time officer. When a fellow police officer entered the room and inquired what was going on, Officer Steverman indicated that she felt as if she was being threatened.

Mr. Brigham offered a starkly different version of this interaction with Officer Steverman in March 2011 — which I do not find plausible. According to Mr. Brigham, Officer Steverman stated that she hoped he (Brigham) would get appointed so he could then be fired. According to Mr. Brigham, he simply replied to this comment by stating that he truly hoped he did get

appointed, trying to make the point that he wanted to prove that he was worthy of being a full-time officer. Even standing alone, this testimony did not ring true to me. However, his further, unprompted testimony, further undercut his credibility. Mr. Brigham testified that Officer Steverman had made the same statement to him on other occasions, including one other time when the Police Chief was present. In rebuttal testimony, the Police Chief adamantly denied that Officer Steverman ever made such a comment in his presence. I found his rebuttal testimony sincere and credible. Mr. Brigham then stated that Officer Steverman regularly drives around town in her cruiser “flipping the bird” at him while he is on paid detail. This is apparently the first time that Mr. Brigham has *ever* made this allegation and it struck me as wildly untrue – and peculiar.

Even in regard to the less consequential incident involving Mr. McAuley, Mr. Brigham offered testimony that was less than credible. Mr. McAuley acknowledges that both men engaged in a heated argument and that he refused to accept an apology offered by Mr. Brigham hours later. Mr. Brigham insists that he never tried to apologize. Rather, he testified that he contacted Mr. McAuley demanding an explanation from Mr. McAuley. I credit the testimony of Mr. McAuley.

While the Town’s investigation of these matters was not perfect, it was sufficiently thorough to justify their concerns, which ultimately resulted in the decision to bypass Mr. Brigham. Specifically, a far better course here would have been for Town personnel to investigate these incidents prior to the interview and to determine whether, standing alone, they justified a decision to bypass. Instead, Mr. Brigham was blind-sided at his interview when outside members of the interview panel began questioning him about incidents, some of which occurred years ago, that were referenced in the background summary. Instead of asking all the candidates

the same questions, Mr. Brigham, near the end of the interview, was asked to respond to the allegations contained in the background report. The Town did not inform him that these concerns were contained in the background investigation and did not give him the opportunity (aside from the interview) to respond to the allegations. It is for this reason that I gave less weight to the Town's bypass reasons related to the interview.

However, after a de novo hearing before the Commission, at which time I heard testimony from Mr. Brigham and four percipient witnesses involved in separate incidents involving him, I have concluded that the Town's concerns were well-founded and provide reasonable justification for bypassing Mr. Brigham for appointment as a permanent, full-time police officer in Scituate.

The Town considered Mr. Brigham's commendable record of military service, his various awards and the positive references of current and past supervisors. They were entitled, however, to weigh those positive factors against the concerns that developed regarding his interactions with four members of the Town's police department, including three women. Those concerns appear to be well-founded and not influenced by any ulterior motives or factors that would warrant intervention by the Commission.

CONCLUSION

For all of the reasons cited above, Mr. Brigham's appeal under Docket No. G1-12-128 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis and Stein, Commissioners [McDowell – Absent]) on February 21, 2013.

A true record. Attest:

Commissioner

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.

Notice:

Joseph Sulman, Esq. (for Appellant)

Tim Norris, Esq. (for Respondent)