

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

KELLY CHUILLI,

Appellant

v.

BRIDGEWATER POLICE DEPARTMENT,

Respondent

DOCKET NUMBER:

G2-23-179

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission vacated the promotional appointment of a Bridgewater Police Lieutenant and ordered a re-do of the process after concluding that there was no basis for the Police Chief to overrule the rankings of an independent assessment center and an outside review panel, both of which ranked the Appellant *first* among the candidates eligible for promotion.

DECISION

On September 19, 2023, the Appellant, Kelly Chuilli, currently a Police Sergeant with the Town of Bridgewater (Bridgewater) Police Department (BPD), appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, §2(b), from her bypass by the BPD Police

Chief, the Appointing Authority, for promotion to the position of Police Lieutenant.¹ The Commission held a pre-hearing conference on October 24, 2023 via remote videoconference. A full hearing was held at the UMass School of Law in Dartmouth on June 28, 2024 and August 9, 2024. The full hearing was recorded digitally and by a stenographer.² Each party filed a Proposed Decision on September 30, 2024.

Both parties agree that the Appellant's appeal must be allowed but disagree on the underlying reasons for such and the relief to be awarded. For the reasons stated below, the Appellant's appeal is allowed. The promotional appointment to police lieutenant is vacated and the BPD is ordered to make a permanent promotional appointment to police lieutenant consistent with this decision and basic merit principles.

FINDINGS OF FACT

Forty-three (43) exhibits were received in evidence (*Resp.Exhs.1 - 18; App.Exhs.1 through 18 (in part), 20 - 25; Jt.Exh.1*) and four exhibits marked for identification (*App.Exhs.19, 26 -29*). Based on the Exhibits in evidence and the testimony of the following witnesses:

Called by the BPD:

- The BPD chose to call no witnesses

Called by the Appellant:

- BPD Chief Christopher Delmonte
- BPD Sergeant Kelly Chuilli
- BPD Lieutenant (Ret). Anne Schuster

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.

² The parties received a link to the digital recordings and they provided copies of the stenographic transcripts to the Commission. The parties stipulated that the stenographic transcripts shall be the official record. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to supply the court with the stenographic transcripts to the extent that the appeal challenges the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

- BPD Lieutenant Scott Hile
- BPD Detective Kevin Kearns
- BPD Detective Matthew Lynch
- BPD Detective Peter Balboni
- BPD Detective Jake Poulin
- Ashley Robson, Daughter of Appellant
- Paul Chuilli, Husband of Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

The Appellant's Background

1. The Appellant, Kelly Chuilli, is a tenured civil service municipal police officer who has been employed with the BPD for nearly 25 years. She currently holds the rank of Police Sergeant. (*App.Exh.1; Resp.Exh.9; Tr.I:178-179, 182 [Appellant]*)

2. The Appellant holds a bachelor's degree in sociology and criminal justice and a master's degree in criminal justice. Her certifications include Sexual Assault Investigator, Advanced Human Trafficking Investigations, Advanced Civil Rights Investigations, Critical Incident Group Response Certification, Critical Incident Individual Response Certification, ASAP Certification, ARIDE Certification, Spike Strip Instructor Certification, Field Training Officer, Advanced Leadership, Public Information Officer Training, Wellness and Suicide Prevention and two out of three FBI LEEDA certifications. (*App.Exh.1; Resp.Exh.9*)

3. The Appellant is a decorated U.S. Army veteran who served in combat during the Persian Gulf War (1990-1994). She achieved the non-commissioned leadership rank of Sergeant (E-5), On more than one occasion, she was recognized as Soldier of the Year. (*App.Exh.1; Resp.Exh.9; Tr.I:182-18, Tr.II:302-303 [Appellant]*)

4. The Appellant has been a Bridgewater resident since 1996 and took an active interest as a BPD officer, as well as personally, in volunteer and community service. She participated in every Senior

Thanksgiving Dinner sponsored by the BPD since they began in 2000; at times, personally offering rides to seniors who could not obtain transportation. She served as a board member of the Bridgewater Council on Aging. She volunteered for Habitat for Humanity building houses in the region and writing articles for the Habitat for Humanity newsletter. She was instrumental in implementing and leading a regional peer support critical-incident stress management (CISM) team. She volunteered for youth sports programs and Girls Inc. programs. She and her husband (a Captain in the Bridgewater Fire Department with 28 years of service) organized Red and Blue Dinners of past and present police and fire personnel as well as the first Faith and Blue event in 2022 that brought police and faith organizations together to sponsor a food drive for the community. (*App.Exh.1; Resp.Exh.9; Tr.I:170 [P.Chulli]; Tr.I:39-41, 45, 63-66[Delmonte]; Tr.I:137[Hile]; Tr.I:198-200, 203, 212 [Appellant]*)

5. In June 2022, the Appellant was one of two sergeants nominated by Chief Delmonte to attend the Federal Bureau of Investigation National Academy Program of the Federal Bureau of Investigation. (*App.Exhs.17 & 18*)³

6. In November 2022, the Appellant was selected by Lieutenant Shuster to attend a Civil Rights Officer Investigator Course. On March 30, 2023, upon completing the course, she was assigned to the position of the BPD Civil Rights Officer. (*App.Exh.25; Tr.II:303-307 [Appellant]*)

7. The Appellant has received the Massachusetts Women in Law Enforcement Award for Mentoring. She was named the 2023 BPD Officer of the Year. (*App.Exhs.1 & 12; Resp.Exh.9*)

8. The Appellant has never been the subject of any form of disciplinary action during her nearly 25 year tenure with the BPD. (*Tr.I:144-145 [Hile]; Tr.I:214-215 [Appellant]*)

Structure of the BPD

³ Then Sergeant Scott Hile was the other nominee. (*App.Exh.18*)

9 The BPD employs a force of approximately 45 sworn police officers, as well as three administrative staff and several police cadets. The Chief of Police serves as the head of the department and appointing authority for the department. The command staff includes a Police Captain (currently funded but vacant), two Police Lieutenants (currently, Scott Hile and John Hennessy) and six Police Sergeants (currently, the Appellant, a K-9 Sergeant and four others). (*Administrative Notice [BPD Department Roster]; App. Exhs. 10 & 29; Resp. Exh. 18; Tr.I:56-57,80-81,96-107[Delmonte]; Tr.II:311[Appellant]*)

10. From 2010 to the present, Christopher Delmonte has held the position of BPD Chief of Police. He described his mission upon assuming the position as increasing the staff levels, both at the patrol officer and superior officer level, to be commensurate with the size of the Town. He hired additional patrol officers, added a sixth Sergeant's position and created a new rank of Captain & Executive Officer to serve as second-in-command. (*App.Ext.16; Tr.I:80-81,101-103[Delmonte]*)

11. In June 2020, Chief Delmonte promoted Lieutenant Carl MacDermott to the position of Captain and Executive Officer, promoted Detective Sergeant Robert Bailey and Sergeant Amy Schuster to Lieutenant and promoted Officers George Zanellato and John Hennessy to fill the positions opened up by the promotion of Sergeants Bailey and Schuster to Lieutenant. These promotions were made from the then current eligible lists, after a sole assessment center examination, interviews and recommendations of a panel of three nearby community Police Chiefs and a final interview by Chief Delmonte. (*Resp.Exhs.10, 11,15 & 17*)

12. Then Sergeant Scott Hile's name appeared on the June 2020 eligible lists for Captain and Lieutenant, but he was bypassed for both positions. Lieutenant MacDermott was selected for the Captain's position. Sergeant Hile was bypassed for promotion because he then had "only two years

of supervisory experience”, lacked “significant investigatory or special operations experience to be most effective in an administrative position” and “would benefit best by having additional time in his current rank of Sergeant.” (*Resp.Exhs.15 & 17*)

13. In June 2022, then Detective Sergeant Hile was transferred to the “day shift” (8am to 4pm) as a Patrol Supervisor. The Appellant became the Detective Sergeant and supervisor of the BPD’s staff of three detectives. Until June 2023, she worked two “day shifts” and two “evening shifts” (4pm to 12am), which paid a differential, and then reassigned to four “day shifts” (without a differential). (*App.Exhs.1,2,18 & 24; Tr.I:181,195,198. 339-341, Tr.II:399-400[Appellant]*)

14. During her tenure as the Detective Sergeant, the Appellant made herself available to her staff 24/7. Her direct superiors and the detectives who worked under the Appellant’s supervision held a uniformly positive view of her law enforcement abilities and her responsiveness as their supervisor. (*Tr.I:154-155[Schuster]; Tr.I:160-163[Kearns]; Tr.I:175-175[P.Chulli]; Tr.II:236-239 [Lynch]; Tr.II:272-277 [Balboni]; Tr.II:277- 280 [Poulin]*)

15. By Memorandum dated December 11, 2022, following the retirement of Captain MacDermott and Lieutenant Bailey in November 2022, Chief Delmonte announced that he had promoted Sergeant Scott Hile to the position of Lieutenant, effective December 19, 2022. Sergeant Hile was then the only name on the then active eligible lists for Lieutenant and Captain. (*App.Exh.16; Resp.Exhs.16 & 17; Tr.I:84-91 [Delmonte]; Tr.I:157-158 [Hile]*)

16. Chief Delmonte’s December 11, 2022 Memorandum also announced that he would fill the vacancy in the Sergeant’s position from the then active eligible list and that he would initiate the process to conduct a sole assessment center examination to establish a new eligible list to fill the vacancies for Captain and Lieutenant. (*App.Exh.16*)

17. After Captain MacDermott retired, there being no Captain appointed, Lieutenant Schuster served as Executive Officer until her retirement in November 2023, at which time Lieutenant Hile was designated as the Executive Officer. (*Tr.I:67-68 [Delmonte]; Tr.I:108. 114 [Schuster]*)

The 2023 Promotional Process

18. Pursuant to a Delegation Agreement between the BPD and the state's Human Resources Division (HRD), notices were posted on or about February 9, 2023 of Sole Assessment Center Examinations for BPD Police Lieutenant and BPD Police Captain to be held on April 7, 2023. (*Resp.Exhs.4 & 5;App.Exh.27*)

19. On or about February 15, 2023, Sergeant Hile spoke with the Appellant. He asked the Appellant to sign up for the Captain's Assessment Center but not take the exam.⁴ He said he would pay her registration fee. The Appellant declined the offer, instead paying for and taking both promotional examinations. (*Administrative Notice [Request for Investigation, CSC No. I -23-203 and attached DLR Charge of Discrimination No. MUP-23-10207 dated 9/1/23]; Tr.I:121[Hile]; Tr.I:163-164 [Kearns]*)

20. Also in February 2023, Lieutenant Hile spoke with Lieutenant Schuster and Sergeant Kingsley about taking the Captain's Assessment Center exam. (*Tr.I:108-116 [Schuster]; Tr.I:121-122 [Hile];Tr.I:183-185[Appellant]*)

21. Lieutenant Schuster knew she was about to retire, but agreed to sign up for the exam although she would not take it if not needed to "close it out", meaning that if enough (i.e., four

⁴ The civil service law in place at the time required a minimum of four candidates to sign up for a promotional examination, after which the pool of eligible candidates would be expanded to include the next lower title of police officers. G.L. c. 31, § 59, ¶ 2.

ranked (Sergeant or Lieutenant) officers) registered, the exam would not need to be “postponed” and opened to patrol officers. (*Tr.I:108-116 [Schuster]*)

22. Eventually, four Sergeants registered for the Lieutenant’s Assessment Center and three took the exam (Appellant, Hennessey and Zanellato). Two Lieutenants (Schuster & Hile) and three Sergeants (Appellant, Hennessey and Zanellato) eventually registered for the Captain’s Assessment Center and four took the exam. (*Resp.Exhs.2 & 7; Tr.I:121-123 [Hile]; Tr.I:187 [Appellant]*)

23. As he promised, Lieutenant Hile paid the registration fees for the two officers (Kingsley and Schuster) who registered but did not take the exam. (*Resp.Exh.7; Tr.I:82-83[Delmonte]; Tr.I:185-186 [Appellant]; Tr.I: 111-112[Schuster]; Tr.I:121-122[Hile]*)

24. The results of the Assessment Center exam for BPD Lieutenant and Captain were announced on or about April 23, 2023.

- The Appellant received the highest score on both exams and was placed first on the eligible lists for both positions.
- Lieutenant Hile, who had offered to pay the Appellant’s examination fee if she agreed not to take the examination, ended up with the lowest score on the Captain’s Assessment Center and placed fourth on the eligible list.⁵
- Sergeant Zanellato had the second highest score on the Lieutenant’s Assessment Center and placed second on the eligible list.
- Sergeant Hennessey had the lowest score on the Sergeant’s Assessment Center and placed third on the eligible list.

(*Resp.Exhs.2 & 12; Administrative Notice [Request for Investigation, CSC No. I -23-203 and attached DLR Charge of Discrimination No. MUP-23-10207]; Tr.I:194-195 [Appellant]*)

25. On June 29, 2023, a panel of two police chiefs (Easton Police Chief Boone and Berkley Police Chief Baker) conducted structured, recorded interviews of the three candidates for BPD

⁵ Under the Personnel Administration Rules (PAR.09(10)), a promotional appointment must be made from the first three names on an eligible list. Thus, Sergeant Hile’s fourth place meant he was not eligible to be considered for promotion to Captain unless one of the top three candidates decided to drop out. (*See Tr.I:195 [Appellant]*).

Lieutenant. Chief Delmonte was present but did not participate in the interview process itself. The panelists ranked the Appellant first among the candidates eligible for promotion, with Sergeants Zanellato and Hennessey ranked second and third respectively, identical to the assessment center rankings. (*Resp.Exhs.2, 8 & 13; Tr.I:31 [Delmonte; Tr.I:201 [Appellant]*)

26. On July 7, 2023, Chief Delmonte conducted a private interview with each candidate for Lieutenant. The record or notes taken by Chief Delmonte during the interviews, if any, were not offered in evidence. (*Resp.Exh.2; Tr.I & Tr.II, passim*)

27. Chief Delmonte's private interview with the Appellant lasted about 15 minutes. No mention was made of any performance issues, save for questions about whether the Appellant thought she could handle the position of Lieutenant and continue her leadership role in the Critical Incident Stress Management (CISM) team, which she assured him she could. (*Tr.I:203-204 [Appellant]*)

28. On or about July 14, 2023, Chief Delmonte selected Sergeant Hennessey, who was ranked third by both the assessment center and outside review panel, for promotion to Lieutenant, effective July 24, 2023. (*Resp.Exhs.1 through 4 & 14*)

29. In a letter addressed to the Bridgewater Town Manager explaining the decision to promote Sergeant Hennessey, Chief Delmonte wrote:

Detective Sergeant Chuilli and Sergeant Zanellato both have significant and diverse operational and specialized experience and are outstanding candidates . . . They have demonstrated their ability to lead and are effective communicators who have and will serve the department well into the future. Although these are very difficult decisions weighing the competing qualifications and qualities of each candidate especially ones as highly regarded as these, however, Sergeant Hennessey is the best candidate to step into this role and accept this responsibility.

Lt. Hennessey has been a permanent police officer since 2007, serving as a Sergeant and shift supervisor since 2020. During this time, Lt. Hennessey has been a member of the Bicycle Patrol Unit, Narcan administrative trainer, Field Training Officer (FTO), sexual assault investigator, Citizens Police Academy Instructor, and is currently an active operator with the SEMLWD Motorcycle Operations Unit. As a member of the SEMLEC MOP, he is nationally certified instructor for new motorcycle patrol officers and is a unit supervisor/coordinator. Lt. Hennessey has been involved in several departmental projects

including training all officers with the deployment of Narcan and is currently responsible for maintaining the weekly work schedule for all officers.

Lt. Hennessey was BPA Officer of the Year in 2013 and former union Vice President. He earned a bachelor's degree in criminal justice from Bridgewater State University and a master's degree in criminal justice from Anna Maria College

Lt. Hennessey has demonstrated excellent communications skills with colleagues and the public, has very good job knowledge and judgment, and is highly respected for his leadership ability. Lt. Hennessey already has some administrative experience, is a competent leader who has the knowledge, skills and abilities to perform in this demanding administrative role today.

(Resp.Exh.2; App.Exh.2)

30. Chief Delmonte called the Appellant on July 14, 2023 to inform her of the bypass. The Appellant put the call on speakerphone so that her family members could hear what they all expected would be good news. When Chief Delmonte told her he was promoting Sergeant Hennessey, she expressed surprise, noting that she had “a good rapport with all of my guys. Everything has been going smooth. We’ve had a solid year of pretty significant incidents, including kidnapping and murders, out-of-town warrants”, all of which “went flawlessly.” The Chief’s response was circumspect, telling the Appellant that she had to “come home” and that she needed a “reset”. In addition to notifying her that she had been bypassed for promotion, Chief Delmonte told the Appellant during this call that he intended to transfer her from detectives to patrol and said she would have to step down from her role as the regional director of the CISM team. He said: “I’ve given it a lot of thought and it’s happening.”

*(Tr.I:32[Delmonte]; Tr.I:165-170 [Robson]; Tr.I:165-170 [Robson]; Tr.:170-174 [P.Chulli]; Tr.I:178-181. Tr.II:318-319[Appellant])*⁶

⁶ Chief Delmonte recalls using the term “reset” in the July 14, 2023 phone conversation, but said it referred to a “reset of her job performance” which he told the Appellant was “ultimately” why she was bypassed. He denies mentioning transfer to patrol or telling the Appellant to resign from CISM during that call. His recollection is not consistent with the Appellant’s credible testimony and that of her family members and I have reconciled the differences in the Appellant’s favor.

31. In the letter to the Appellant formally giving her notice of the bypass, Chief Delmonte stated that a “candidate below your name on the most recent eligible list” had been selected and advised her of her right to appeal the bypass to the Commission and referenced Chief Delmonte’s letter to the Town Manager that “detailed the selection reasons.” The letter stated that the Appellant was an “outstanding candidate, a highly respected Sergeant, and a woman of true character whom I greatly appreciate, and we are fortunate to have.” (*Resp.Exh.1*)⁷

32. This Appeal duly ensued. (*App.Exhs.3 through 7; Jt.Exh.1*)

The Commission Hearing

33. At the commencement of the Commission hearing, the BPD asserted in its opening statement that the Appellant was bypassed because Chief Delmonte had “concerns regarding her job performance in her then current position of detective sergeant and her lack of supervisory experience compared to Sergeant Hennessey, particularly given the fact that leadership skills and leadership experience was paramount in the assignment of the lieutenant position.”

34. At the outset of the Commission hearing, the BPD stated that it “did not comply with Civil Service law in drafting and issuing [the Appellant’s] bypass letter in that the letter referred only to Sergeant Hennessey’s positive attributes but “did not sufficiently articulate or establish the reasons for her bypass.” The BPD rested on the documents in evidence, called no witnesses and offered no rebuttal to the evidence introduced by the Appellant in support of its decision to bypass the Appellant. Instead, as referenced in more detail below, the BPD proposed that the status quo stand, allowing the third-ranked Hennesey to retain his promotion for lieutenant and keeping the

⁷ Sergeant Zanellato received a substantially identically worded letter informing him that he had also been bypassed. (*Resp.Exh.14*)

Appellant in her top-ranked position so that she could be considered for promotion in a future promotion cycle, if any, before the expiration of the eligible list. (*Tr.I:12-15 & Tr.II:402*)

35. At the Commission hearing, Chief Delmonte asserted that he also relied on negative reasons related to the Appellant to bypass her for promotion, but did not mention any negative reasons for bypassing the Appellant in the bypass letter (or issue any prior discipline to her in that regard) because he attributed her job performance issues to an incident in the September 2022 timeframe that involved a “very private personal matter . . . that she had and has the ability to overcome” and he “did not want to embarrass her” by including “her personal issues or personal struggles in an official record.” (*Tr.I:43-44, 75 [Delmonte]*)

36. The Appellant does not dispute that she was dealing with a personal family emergency during the latter part of 2022. Chief Delmonte had been away on leave and business trips during that time. Upon his return in December 2022, he talked with the Appellant about the reports he had received while he was away concerning the Appellant’s family issues. She assured him she had moved past it and was “back on point.” Nothing in the conversation suggested the Chief was concerned about the Appellant’s ability to do her job or had received any complaints about her work as the supervisor of the detective unit. The Chief did not raise the issue as a matter of concern again. (*Tr.I:210-21, 290-295 [Appellant]*)

Changes to the Appellant’s Duties

37. On May 25, 2023, approximately two months after the Appellant refused Sgt. Hile’s request that she sign up for, but not take, the promotional examination, Lieutenant Schuster informed the Appellant that she would be moved from working a split shift (two “day shifts” (8am to 4pm) and two “evening shifts” (4pm to 12am) and begin working straight day shifts. (*App.Exh.24*)

38. This change was not what the Appellant wanted, as her split shift schedule provided her additional flexibility as well as a shift differential stipend. (*App.Exhs.15 & 24; Tr.II:339-341 [Appellant]*)

39. On June 27, 2023, Lieutenant Schuster sent an email to the Appellant asking if she was interested in being involved in the October 2023 Faith & Blue event that she had previously been instrumental in organizing and managing in the past. Twelve minutes later, Lieutenant Schuster sent another email stating that the Appellant “can disregard” the prior message, adding that: “I’m sorry I didn’t realize this had already been discussed with Lt. Hile and Chief Delmonte.” A few weeks before the event, Lieutenant Schuster again offered the Appellant the opportunity to participate, but by then the Appellant had other commitments. Lieutenant Hile ran the event instead. (*App.Exhs.21 & 22; Tr.I:137-138 [Hile]; Tr.I:198-201, Tr.II:365-374 [Appellant]*)

40. On August 4, 2023, Chief Delmonte requested that the Appellant meet him at noontime at a local out-of-town restaurant. The meeting lasted over two hours. (*Tr.I:51,54[Delmonte]; Tr.I219-220[Appellant]*)

41. Chief Delmonte started the meeting by bringing up the Appellant’s pending transfer from Detective Sergeant to a Patrol Supervisor. Chief Delmonte appeared upset that the Appellant had been telling others that he was “pulling [her] out of Detectives” when he hoped she would have preferred to “save face” and “tell people that the transfer was her idea.” Among other things, the Appellant remembers that Chief Delmonte also said that she was at a “crossroads”, said she appeared “angry” at work and, possibly, in her personal life. He renewed his request that the Appellant should step down from her leadership role with CISM. (*Tr.II:220-221 [Appellant]*)

42. The Appellant recalls that, at some point in the meeting, she brought up Lieutenant Hile’s encounter with her in which he approached the Appellant and offered to pay her registration fee if she would sign up for the Captain’s Assessment Center but not take the test. Chief Delmonte did

not acknowledge that he had any prior knowledge of this encounter, and stated: “Well, none of the sergeants were going to be promoted to captain anyway.” The Appellant called the meeting a “life changing moment” in which she lost respect for Chief Delmonte whom she had “greatly admired and respected” and “a little bit for law enforcement, in general” because “he was ok with asking me to lie” and would not “stand behind [his own] decision.” (*Tr.I:221-223 [Appellant]*)

43, Effective September 7, 2023, the Appellant was transferred from the position of Detective Sergeant and reassigned to the evening shift as a Sergeant. The position of Detective Sergeant was left vacant and the supervisory duties assigned to Detective Poulin, as “OIC.” (*App.Exh.13; Resp.Exh.18;Tr.I:60-62, 105 [Delmonte];Tr.I:217, 223-224 [Appellant]; Tr.II:281-283 [Poulin]*)

44. On September 18, 2023, Sergeant Schuster informed the Appellant that she was “off the hook” to conduct the Police Matron and Holding Facility Training, as the BPD would be using an outside vendor. (*App.Exh.19*)

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).⁸

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). Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

“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”).

⁸ The civil service law and rules enable an appointing authority to list both positive and negative reasons to justify a bypass. However, if, as here, the Appointing Authority lists only positive reasons in the notice of bypass to the Appellant, they cannot later (i.e. – after an appeal has been filed with the Commission) *add* additional and/or negative reasons to justify the bypass.

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

Overview

The BPD failed to establish by a preponderance of credible evidence that it had reasonable justification to bypass the Appellant and promote Sergeant Hennessey, the lowest ranked candidate on the eligible list, as the alleged positive reasons for selecting the third ranked candidate applied equally to the Appellant, and her alleged negative “performance” issues were not used as the basis for her bypass and were not established by a preponderance of the evidence to be credible.

The Appellant is a dedicated law enforcement officer, with over two decades of experience with the BPD, a bachelor’s and master’s degree, a decorated combat veteran and an impressive history of contribution to her community. She has no disciplinary record and was recently recognized by her

peers as Officer of the Year. When a vacancy for police lieutenant arose, she scored highest among all candidates on an independent assessment center and was then ranked first by an external review panel of Police Chiefs from other communities. Yet, despite all this experience, education, accolades, and superior performance in objective tests of her ability, Sergeant Chuilli was *bypassed* for promotional appointment to police lieutenant by a lower-ranked male candidate with a resume that, objectively, shows less experience with the BPD and virtually no objective commitment to the community. Those facts, standing alone, are troubling enough.

Even more disturbing, however, as explained below, is the inescapable conclusion that this bypass was based on factors wholly unrelated to a merit-based selection process. Specifically, the preponderance of evidence shows that the Appellant's bypass and other punitive actions against her appeared shortly after she refused to go along with an eyebrow-raising proposal by her superior officer who offered to pay her examination fee for her to sign up for, but not take a promotional examination, which would have the end result of shrinking the pool of his potential competitors for Police Captain. When she refused, signed up for and took both the lieutenant and captain examinations and scored highest on both examinations, the BPD (a) opted to keep the position of Captain vacant; and (b) bypass the Appellant for lieutenant, disregarding the rankings of an independent assessment center and an external panel of Police Chiefs. The negative actions against the Appellant did not stop there. As detailed in the findings, she was then involuntarily transferred to a less desirable shift, stripped of certain responsibilities and, perhaps most petty and disturbing of all, was frozen out of the opportunity to coordinate volunteer activities that she had long been involved with. Finally, this accomplished professional was summoned to an out-of-town restaurant and forced to undergo a demeaning dressing down, including being asked why she was such an "angry" person, both at work and personally.

The Appellant's principled stand against gaming the civil service promotional system is not the only unlawful and pretextual factor that, more likely than not, influenced the decision to bypass this undisputedly qualified candidate. Although not necessary to this decision, and I expect it will be

appropriately addressed more thoroughly in another forum⁹, I also discerned that, whether conscious or not¹⁰, the Appellant, who was the only female superior officer eligible for promotion to lieutenant or captain, was questioned about whether she could handle the responsibilities of the job given personal issues she was confronting. She was quizzed about being “angry” and was even asked if she was also angry with her husband, none of which has any place in a merit-based promotional process.

Analysis of the Positive Reasons for Selecting Sergeant Hennessey

Chief Delmonte’s bypass letter to the Appellant and the attached letter of explanation sent to the Bridgewater Town manager contained only positive reasons for the selection of Sergeant Hennessey as the “best candidate” based on his qualifications and experience. A snapshot of the relative experience of the two officers shows no such distinction and demonstrates that the Appellant possessed the equivalent, and, in some instances, more relevant, positive qualifications as Sergeant Hennessey.

QUALIFICATION	APPELLANT	HENNESSEY
Tenure with BPD	2001-present	2007-2009* 2011-present *Patrolman in Dedham 2007-2009
Tenure as BPD Sergeant	June 2022	June 2020
Military Combat Supervisor	Yes	No

⁹ See Chuilli v. Bridgewater Police Dep’t, MCAD Docket No. 24NEM00767/EEOC/HUD-16C-2024-01350.

¹⁰ By definition, unconscious bias never disappears; it is necessarily a continuing work in progress. See WHAT IS UNCONSCIOUS BIAS, <https://www.unconsciousbiasproject.org/resources/explain-unconscious-bias>; WHAT IS UNCONSCIOUS BIAS(AND HOW YOU CAN DEFEAT IT), <https://psychologytoday.com/is/blog/intentionalinsights/202007/what-is-unconscious-bias-and-how-you-can-defeat-it>; 5 TYPES OF UNCONSCIOUS BIAS IN THE WORKPLACE, <https://thehrsource.com/5-types-of-unconscious-bias-in-the-workplace>; 19 UNCONSCIOUS BIASES TO OVERCOME AND HELP PROMOTE INCLUSIVITY, <https://asama/cp/resources/unconscious-bias-examples>.

Education	B.A.– Sociology & Criminal Justice (2000) M.A.- Criminal Justice (2015) FBI National Academy (2022)	B.A.– Criminal Justice M.A.- Criminal Justice
BPD Officer of the Year	2023	2013
Special Assignments	Detective Sergeant, Supervisor of Detectives Field Training Officer (FTO) Civil Rights Officer Major Crimes Task Force Matron Trainer Director, SEMELAC Critical Incident Peer Support Team	Motorcycle Unit, Supervisor Field Training Officer (FTO) Sexual Assault Investigator NARCAN Instructor SEMLAC Motorcycle OIC
Community	Board Member, Bridgewater COA Habitat for Humanity Faith & Blue Food Drive Red & Blue Dinner (Police & Fire)	Citizens Police Academy Instructor
Assessment Center	First	Third
Outside Chiefs' Board	First	Third

The BPD acknowledges that the bypass letter was fatally flawed, because it only included positive attributes of the third ranked candidate and did not explain how those attributes surpassed those of the Appellant who was ranked first by both the Assessment Center and the interview board of outside Police Chiefs. In fact, Chief Delmonte praised the Appellant as an “outstanding candidate, a highly respected Sergeant, and a woman of true character whom I greatly appreciate, and we are fortunate to have.” In his letter to the Town Manager, Chief Delmonte elaborated on this praise of both of two candidates that ranked above Sergeant Hennessey: “Detective Sergeant Chuilli and Sergeant Zanellato both have significant and diverse operational and specialized experience and are outstanding candidates . . . They have demonstrated their ability to lead and are effective communicators who have and will serve the department well into the future.”

The Appellant’s Alleged Performance Issues

The BPD does not dispute that the bypass of the Appellant must be allowed because it cannot be supported for the “reasons” stated in the bypass letter and, rightly so, as those reasons do not

provide reasonable justification for the decisions to bypass such a well-qualified candidate. The Commission's inquiry does not end there, however. Although not included as reasons in the bypass letter, the BPD's assertion at the Commission hearing that it did, in fact, have reasonable grounds to bypass the Appellant is also flawed and must be carefully scrutinized, as it bears on the remedy that is appropriate in this appeal.

I find that the preponderance of the evidence does not support the BPD's claim that the Appellant has continuing performance issues, including a "loss of confidence" by her subordinates, a failure to communicate, or an inattention to duty. The credible evidence proves quite the opposite. Before her performance was called into question during the Commission hearing, the Appellant stood out as one of the most effective Sergeants in the department. Now- retired Lieutenant Schuster, who had been the Appellant's direct supervisor from June 2022 to November 2023 had nothing but praise for the Appellant. She repeatedly turned to the Appellant to take on extra duties. Similarly, every one of the detectives who worked under the Appellant testified that she was an excellent supervisor. The Appellant was chosen to be sent to the FBI National Academy in June 2022. She was selected to attend civil rights training in November 2022 and assumed the duties of as BPD Civil Rights Officer in March 2023. She was named the 2023 BPD Officer of the Year.

The Appellant acknowledged that, for a few months at the end of 2022, she was involved in a personal family crisis. The Appellant persuaded me, and the credible evidence showed, that this distraction was temporary and had no continuing impact on her performance as a Detective Sergeant at any time in 2023 prior to the bypass decision. The fact that she excelled in both the Lieutenant's and Captain's Assessment Center in April 2023, as well as in the Outside Police Chief's Interview process in June 2023, reinforces the conclusion that her top-ranking in those tests showed that she was at the top of her game.

Moreover, although the evidence is somewhat circumstantial, I am persuaded that the performance issues with the Appellant are directly tied to her decision to take the Captain's Assessment Center, rather than participate in the plan hatched by Lieutenant Hile to keep her from doing so for his own personal advantage. The Appellant became the target of unwelcome changes in her duties only after she took the Captain's Assessment Center and topped the list. As I have found that her bypass for Lieutenant is not reasonably justified, either on the basis of alleged superior qualifications of the third-ranked candidate, nor on the basis of unsubstantiated performance issues of her own. The fair inference, therefore, must be that her bypass was motivated for an ulterior reason, most likely to further the prospects of Chief Delmonte's preferred candidate, Lieutenant Hile, for the Captain's promotion

Chief Delmonte denied any prior knowledge of or involvement in Lieutenant Hiles's scheme to rig the Captain's Assessment Center process. However, I heard testimony that, after the results of the Captain's Assessment Center were announced, Sergeant Hennessey was heard to say that if he got the Lieutenant's promotion, he would withdraw his name from the Captain's eligible list, thereby paving the way for Lieutenant Hile to get the Captain's promotion. This evidence, in part, is uncorroborated hearsay and I do not need to credit that testimony here as it is not necessary to the decision in this bypass appeal involving the position of BPD Lieutenant. Although the allegation does carry a ring of truth, it is more appropriate to be considered by opening a separate investigation to address the Captain's Assessment Center process (now pending as CSC No. I-23-203), or a future bypass appeal, if any, at some time in the future.¹¹

¹¹ I recommend that no action be taken on the related investigation request at this time. Should the parties fail to resolve this matter prior to the effective date of this Decision, the Commission may consider at that time whether to open a formal investigation for such further inquiry and evidentiary proceedings and orders as appropriate to ensure compliance with civil service law.

The Remedy

The BPD proposed that the Appellant's appeal be allowed and that she remain on the current and future eligible lists for future consideration for promotion to Lieutenant. The Appellant does not assent to that "traditional" form of relief in a bypass case for several reasons: (1) the BPD currently has only two lieutenants, and the chances of the BPD promoting another Sergeant in the near future is unlikely and speculative, at best; (2) the evidence that the Appellant was targeted for bypass because her decision to take the Captain's Assessment Center upset the plan to promote Lieutenant Hile to Captain, implies that further protections are needed to assure that her consideration for promotion is performed on a level playing field

I agree with the Appellant that the traditional remedy of putting her at the top of the Lieutenant's eligible list (where she already is ranked) does not ensure a fair future consideration of her promotional opportunities. Accordingly, I recommend that the Commission order the recent Lieutenant's promotion be vacated, that Lieutenant Hennessey's appointment be converted to a temporary Lieutenant, and that the BPD conduct a new process to fill the vacancy of Lieutenant on a permanent basis consistent with the requirements of civil service law and this decision.

This is one of those rare appeals in which the Commission is warranted to exercise its broad discretion to fashion a unique remedy when necessary to ensure that the civil service rights of a tenured employee aggrieved by an unlawful bypass are fully restored. Mulhern v. Civ. Serv. Comm'n, 57 Mass. App. Ct. 920, 920 (2003) ("The remedy to be accorded a plaintiff is a matter within the commission's discretion and will rarely be overturned."), citing Bielawski v. Personnel Administrator of Div. of Personnel Admn., 422 Mass. 459, 464 n.11, 465 (1996). See also, Jebb v. Chicopee, 27 MCSR 208 (2014) (Commission vacated appointment of Police Chief); Smyth v. Quincy, 24 MCSR 497 (2011) (Commission vacated appointment of Fire Chief); Bertulli v. Town of Milford, 14 MCSR 151 (2001) (Commission set aside the promotion of a police sergeant to lieutenant); Sihpol

v. Beverly Fire Department, 12 MCSR 72 (1999) (Commission vacated appointments after finding evidence of a flawed selection process).

In that regard, an unrecorded, subjective interview by Chief Delmonte, as was performed in the 2023 hiring process, has no place in the selection process. Public safety agencies may conduct interviews of potential candidates as part of the hiring process, especially in the case of promotional appointments of superior officers. However, 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, considerations that form the core basic merit principles of civil service law; the Commission gives especially heightened scrutiny to subjective interviews when it appears they have become a means to nullify the results of a duly administered, independent Assessment Center form of examination. *See, e.g., Flynn v. Civil Service Comm’n*, 15 Mass. App. Ct. 206, 208, *rev. den.*, 388 Mass. 1105 (1983); 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); Connor v. Andover Police Dept., 30 MCSR 439 (2017); Dorney v. Wakefield Police Dep’t., 29 MCSR 405 (2016); Cardona v. City of Holyoke, 28 MCSR 365 (2015).

CONCLUSION

For the reasons stated herein, this appeal of the Appellant, Kelly Chuilli, CSC Docket No. G2-23-179, is *allowed*.

After considering the particular factors involved in this appeal, I conclude that, in addition to placing Sergeant Chuilli at the top of all current and future certifications for Lieutenant, additional protections are necessary to assure that any future consideration is not impaired by the same biases (whether conscious or unconscious) that produced the current unlawful bypass.

Accordingly, pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the Bridgewater

Police Department (BPD) in its delegated capacity take the following steps:

1. The permanent appointment of John J. Hennessey, III to the position of BPD Police Lieutenant, effective July 14, 2023, is vacated.
2. The civil service status of John J. Hennessey, III as BPD Police Lieutenant, shall be adjusted from “permanent” to “temporary,” effective retroactively to July 14, 2023.
3. The BPD shall then, forthwith, fill the permanent lieutenant position using the rankings of the assessment center and external panelists, and without relying on any facts or circumstances of which it had knowledge prior to July 14, 2023, including, in particular, but without limitation, alleged performance issues of the Appellant during the period from approximately September 2022 through July 2023.
4. No promotional appointment to BPD Police Lieutenant by any candidate ranked below Kelly Chuilli shall become effective until such time as: (a) the BPD has provided Kelly Chuilli with reasons for bypass; (b) Kelly Chuilli has had the opportunity to file an appeal with the Commission; and, if one is lodged, (c) the Commission has issued a final decision in any such future bypass appeal.
5. The effective date of this decision is March 6, 2025. Should the parties mutually agree to an alternative form of relief, they may file a motion for reconsideration with the Commission on or before March 6, 2025. Otherwise, this decision shall become final for the purposes of Section 44 of Chapter 31 on March 6, 2025.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, Stein Commissioners) on February 6, 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)(1), 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:

Allison MacLellan, Esq. (for Appellant)

Richard F. Massina, Esq. (for Respondent)