

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

CORTLAND CARTWRIGHT &
SAMANTHA ACKERSON,
Appellants

v.

G1-19-180 (Cartwright)
G1-19-183 (Ackerson)

CITY OF BROCKTON,
Respondent

Appearance for Appellants:

Pro Se
Cortland Cartwright
Samantha Ackerson

Appearance for Respondent:

Brittany E. Blye, Esq.
Assistant City Solicitor
City of Brockton
Brockton City Hall
45 School Street
Brockton, MA 02301

Commissioner:

Christopher C. Bowman

DECISION

1. The Civil Service Commission (Commission) received appeals from two (2) Appellants contesting their non-selection to the position of police officer by the City of Brockton (City). Cortland Cartwright (Mr. Cartwright) filed his appeal with the Commission on August 23, 2019 and Samantha Ackerson (Ms. Ackerson) filed her appeal with the Commission on August 28, 2019.
2. Pre-hearing conferences regarding both appeals were held at the offices of the Commission on September 17, 2019. The Appellants and counsel for the City attended each pre-hearing conference.
3. Based on the information provided at the pre-hearing conferences, the following appears to be undisputed:

- A. The City granted conditional offers of employment to the position of police officer to both candidates.
 - B. Among the conditions were the following: 1) Successful completion of a medical examination; 2) Successful completion of a psychological examination; 3) successful completion of the Physical Abilities Test (PAT) conducted by the state's Human Resources Division (HRD); and 4) successful completion of a Police Academy.
 - C. Both Appellants successfully completed the medical examination, psychological examination and the PAT.
 - D. Both Appellants were notified that they were accepted into the Police Academy.
 - E. Both Appellants, upon being notified of their acceptance into the Police Academy, notified their employers at the time that they would be resigning to accept a police officer appointment in Brockton.
 - F. Entrance requirements into a Police Academy fall under the Massachusetts Municipal Police Training Committee (MPTC).
 - G. Shortly prior to the Police Academy start date, both Appellants were notified of a new physical fitness entrance requirement to enter the Police Academy, above and beyond the already-completed PAT.
 - H. Specifically, the Appellants, prior to entering the Police Academy, were required by the MPTC to undergo a physical fitness examination that included completion of a 1.5 mile run, push-ups, sit-ups and a 300 meter run.
 - I. Mr. Cartwright failed to complete the sit-up and 1.5 mile run portion of the examination within the time limits.
 - J. Ms. Ackerson failed to complete the 1.5 mile run portion of the examination within the time limit (by 19 seconds).
 - K. The MPTC rescinded both Appellants' acceptance into the Police Academy.
 - L. The City rescinded the Appellants' conditional offers of employment. Mr. Cartwright's non-selection was not considered a bypass, as nobody ranked below him was appointed. Ms. Ackerson's non-selection was a bypass.
 - M. Mr. Cartwright was able to rescind his resignation at his current employer and is still employed.
 - N. Ms. Ackerson was not able to rescind her resignation with her former employer and is now unemployed.
4. A review of the MPTC minutes in 2019 shows that the MPTC has been debating the issue of new physical fitness standards and when/how they should be implemented for several months.
 5. According to the May 28, 2019 MPTC minutes:
 6. "The Boston and Worcester Police Academies have concerns about the new fitness standards and asked that the Committee revisit the previously-implemented ROC entry-level fitness requirements. Superintendent Cox from the Boston Police Department told the Committee that the academy staff administered the entry-level standards to the recruits in its current academy to estimate the impact of the standards. The fitness standards were not in effect when the Boston and Worcester police academies collected data from the physical fitness tests. **However, the data demonstrated that the majority of student officers in both**

police academies would not have passed the new entry level standards. As a result, the Boston Police Department is asking the Committee to revisit the entry level standards before its implementation. One proposal was to allow academies flexibility when administering the entry level standards.

Joe Vieira commented that the decision to front load the entry level standard will benefit the smaller departments. If a recruit was unable to pass the entry level standards, a smaller department could send multiple people and still be able to secure a spot within an academy. Chief O'Donnell added that the entry level fitness standard ensures that people entering an academy are in shape and less likely to get injured while performing PT.

Superintendent Cox explained that implementing an entry level fitness standard for an entrance into the academy can have significant impact on larger departments. **The Boston Police Department attracts people with a variety of backgrounds who may not have the resources to prepare for these standards.** The Committee discussed whether the standard is too high and whether it should consider an exit standard.

There is a disparity in the numbers for Worcester, Springfield and Boston. U/S Reidy said that the standard is having a significant impact on the larger departments. One solution considered was postponing the implementation of the entry level fitness standards to see if the standard should be adjusted.

Chief Hicks suggested keeping the process for entry level standards in place but deferring the requirement until July 2020. Deferring the standards would allow additional data to be collected. Ed Zivkovich recommended another option. The Committee could contract with a person who has a physiology degree who could collect data and make recommendations on what are reasonable fitness standards. There was further discussion about offering a standard and lowering the percentage. **U/S Reidy said that the Committee should hold off on implementing the entry level fitness standards until more data is collected. The standards are impacting the three (3) largest cities in Massachusetts and therefore it may not be beneficial to rush implementation for July 2019.**” (emphasis added)

7. Ultimately, the MPTC, on May 28, 2019, by a 7-3 vote, voted to implement a 6-month moratorium on the new fitness standards until January 1, 2020.

8. According to the June 21, 2019 MPTC minutes:

“At last month’s meeting, concerns of a few of the Commonwealth’s largest departments over the entry-level fitness standards that had been recently voted on for implementation July 1, 2019, produced a six-month moratorium on its implementation, moving it to January 1, 2020. Chairman Hicks commented that he has been receiving feedback that this was not a

welcome change. He stated that the Committee needs to be sensitive to all cities and towns in the Commonwealth. There was much discussion about a lower entry standard, giving time to build to a predetermined higher standard of fitness. It was suggested that MPTC might develop a training video on how to properly prepare for training, available to those who are considering pursuing this career. A lower entry level would allow more students entry and with an opportunity for coaching in Health and Wellness on how to build strength and stamina, with a reasonable goal. Those departments that have cadet programs could be mentoring these students and help prepare them for application. Several ideas were offered with regards to working with candidates during the hiring process. Ultimately, a new Motion was made to reconsider the Motion of last month's meeting regarding the moratorium on entry-level fitness testing to enter a police academy and instead revise the fitness standard to establish a 30th percentile entry level (based on the Cooper Institute norms) for any academy beginning after September 1, 2019. Students must also then attain the 40th percentile in all four events by week 8. Those who fail to do so will be retested by week 10. Failure to meet the standard by week 10 will result in dismissal for non-disciplinary reasons. Participation requirements remain in effect. The Motion was seconded and passed, one abstention (Vieira). Jason Shea, MPTC SWC will be asked to amend the daily PT regimen to reflect the new standards.”

9. Both of the Appellants were scheduled to begin the Police Academy in Randolph on September 9, 2019, nine (9) days after the new effective date referenced above.
10. The City of Brockton is a “consent decree” community and, thus, is required to submit any reasons for bypassing police officer candidates to HRD for approval.
11. There was nothing in the record showing whether the City sent the reason for bypassing Ms. Ackerson to HRD and/or whether such reason was reviewed and accepted by HRD.
12. On September 19, 2019, I issued a Procedural Order, requesting relevant information from the City and HRD, which was subsequently provided to the Commission.
13. That information provided confirmed that the City did not provide HRD with the reason for bypassing Ms. Ackerson, but, rather, notified her directly of the reasons for bypass.¹

¹ The correspondence provided by the City includes an email from the Brockton Police Department stating that Ms. Ackerson was not bypassed. This is incorrect. Since candidates ranked below Ms. Ackerson, who was willing to accept appointment, were appointed, a bypass occurred. The City, as a consent decree community, was required to provide HRD with the proposed reason for bypass.

Analysis / Relief to be Granted

The undisputed facts here show that the Appellants are aggrieved persons. They were harmed through no fault of their own when the entrance requirements for police officer were effectively modified mid-way through the hiring process.

Both of the Appellants met all of the required conditions of the conditional offer of employment to be a Brockton Police Officer with the exception of completing the Police Academy. Upon being notified that they were accepted into the Police Academy, they both resigned from their employment at the time. Then, with little notice, they were abruptly informed of new entrance requirements for the Police Academy which were not in place at the time they signed the Certification as willing to accept employment or at any point in the process, including, but not limited to, the time at which they resigned from their employment.

This is fundamentally unfair. As both of the Appellants stated at the pre-hearing conference, had they been aware of the new Police Academy entrance requirements at the time, they would have geared their physical preparation around those standards, as opposed to the standards of the PAT, which both of them successfully passed. This is of particular concern when, as here, the candidates are seeking a position in a City still subject to a consent decree and it appears that no data was collected by the MPTC regarding the potential impact the new standards would have regarding the disqualification of current or new recruits.

For these reasons, relief is warranted to ensure that both Appellants, now aware of the new physical fitness requirements, have at least one additional opportunity to be considered for appointment as a Brockton Police Officer, a job for which the City already granted them a conditional offer of employment.

The Appellants' appeals are *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders that:

1. HRD shall place the names of Cortland Cartwright and Samantha Ackerson at the top of any future Certification for permanent, full-time police officer in the City of Brockton until such time as they are appointed or bypassed.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 7, 2019.

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:

Cortland Cartwright (Appellant)
Samantha Ackerson (Appellant)
Brittany Blye, Esq. (for City of Brockton)
Patrick Butler, Esq. (HRD)
Regina Caggiano (HRD)