

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

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

Kevin M. Dangelo,  
Appellant

v.

Docket NO.: G2-11-136

Town of Natick,  
Respondent

Appellant's Representative:

Kevin M. Dangelo,  
*Pro se*

Respondent's Representative:

James A. Sheridan  
Chief of Department  
Natick Fire Department  
22 East Central Street  
Natick, MA 01760

Commissioner:

Daniel M. Henderson

**DECISION**

Pursuant to the provisions of G.L. c. 31 s. 2(b), the Appellant, Kevin M. Dangelo, (hereafter "Dangelo" or "Appellant"), seeks review of the decision and reasons proffered by the Appointing Authority in its delegated capacity, Town of Natick Fire Department (hereafter "Town" or "Department"), for the bypass of the Appellant for promotional appointment to the position of fire lieutenant in the Natick Fire Department. Fire Chief James A. Sheridan is the appointing authority for the Department. As the reasons for its decision, the Department cited positive reasons regarding the bypassing candidate on greater relevant experience and training

and negative reasons regarding the Appellant's limited relevant experience, a leave of absence from May 7, 2010 to November 22, 2010, while returning from that leave of absence for less than four months. The Appellant filed a timely appeal. A full hearing was held on July 11, 2011, at the offices of the Civil Service Commission (hereafter "Commission") The full hearing was digitally recorded and copies of the CD was provided to the parties. The parties submitted post-hearing proposed decisions.

### **FINDINGS OF FACT**

Eight (8) exhibits and a stipulation of facts from the pre-hearing conference were entered into evidence. Based upon the documents entered into evidence, the Commission's case file and the testimony of:

For the Appointing Authority:

- James A. Sheridan, Fire Chief of Natick Fire Department and appointing authority

For the Appellant:

- Kevin M. Dangelo, Appellant

**I make the following findings of facts:**

1. The Appellant took the civil service promotional exam for Fire Lieutenant in 2009 from which an eligibility list was established on May 22, 2009. He passed the exam with a score of 86. The Appellant's rank was 1 among those candidates willing to accept appointment on this certified eligibility list for Fire Lieutenant for 1 promotional appointment. The candidate selected for this promotion, Ronald Downing, (hereafter "Downing") ranked below the Appellant at the number 2 position on the eligibility list. The Department is a "delegated" appointed authority; meaning it has the authority delegated from the personnel administrator for the Commonwealth, Human Resources

Division or “HRD” to administer the selection process including the notification to the applicants of the reasons for bypass. *(Stipulation of facts)*

2. Fire Chief James Sheridan is the appointing authority for the Department. Chief Sheridan sent the Appellant a letter dated March 11, 2011 stating his reasons for bypassing him as a Fire Lieutenant and appointing Downing, the number 2 candidate on the eligibility list. As the reasons for its decision, the Department cited positive reasons regarding the bypassing candidate Downing’s greater experience and training and negative reasons regarding the Appellant’s limited experience, a leave of absence from May 7, 2010 to November 22, 2010, while returning from that leave of absence for less than five months. *(Exhibit 1 and testimony of Fire Chief Sheridan)*
3. By letter dated April 25, 2011, the Appellant filed a detailed response to the bypass decision at the Commission. *(Exhibit 2 and Testimony of Appellant).*
4. The Appellant’s detailed response letter shows an impressive list of specialized training team memberships and certifications for the Appellant. However, the Appellant did not adequately address the wide disparity in practical firefighting and fire company command experience between him and Downing and his recent return from a leave of absence, which were the primary reasons given by Chief Sheridan for the bypass. The Appellant’s letter repeats the fact that training and experience credits had already been factored in the civil service exam score, yet he still retained the top position on the eligibility list. The Appellant also touted his experience and certification as a paramedic. In sum, the Appellant’s letter is an expression of high individual training and accomplishment. *(Exhibit 2)*

5. Chief Sheridan felt that due to the Appellant's leave of absence from May 7, 2010 to November 22, 2010, (This return date is a mistake, the actual date is October 22, 2010) and returning from that leave of absence for a period of less than five months at the time of the bypass decision, gave the Appellant less than four years total experience and little or no actual firefighting experience during that time. He felt that Downing had much greater practical and relevant experience; specifically in fighting structural fires and command of a fire company. In the bypass letter to the Appellant, he also listed some of Downing's special training and assignment achievements, including, being an Instructor at the Mass. Fire Academy; being a Fire and Life Safety Instructor and leading Natick's CPR/AED Team. As a result, he felt that it was not in the best interest of the Town or the Department to appoint the Appellant instead of Downing. *(Testimony of Fire Chief Sheridan, Exhibits 1, 2& 8)*.
6. The bypassing candidate Downing had 11 years of uninterrupted service with the Natick Fire Department during which he fought numerous fires including structural fires. Downing also had 14 years of prior service with the Sherborn Fire Department, including 7 as a "Fire Officer". Downing's wide disparity or greater amount and quality of experience including his experience of being in charge of a fire company. This was a significant basis for his bypass decision. *(Testimony of Chief Sheridan, Exhibit 8)*
7. This promotional appointment was Chief Sheridan's first permanent fire lieutenant appointment since becoming Fire Chief 3 years earlier. He had made a few temporary fire lieutenant appointments, including that of the Appellant on November 18, 2009. *(Testimony of Chief Sheridan)*

8. Chief Sheridan testified that his letter addressed to the Commission and marked as Exhibit 8, explained in detail his reasons for bypassing the Appellant and appointing Downing. That letter was read into the record by Chief Sheridan. He believed that the wide disparity in total years of experience and specifically in firefighting and company command experience between the Appellant and Downing would make it unwise and unsafe to promote the Appellant at that time. He also believed that it would have been unfair to the Appellant to place him in that position of responsibility without the commensurate experience. The Appellant had less than 4 years of service with little or no actual firefighting experience (fighting structural fires). He has taken a 5 ½ month leave of absence and returned to the Department for less than 5 months at the time of the bypass decision. By contrast, the appointed candidate Downing had 11 years of uninterrupted service with the Department and had experience fighting numerous structural fires. Additionally, he had 14 prior years of experience with the Sherborn Fire Department, of which 7 were as a “Fire Officer”. *(Exhibits 2& 8, Testimony of Chief Sheridan)*
9. Chief Sheridan believes that going from being a member of a Fire Company to being a leader of a Fire Company is significantly different; and that appropriate practical experience is an integral factor in both developing and judging that leadership quality. *(Testimony of Chief Sheridan, Exhibits 2 & 8)*
10. Chief Sheridan was not aware of any of the exam scores of the three candidates on this eligibility list, just their rank on the list. The Appellant became aware of his own exam score but not the scores of the other two candidates. The Chief was also aware at the time of appointment that each candidate’s relevant training and experience credits were

counted in the final civil service exam score. He was also aware at that time that the Appellant also had 3 years prior service with the Sherborn Fire Department. He was also aware that the Appellant had some experience in fighting structural fires, but did not know the specifics. However, he was not aware that the Appellant had 40 hours of continuing education. *(Testimony of Chief Sheridan and the Appellant)*

11. The Appellant believes that the Chief's decision to bypass him for appointment was "arbitrary and capricious" based on the Chief's personal dislike of the leave of absence he had taken. *(Testimony and argument of Appellant)*

12. Chief Sheridan testified that he actually likes the Appellant and believes that he has a bright future in the Department once he achieves more qualifying experience for this supervisory position. He talked the Appellant out of resignation from the Department in April-May, 2010 when the Appellant intended to resign and move to North Carolina. The Appellant had actually sent his resignation letter to the Chief. The Chief then convinced him to take a leave of absence instead. However, the Appellant did actually relocate to North Carolina for that period of his leave of absence. *(Testimony of Chief Sheridan and Appellant, Exhibits 2 & 5)*

13. During the Appellant's leave of absence Chief Sheridan kept in contact and updated him. Chief Sheridan contacted the Appellant several times during the leave of absence to inform him that there would be an opening coming up, in case he wanted to return then. An opening would have to occur before the Appellant could return from his leave of absence. *(Testimony of Chief Sheridan and Appellant)*

14. The Appellant is intelligent, well trained and well educated. He also appears to have been an able performing member of the Department. He believes that his higher civil

service exam score should automatically qualify him for this promotional appointment, especially since it was the Department's past practice to appoint the highest ranking candidate from the eligibility list. The Appellant also admitted in his response letter and testimony that Downing had received a Departmental appointment to the Natick CPR/AED team, by qualifying due to experience. The Appellant lacked the qualifying time or experience for this appointment but claimed that this appointment by seniority "has little merit-based application" (*Testimony and demeanor of Appellant and Exhibits 2 & 7*)

15. Fire Chief James Sheridan, the appointing authority here, testified in a straight-forward manner. He was exact in his testimony, deferring to documentation if his memory of details failed. He is professional yet, down to earth, direct and engaging. He did not hesitate to affirm the positive aspects of the Appellant's career training and performance. I sensed no bias, prejudice or other negative attitude or motive against the Appellant. On the contrary, I sensed that he genuinely likes and respects the Appellant and believes that he has a bright future ahead of him in the Department. He felt that bypassing the Appellant was a difficult decision but the right one under these circumstances. I find Chief Sheridan to be a credible and reliable witness. (*Exhibits and testimony, Testimony and demeanor of Chief Sheridan*)

## **CONCLUSION**

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); *See Town of Watertown v. Arria*, 16 Mass. App. Ct. 331 (1983);

*McIsaac v. Civil Service Commission*, 38 Mass. App. Ct. 411 (2000); *Police Department of Boston v. Collins*, 48 Mass. App. Ct. 411 (2000); *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). The Commission has held in numerous decisions that its function is not one of substituting judgment for that of the Appointing Authority. *City of Cambridge*, 43 Mass. App. Ct. at 304; *School Committee of Salem v. Civil Service Commission*, 348 Mass. 696, 699 (1965). Massachusetts General Laws chapter 31 § 2(b) provides that “no administrator ... shall be reversed by the commissioner except upon a finding that such decision was not based upon a preponderance of evidence in the record.”

An action is “justified” when it is “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.” *City of Cambridge*, 43 Mass. App. Ct. at 304, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Commissioners of Civil Service v. Municipal Court of the City of Boston*, 359 Mass. 211, 214 (1971).

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. . . . In the task of selecting public employees of skill and integrity, appointing authorities are invested with broad discretion.

*City of Cambridge*, 43 Mass. App. Ct. at 304 (citations omitted).

Appointing Authorities are allowed sound yet significant discretion when choosing individuals from a certified list of eligible candidates on a civil service list. *City of Cambridge*, 43 Mass. App. Ct. at 304. The Commission’s role, while important, is relatively narrow in



scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Falmouth v. Civil Service Commission*, 447 Mass. 814, 824-826 (2006). In doing so, the Commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. *City of Beverly v. Civil Service Commission*, 78 Mass.App.Ct. 182, 188 (2010).

Such deference would appear to be especially appropriate with respect to the hiring of public safety officers such as police officers and here with a promotion to a firefighter leadership position. The personal and property loss consequences could be great if there is a failure of firefighting leadership or company command judgment, at certain structural fires.

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." *Town of Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). See *Commissioners of Civil Service V. Municipal Ct. of Boston*, 369 Mass. 84, 86 (1975) and *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-728 (2003).

Fire Chief Sheridan stated in his bypass letter to the Appellant that the reasons for bypass were a combination of negative reasons regarding the Appellant and positive reasons regarding the bypassing candidate Downing. Fire Chief Sheridan determined that the Appellant's experience deficiencies, especially in the area of fighting structural fires and fire company command rendered him an unwise and unsafe choice to be permanently promoted to a fire command position, fire lieutenant at this time. The Appellant's relative short amount of experience in the Department, less than 4 years; in conjunction with a recent return for a leave

of. The Appellant had little or no actual experience fighting structural fires in the Chief's assessment. Chief Sheridan found that the chosen candidate Downing had a significant amount of total years' experience as a firefighter, especially in fighting structural fires and being in command of a fire company.

Chief Sheridan testified that his letter addressed to the Commission and marked as Exhibit 8, explained in detail his reasons for bypassing the Appellant and appointing Downing. That letter was read into the record by Chief Sheridan. He believed that the wide disparity in total years of experience and specifically in firefighting and company command experience between the Appellant and Downing would make it unwise and unsafe to promote the Appellant at that time. He also believed that it would have been unfair to the Appellant to place him in that position of responsibility without the commensurate experience. The Appellant had less than 4 years of service with little or no actual firefighting experience (fighting structural fires). He has taken a 5 ½ month leave of absence and returned to the Department for less than 5 months at the time of the bypass decision. By contrast, the appointed candidate Downing had 11 years of uninterrupted service with the Department and had experience fighting numerous structural fires. Additionally, he had 14 prior years of experience with the Sherborn Fire Department, of which 7 were as a "Fire Officer".

The Chief determined that this lack of critical relevant experience indicated that the Appellant had been untested and unseasoned in this vital area. Conversely, the promoted candidate, Downing had a significantly greater amount of relevant experience. Downing was seasoned and tested in the area of fighting structural fires and also in fire command experience. Chief Sheridan felt this was a significant and a reasonable basis to appoint Downing, bypassing of the Appellant.

The Department has demonstrated a sufficient risk that the Appellant lacks the relevant experience to show that he is able to make the critical decisions and judgments at a structural fire scene as a fire company commander. Yet, Downing the promoted candidate did have the relevant experience and showed that he had made those critical decisions and judgments correctly in the past, to the satisfaction of Chief Sheridan.

There was no evidence presented to show any political favoritism or bias or other improper consideration.

Based on the totality of the facts and circumstances found by a preponderance of the credible evidence in the record, the appointing authority had sound and sufficient reasons for its decision to bypass the Appellant for promotional appointment to the position of fire lieutenant, for the reasons stated in its bypass letter.

For all of the above reasons, the Appellant's appeal under Docket No. G2-11-136 is hereby *dismissed*.

Civil Service Commission,



Daniel M. Henderson  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; McDowell, Stein, and Henderson, Commissioners), [Marquis absent], on November 17, 2011

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Kevin M. Dangelo (Appellant)

Fire Chief James A. Sheridan (Appointing Authority)

John Marra, Atty. (HRD)