

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 7/3/09
Civil Service Commission

CB

SUFFOLK, SS,

CIVIL SERVICE COMMISSION

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

MARK J. CONNOLLY, JR.,
Appellant

v.

Case No. G1-05-409

CITY OF QUINCY,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Mark J. Connolly, Jr., (hereafter "Appellant" or "Connolly") seeks review of the Personnel Administrator's decision to accept the reasons of the City of Quincy (hereafter "Quincy" or "City"), bypassing him for original appointment to the position of police officer. A full hearing was held on April 2, 2008, at

the offices of the Civil Service Commission. One audio tape was made of the hearing.

FINDINGS OF FACT:

Eleven (11) exhibits and a stipulation of facts were entered into evidence at the hearing. The parties also entered into a verbal stipulation on the record that the main reason for bypass was a handwritten essay by the Appellant.

Based on the above exhibits, verbal and written stipulation and the testimony of the following witnesses:

For the Appointing Authority:

None;

For the Appellant:

Appellant;

I make the following findings of fact:

1. On March 18, 2005, the Appellant's name appeared on the first Certification No. 250232 for the position of permanent fulltime police officer for the Quincy Police Department. The certification directed the City to select 14 of the first 29 Highest, who signed willing to accept. (Exhibit 10)
2. On April 13, 2005, HRD issued a second list Certification No. 250232. This Certification also directed the City to select 14 of the first 29 Highest, who signed willing to accept. The names on the second Certification No. 250232 were different than the first certification. It appears that selections were made consecutively from the second certification after the names on the first was exhausted.(Exhibit 10)
3. The Quincy Police Department filled 24 police officer positions from the two

Certification lists plus two names designated as “Military holding space”. (Exhibit 10)

4. Nineteen (19) of the candidates selected for appointment were chosen from the second Certification dated April 13, 2005. The Appellant was bypassed for selection by all of these nineteen candidates.(Exhibit 10)
5. On September 20, 2005, the City of Quincy notified the state’s Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reason(s): his handwritten short essay entitled, “Why I want to be a police officer.” The City felt that this essay and his reference in it to “the adrenalin rush” when responding to calls and making arrests, “...raised major concerns relative to his judgment, temperament and maturity.” (Exhibit 10, Stipulated fact)
6. On or about October 5, 2005, by letter HRD notified the Appellant that the reasons states in the City’s letter of September 20, 2005 had been approved for his bypass for appointment as a police officer. (Exhibits 10, 11, Stipulated fact)
7. The Appellant had prior field experience, letters of recommendation, and a commendation from the Oak Bluffs Police Department, police officer performance, A First Responder Course certificate, Oak Bluffs Police Officer Training and South Suburban Police Institute Reserve Intermittent Police Academy training, the latter of which was sponsored by the Chief of Police from Oak Bluffs. (Exhibits 1-9; testimony of Appellant)
8. The Appellant received a Bachelor of Science in Criminal Justice from Bridgewater State College in 2004. (Exhibit 9; testimony of Appellant)
9. The City’s bypass letter to HRD quoted an Oaks Bluffs Police Department source as

describing the Appellant as “a dependable and professional summer officer”. Another co-worker there described him as “respectful, dependable and very enthusiastic”. (Exhibit 10)

10. One candidate, who bypassed the Appellant for selection, was employed for one year as a construction surveying crew supervisor, with no prior experience in law enforcement and no undergraduate college degree. That candidate was described as “very passionate”, “dedicated”, “well-respected”, “hard-working”, “loyal” and “devoted”. These adjectives could equally be applied to the Appellant. However, The City’s letter goes further regarding that selected candidate and designates these adjectives as skills and abilities, stating: “Those skills and abilities will be directly transferable and will be beneficial to the Quincy Police Department.”(Exhibit 10)
11. The City’s bypass justification to HRD indicates that the positive references of many of the candidates who scored below the Appellant on the qualifying exam read quite similarly to the positive statements about the Appellant gleaned from the investigation of him, although some of these other candidates appear to have no law enforcement experience. (Exhibit 10)
12. Several of the positive profiles of the lower ranked selected candidates make note of the candidate’s ties to the City police department or other City connections. One selected candidate had 35 years of employment as a civilian with the Quincy Police Department. One selected candidate had one summer (2004) employment as a seasonal Nantucket police officer, similar to the Appellant’s experience in the Oak Bluffs Police Department. However, the selected candidate had also served a student internship with the Quincy

Police Department. Several other selected candidates also did student internships at the Quincy Police Department or had relationships with QPD officers. Several of the selected candidates who bypassed the Appellant lacked the amount of police training or experience of the Appellant. (Exhibit 10)

13. One selected candidate, who bypassed the Appellant, was employed as a police officer by the Nashua New Hampshire Police Department since August, 2002. He was also a 2002 graduate of the New Hampshire Police Academy. This selected candidate also claimed and received the residency preference as a Quincy resident. The City's bypass letter omitted any mention or concern about this obvious incongruity. Several other selected bypassing candidates were police officers in other Massachusetts towns, while claiming and receiving the Quincy residency preference. While the candidates' residency preference qualification may well have been warranted, the failure of the letter to state it clearly, in the face of the clearly stated out-of-town and out-of-state police employment are questionable omissions. The qualification for residency preference is an elemental if not automatic aspect of every police employment background investigation.

(administrative notice, Exhibit 10)

14. In addition, some of the lower ranked candidates who were selected for appointment had no prior experience in law enforcement, such as: candidates whose current employment was described as one-year experience as a "field crew" supervisor for a construction company; five years experience as a Verizon Splice Service Technician, liquor distributor salesman; three-year's experience as a bank employee; ten year's experience as a valet

parking attendant; one year as a security officer at MGH; and four years as a geologist.

(Exhibit 10)

15. Of the candidates bypassing the appellant for selection, nine (9) had no prior police officer experience. (Exhibit 10)

16. Of the bypassing candidates selected, for twelve (12) of those candidates, the City listed as part of the reason for hiring that individual as: employment, references, life long residency or internships with The QPD or other City department affiliations. (Exhibit 10)

17. Of the candidates selected, two (2) had no college degrees and no prior related experience. Two other selected candidates had degrees in Sociology which the City noted would be of assistance in working with the various communities within the City of Quincy. (Exhibit 10)

18. The City's letter contained conclusory descriptive expressions of the selected candidates that were general and subjective in nature. These descriptive expressions appear to be the substantive basis for their selection. Some of these expressions are as follows: "very passionate", "hard working", "loyal", "excelled in many things", "everyone loves _____", "funny, smart and an all around great guy", "...friendly, confident, clean cut," "hard working, brave intelligent", "nice guy, "well liked", "very good" and "everyone likes him", "excellent", "upstanding" and "conscientious". No first-hand or reliable evidence was presented to show how these conclusory assessments of the competing candidates was determined. (Exhibit 10, administrative notice)

19. The Appellant, since 2001, has worked within the school system at the collegiate level, beginning as a Resident Assistant, supervising 90 students, building community and

- enforcing school policies. (Exhibit 9, testimony of Appellant)
20. The Appellant received a promotion to Senior Resident Assistant in 2002, with additional responsibilities and duties. (Exhibit 9, testimony of Appellant)
21. He has continued to receive promotions and take on more responsibility since that time. (testimony of Appellant)
22. The Appellant worked for the Oak Bluffs Police Department in 2004, and received special training and gained field experience as a police officer. (Exhibits 1-9, testimony of Appellant)
23. The Appellant received a medal of commendation from the Oak Bluffs Police Department, and had several letters of recommendation from full time officers. (Exhibits 1-8; testimony of Appellant)
24. The Appellant did not receive any negative feedback or comments during or after his interview with the Quincy Police Department. (testimony of Appellant)
25. The six page background investigation report filed by Officer Ralph Willard did not cite the Appellant's essay or its contents as a negative determination of his investigation. (Exhibit 9)
26. The Appellant never met or communicated with Roberta Kety, Quincy Director of Human Resources who drafted the letter regarding his bypass to the HRD. (testimony of Appellant)
27. The Appellant was never given notice that his essay raised concerns nor given an opportunity to explain what he meant in his essay entitled, "Why I want to be a police officer." (testimony of Appellant)

28. The Appellant was attempting to convey his enthusiasm in his essay, and distinguish himself from the other candidates. The Appellant testified that he had consulted a veteran police officer friend prior to completing the application process. That friend advised him that the position of police officer was highly coveted and therefore highly competitive. The friend advised him that he should somehow try to distinguish himself from the competition. With this advice in mind, the Appellant tried to answer in such a way as to emphasize his prior experience as a police officer and his capacity to handle and enjoy the stress of certain police situations. (Testimony of Appellant)

29. The Appellant testified with a polite formal demeanor. He wore a suit and tie. He answered in a straightforward unhesitant manner. He answered promptly, naturally and easily. He did not volunteer extraneous or advantageous statements to his answers. He made good eye contact. His body language was appropriate and his language and answers rang true. He seems to have the responsibility and sincere motivation to be a police officer. He is currently managing ten (10) employees under him. I find him to be a credible and reliable witness. (Testimony and demeanor of Appellant, Exhibits)

CONCLUSION:

Basic merit principles as defined in G.L. c. 31, §1 require that employees be selected and advanced “on the basis of their relative ability, knowledge and skills”, using “fair treatment of all applicants and employees in all aspects of personnel administration” and protection from coercion for “political purposes” and from “arbitrary and capricious actions.” “A civil service test score is the primary tool in determining relative ability, knowledge and skills and in taking a personnel action grounded in basic merit principles.” Sabourin v. Town of Natick, 18 MCSR 79

(2005); Compare Flynn v. Civil Service Comm'n, 15 Mass.App.Ct. 206 (1983). Here, the Appellant's score on the civil service examination was higher than those of at least nineteen other candidates.

The appointing authority, in circumstances such as those before us, may not be required to appoint any person to a vacant post. However, the appointing authority is expected to exercise "sound discretion" under the particular circumstances of the appointment. The appointing authority, in the exercise of sound discretion may select among persons eligible for appointment or promotion or may decline to make any appointment. See Goldblatt v. Corporation Counsel of Boston & others 360 Mass. 660, 666 (1971); Commissioner of the Metropolitan Dist. Commn. v. Director of Civil Serv. 348 Mass. 184, 187-193 (1964). See also Corliss v. Civil Serv. Commrs., 242 Mass. 61, 65; (1922) Seskevich v. City Clerk of Worcester, 353 Mass. 354, 356 (1967); Starr v. Board of Health of Clinton, 356 Mass. 426, 430-431 (1969). Cf. Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 571-572 (1940).

In a bypass appeal, the Commission must consider whether, based on a preponderance of the evidence before it, the Appointing Authority sustained its burden of proving there was "reasonable justification" for the bypass. E.g., City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 303-305, 682 N.E.2d 923, rev.den., 428 Mass. 1102, 687 N.E.2d 642 (1997) (Commission may not substitute its judgment for a "valid" exercise of appointing authority discretion, but the Civil Service Law "gives the Commission some scope to evaluate the legal basis of the appointing authority's action, even if based on a rational ground."). See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 461-62 (2001) ("The [Civil Service] commission properly placed the burden on the police department to

establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles the commission acted well within its discretion.”); MacHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to “review, and not merely formally to receive bypass reasons” and evaluate them “in accordance with basic merit principles”); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 577 N.E.2d 325 (1991) (“presumptive good faith and honesty that attaches to discretionary acts of public officials . . . must yield to the statutory command that the mayor produce ‘sound and sufficient’ reasons to justify his action”). See also, Bielawski v. Personnel Admin’r, 422 Mass. 459, 466, 663 N.E.2d 821, 827 (1996) (rejecting due process challenge to bypass, stating that the statutory scheme for approval by HRD and appeal to the Commission “sufficient to satisfy due process”) All candidates must be adequately and fairly considered. The Commission has been clear that a bypass is not justified where “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988).

In this present case, the City should have given notice or sought substantiation once it had made a bypass determination or deduction based “mainly” on the Appellant’s use of a phrase in the essay. The Appellant had the right to rebut or explain himself at that point. This failure of the City to seek an explanation or substantiation for its critical and consequential interpretation is an indication that it was not looking for an explanation but instead was seeking an excuse to bypass. The strong and

pervasive overtones of parochial favoritism are palpable in this selection process. This type of favoritism is one of the impermissible considerations that the civil service law is intended to guard against.

The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001). "Abuse of discretion occurs . . . when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and improper factors are assessed but the [fact-finder] makes a serious mistake in weighing them." E.g., I.P.Lund Trading ApS v. Kohler Co., 163 F.3d 27, 33 (1st Cir.1998).

Applying the foregoing principles to the evidence in this appeal, the Commission concludes that the City has not met its burden of proof.

The Appellant was bypassed for appointment to the position of police officer in the City of Quincy, while other candidates with similar or lesser background qualifications, with lower scores on the civil service exam, were selected.

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928).

Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence.

A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991). ; G.L. c. 31, § 43.

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, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In making that analysis, the commission must focus on the fundamental purposes of the civil service system -- to guard against political considerations, favoritism, and bias in governmental employment decisions.... When there are, in connection with personnel decisions, 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. It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.

Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004), *quoting* City of Cambridge, 43 Mass. App. Ct. at 304.

However, 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. City of Cambridge, 43 Mass. App. Ct. at 304.

Further, political consideration, favoritism and bias will not uphold a bypass decision or if the reasons were untrue, incapable of substantiation or are pretext for impermissible reasons. If a selection, rather than being based on merit standards, was “tainted with bias and favoritism, then it is the Commission’s responsibility to intervene and provide relief to individuals such as the Appellant who have been harmed through no fault of their own.” Brock Kalinowsky v. City of Pittsfield, CSC Decision No. G1-06-159 (2007).

The parties stipulated that the “main” reason the Appellant was bypassed was because of his essay entitled, “Why I want to be a police officer.” However, the City relied on a subjective interpretation of the intent of or inference drawn from the use of an expression in the essay. The City did not conduct a subsequent investigation to substantiate its conclusion drawn from the phraseology used in the essay. The City gave the Appellant no notice of nor an opportunity to explain what he intended by the expression. The first opportunity the Appellant had to explain his intent for the use of the expression was at the Commission hearing. The Appellant then provided a reasonable and plausible explanation in his testimony. The City’s background investigation did not provide any concrete examples to sufficiently substantiate their erroneous inference of the Appellant’s poor judgment or immaturity. Additionally, the Appellant has more training, education and actual police experience than a number of the candidates who were selected. He had a number of positive recommendations from law enforcement personnel, and his employment history displays a high level of professionalism and responsibility. The only qualification that the Appellant seemed to lack was a prior affiliation with the City’s Police Department or some other City related experience.

He received no negative feedback from his interview with the City, and testified he was trying to communicate his capability to handle police stresses and also trying to distinguish himself from the other candidates with his essay. The Appellant further testified that he was never questioned about the essay, either in the interview or at any later date, and was not able to then explain what he intended the essay to convey. The City's Investigating Officer Willard did not cite the Appellant's essay as a negative determination of his investigation.

The bypass-letter drafted by the City indicates that a number of selected candidates for whom the Appellant was bypassed, were chosen based on their personal relationships or work experience with the QPD or other departments in the City of Quincy. Still others appear to have been selected based on a perceived "commitment to Quincy". There were also a number of selected candidates for whom the Appellant was bypassed who had lesser educational and/or employment experience. The high number of City of Quincy affiliations stated in the letter raises the possibility that some other candidates' City affiliations may have been omitted. The verification of a candidate's qualification for the residency preference is a fundamental aspect of any background investigation. The obvious omission in the letter regarding the residency preference qualification of several selected candidates who at the time were serving as police officers in other Mass. Towns and one as a police officer in a NH City. These overt stated facts in the City's bypass letter raised the question of residency preference qualification for those candidates. These candidates may very well have qualified for the preference yet it would reasonably be expected that the City would address such an obvious and important issue and its determination in its bypass letter. Yet, the City focused on an unsubstantiated inference or interpretation of the Appellant's use of a phrase in his essay, to form an untoward conclusion

regarding his character or temperament to disqualify him for appointment. The magnification of the miniscule regarding the Appellant and contrastingly ignoring the enormous regarding the other above referenced competing candidates, creates at least the appearance of bias or favoritism in the selection process.

The City has failed to meet its burden to show there was a reasonable justification for the action taken. Given the evidence, there is an inference that the Appellant was bypassed in order to hire candidates who were viewed favorably; by having special relationships with or deemed “committed” to Quincy. The only conclusion the Commission can logically reach is that his consideration for selection, rather than being based on merit standards, was tainted with bias and/or favoritism. In such cases, it is the Commission’s responsibility to intervene and provide relief to individuals such as the Appellant who have been harmed through no fault of their own. Further, the City has failed to show that the Appellant’s essay was a reasonable basis for bypass. The Appellant is found to be a credible and reliable witness. His explanation for the use of the expression at issue is plausible, reasonable and believable. The City failed to introduce direct first-hand evidence as to how it reached the conclusion it formed on the Appellant. No direct evidence was presented to show what process if any and what factors HRD weighed and relied on to approve of the City’s reasons for bypass of the Appellant. The City also failed to introduce any first-hand evidence on the relative or comparative decision making on the other competing candidates who were selected. In balance, the overriding parochial favoritism for the selected candidates appears to be a determinative factor in the selection process. The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g.,

Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001). "Abuse of discretion occurs . . . when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and improper factors are assessed but the [fact-finder] makes a serious mistake in weighing them." E.g., I.P.Lund Trading ApS v. Kohler Co., 163 F.3d 27, 33 (1st Cir.1998).

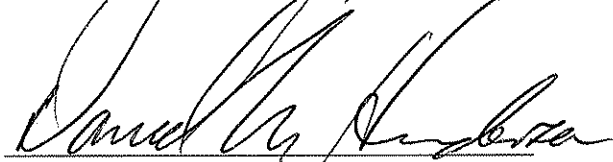
For all of the above reasons, the Commission hereby *orders the following*:

RELIEF GRANTED TO THE APPELLANT

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs that name of the Appellant, Mark J. Connolly, Jr., be placed at the top of the eligibility list for original appointment to the position of Police Officer so that his name appears at the top of any current certification and list and/or the next certification and list from which the next original appointment to the position of Police Officer in the Quincy Police Department shall be made, so that he shall receive at least one opportunity for consideration from the next certification for appointment as a QPD police officer. The Commission further directs that, if and when Mark J. Connolly, Jr. is selected for appointment and commences employment as a QPD police officer, his civil service records shall be retroactively adjusted to show, for seniority purposes, as his starting date, the earliest Employment Date of the other persons employed from Certification # 250232.

For all of the above reasons, the appeal under Docket No. G1-05-409 is hereby *allowed*.

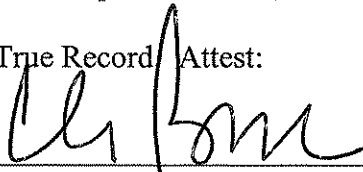
Civil Service Commission,

A handwritten signature in black ink, appearing to read "Daniel M. Henderson", is written over a horizontal line.

Daniel M. Henderson,
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman voted NO; Henderson voted YES, Marquis voted NO, Stein voted YES and Taylor voted YES, Commissioners) on July 2, 2009.

A True Record Attest:



Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Valerie A. McCormack, Esq.

Kevin J. Madden, Esq...

John Marra, Esq.

Concurring Statement, Commissioner Paul M. Stein

I concur with the decision to allow this appeal. I agree with the findings that the selection process appears to have been impermissibly tainted by political considerations, favoritism or bias that more likely than not prejudiced the Appellant's chances for a fair and impartial consideration of his qualifications in comparison to others and resulted in his bypass by numerous candidates who had lower scores on the qualifying civil examination and whose credentials appear substantially equivalent, if not less compelling, than that of the Appellant. (*Hearing Commissioner's Findings Nos. 10-12, 14-17*) I am also troubled by the fact that, at no time during the selection process, was the Appellant asked to address one of the main reasons he was disqualified, i.e., essentially his essay on why he wanted to become a police officer raised concerns about his "judgment, temperament and maturity". (*Hearing Commissioner's Findings Nos 5-6, 24-27*). Finally, I note that the Appointing Authority in this case did not proffer any witnesses in defense of its bypass decision nor did it submit any post-hearing proposed decision in support of the dismissal of the appeal. Thus, I am persuaded that, but for the use of the improper lens of bias, the Appellant's credentials very likely would not have been seen as disqualifying him. I would not want or intend, however, that the result in this case be construed to signal or imply any change to the long-standing general rule that an Appointing Authority may properly bypass a candidate for another candidate with equivalent or lesser positive credentials or experience to the selected candidate, solely upon proof of a legitimately determined belief that a candidate's negative qualities justify the bypass (including concerns about judgment, temperament and maturity), in the absence of the evidence, here, that improper favoritism or bias was a contributing factor in how these qualities, both positive and negative, may have been viewed.