

11
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 09-0476-H**

TOWN OF ARLINGTON

vs.

CIVIL SERVICE COMMISSION & another¹

**MEMORANDUM OF DECISION AND ORDER ON THE
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

In April 2007, the Town of Arlington ("Town") notified the Commonwealth's Human Resource Department ("HRD") of its decision to bypass police officer Douglas Cronin ("Cronin") for promotion to the position of sergeant, and instead select two lower ranked candidates. After requesting additional information from the Town regarding the reasons for the Town's selections, the HRD approved the Town's reasons for bypassing Cronin. Cronin exercised his right to administrative review by appealing to the Civil Service Commission ("commission"). The commission found that the Town failed to substantiate two of the three reasons offered for bypassing Cronin, and directed the HRD to place Cronin's name at the top of the list of eligible candidates for the position of sergeant, after January 1, 2010.

The Town brought the present action seeking judicial review of the commission's decision. This matter is before the court on the Town's motion for judgment on the pleadings. For the reasons stated below, the court concludes that the Town had reasonable justification for bypassing Cronin, and therefore vacates the commission's decision.

¹Douglas Cronin

BACKGROUND

In February 2007, the Town requested a list of certified promotional candidates from the HRD in order to promote two of its patrol officers to the position of sergeant. The HRD returned a list of candidates and their rankings. Cronin was the highest ranked candidate with a score of 94, while the second and third ranked officers scored 82 and 80, respectively.

The Town convened a three-member panel to interview the top five candidates for the two vacant positions. The panel asked each of the candidates an identical set of predetermined interview questions, and then asked follow-up questions relevant to the candidate's responses. Following the interviews, the panel discussed each candidate's interview performance and overall qualifications, and ultimately decided to bypass Cronin in favor of the second and third ranked candidates.

By letter dated April 3, 2007, the Town submitted its reasons for bypassing Cronin to the HRD. The Town's reasons generally consisted of three main concerns: (1) lack of supervisory experience, (2) prior incidents involving disciplinary action, and (3) use of discretion and common sense when enforcing the law. With respect to the third category, the Town expressed concern regarding Cronin's ability to assume the supervisory position of a police sergeant.

The commission concluded that the Town had failed to substantiate the first two reasons for bypassing Cronin. Specifically, the commission found that none of the candidates had supervisory experience, and that the Town had included that reason by mistake. Regarding allegations of misconduct, the commission found that the Town failed to substantiate some of the allegations and that incomplete information had been provided to the HRD with respect to others, including occasions where Cronin had been exonerated of any wrongdoing. The commission therefore rejected these two reasons as justification for bypassing Cronin.

With respect to Cronin's judgment in enforcing the law, however, the commission found that Cronin displayed a rigid, "by the book" mentality, which constituted a legitimate consideration when determining whether to promote him to a leadership position. In response to a hypothetical question posed to Cronin at his interview, for example, he responded that he would remove a grandmother from a public park if present after hours, noting that the law could be changed to permit otherwise. Based on Cronin's interview responses and testimony, the commission expressed concern that Cronin "seemed to relish ensuring compliance with the letter of local bylaws and challenging local officials to change these bylaws if they didn't want them strictly enforced." (R. at 386.)

Although the commission found Cronin's "rigidity" to justifiably cause the Town concern, it was "troubled" by the Town's inclusion in its report to the HRD of disciplinary incidents for which Cronin had been exonerated. The commission also criticized the Town for failing to consider the wide differential between Cronin's ranking (94) and the scores of the other leading candidates (82 and 80). The commission therefore decided to "allow in part" Cronin's appeal, and directed the HRD to place his name "at the top of the first list of eligible candidates for the position of sergeant issued to the Town of Arlington after January 1, 2010 to allow [Cronin] to be given at least one additional consideration for a sergeant position in the Town of Arlington." (R. at 388.) This decision was expressly intended to "recognize the Town's failure to substantiate two of the three reasons proffered for bypassing [Cronin] and their failure to consider, at all, the difference in civil service scores between [Cronin] and the selected candidates, while also recognizing the very real, palpable, rigidity of [Cronin] that has given the Town such concern." (R. at 388.)

DISCUSSION

Any party aggrieved by a decision of the Civil Service Commission may obtain judicial review in the Superior Court. G. L. c. 31, § 44. In reviewing the commission's decision, this court is required to "give due weight to the experience, technical competence, and specialized knowledge of the [commission], as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14(7); see also G. L. c. 31, § 44 (judicial review of commission's decision is governed by G. L. c. 30A, § 14). The Town, as the appealing party, bears the burden of proving that the commission's decision is invalid. Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 242 (2006).

"[I]n reviewing employment actions of appointing authorities, the role and jurisdiction of the commission is to determine whether the appointing authority has sustained its burden of proving that there was reasonable justification for the employment action." Burlington v. McCarthy, 60 Mass. App. Ct. 914, 915 (2004). In this context, "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." Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997). The commission must make its assessment with a "focus on the fundamental purposes of the civil service system—to guard against political considerations, favoritism, and bias in governmental employment decisions" Id.

Pursuant to G. L. c. 31, § 27, "[i]f an appointing authority makes an original or promotional appointment from a [certified list of eligible persons] of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest." Where the

appointing authority provides reasonable justification for the bypass, consistent with basic merit principles,² the commission may not substitute its judgment for that of the appointing authority. Cambridge, 43 Mass. App. Ct. at 304. This limitation on the commission's authority protects the broad discretion vested in the appointing authority to select its employees. Id. at 304-305.

In the present case, neither the Town nor Cronin have challenged the commission's findings of fact. Rather, the Town seeks to set aside the commission's decision on the ground that it lacked the authority to grant Cronin relief because it found that the Town had substantiated a valid reason for bypass. Cronin, on the other hand, takes a different view of the commission's decision. He argues that the commission acted within its discretion in ordering relief because it ruled that the bypass was improper. The parties' interpretations thus diverge on the central issue before the commission: whether the Town had reasonable justification for the action taken, that is, to bypass Cronin in favor of the second and third ranked candidates.

The parties' differing interpretations of the commission's ruling on this central issue is understandable. The commission's decision, although otherwise very thorough and articulate, never answered the question of whether the Town had reasonable justification for bypassing Cronin. Nor did the commission expressly hold that the bypass decision was improper or, conversely, that it was warranted under the circumstances. Rather, the commission "allowed in part" Cronin's appeal, which begs the following question: What part of the Town's decision did the commission find objectionable?

It is clear from the body of the decision that the commission rejected two of the three reasons

²"Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G. L. c. 31, § 1.

for bypassing Cronin as adequate justification. Implicit in this finding is the commission's acceptance of the third reason as reasonable justification for Town's action. In fact, the commission acknowledged that the Town had legitimate concerns regarding Cronin's judgment, use of discretion, and ability to serve in a leadership position. Furthermore, the commission recognized that there was no evidence that the Town's bypass decision was based on improper motives. It is therefore apparent that the commission granted Cronin relief because of flaws it identified in the bypass procedure, not because of inadequate justification for the bypass decision itself.


The question, then, is whether the commission may lawfully order Cronin's name to be placed at the top of the list of eligible candidates even though the Town had reasonable justification for its decision to bypass Cronin. The court concludes that it cannot. See Boston v. Buckley, 61 Mass. App. Ct. 1117 (2004) (overturning commission's order to place candidate at top of certification list where Town had reasonable justification for bypass [order pursuant to Rule 1:28]); Burlington, 60 Mass. App. Ct. at 916 (same); Beverly v. Massachusetts Civil Serv. Comm'n, 25 Mass. L. Rptr. 599, 600 (Mass. Super. Ct. 2009) (same). In the valid exercise of its discretion, the Town was permitted to bypass Cronin based on legitimate concerns regarding his judgment and leadership qualities. Any failure on the part of the Town to substantiate some of its stated reasons in its report to the HRD did not have any material affect on Cronin since the Town was justified in bypassing him in favor of the other candidates. See Flynn v. Civil Serv. Comm'n, 15 Mass. App. Ct. 206, 210 (1983) (noting that "since the same promotions would have been made had the [appointing authority] meticulously followed the [selection process], any infraction cannot be considered material insofar as the [bypassed candidates] are concerned"). Where there was reasonable justification for the Town's decision, and no evidence of bias or improper motive, the

decision is "not subject to correction by the commission." Cambridge, 43 Mass. App. Ct. at 305.

By ordering relief to the contrary, the commission erroneously substituted its judgment for that of the Town, and its decision must therefore be vacated.

ORDER

For the foregoing reasons, it is hereby ORDERED that the Town of Arlington's motion for judgment on the pleadings be ALLOWED. The decision of the Civil Service Commission is VACATED.


Kimberly S. Budd
Justice of the Superior Court

Dated: December 22, 2009