

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

MATTHEW C. EDSON,
Appellant

v.

G2-05-195

TOWN OF READING,
Respondent

Appellant's Representative:

Richard O'Neill, Jr., Esq.
Richard O'Neill, Jr. and Associates, P.C.
2500 Main Street, Suite 12
Tewksbury, MA 01876
(978) 657-5600

Respondent's Representative:

Nathan L. Kaitz, Esq.
Morgan, Brown & Joy, LLP
200 State Street, 11th floor
Boston, MA 02109
(617) 523-6666

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b) the Appellant, Matthew C. Edson (hereafter "Appellant" or "Edson"), seeks review of the Personnel Administrator's decision to accept the reasons of the Respondent, Town of Reading (hereafter "Appointing Authority" or "Town"), bypassing him for promotional appointment to the position of Sergeant in the Town of Reading Police Department (hereafter

“Department”). A hearing was held on September 5, and October 11, 2007 at the offices of the Commission. As no written notice was received from either party, the hearing was declared private. The witnesses were sequestered. Five audiotapes were made of the proceedings.

FINDINGS OF FACT:

During the hearing, a total of nineteen exhibits (Exhibit 4-17 and 27-31)¹ were entered into evidence by the Appellant and the Appointing Authority. Based on the evidence, inferences and the testimony of:

For the Appointing Authority:

Peter Hechenbleikner, Town Manager;
Chief James Cormier, Police Chief;
Patricia Sherill, Lieutenant, Canton Police Department;
David Clark, Sergeant, Reading Police Department

For the Appellant:

Matthew C. Edson, Appellant;
Paul Timmons, Sergeant, Cambridge Police Department;
William K. MacKenzie, Lieutenant, Andover Police Department;
Mark O'Brien, Sergeant, Reading Police Department;
Thomas Murphy, Trooper, Massachusetts State Police;

I make the following findings of fact:

1. The Appellant has been employed by the Town of Reading as a permanent police officer since July 1, 1992. His Civil Service seniority date is July 1, 1992. The Appellant was assigned to the Uniform Patrol Division where his duties included cruiser and mountain bike patrols and enforcement of motor vehicle and criminal

¹ Exhibits 1-3 and 18-26 were marked for identification purposes only.

laws and the conduct of associated investigations and responses to call for service and assistance. Prior to this, Appellant was employed as a Police Officer in the Patrol Division with the Concord, New Hampshire Police Department from June 1990 to June 1992. He served as a Reserve Police Officer / Cadet-Dispatcher during the period from January 1989 to June 1990. (Exhibit 7, Testimony of Appellant)

2. The Appellant received his Bachelor of Arts Degree in Criminal Justice from Northeastern University in 1990, and received his Master of Science Degree in Criminal Justice from Anna Maria College in 1996. (Exhibit 7, Testimony of Appellant)
3. The Appellant has never been formally disciplined for any infraction of departmental rules and regulations during his tenure with the Department. (Exhibits and Testimony)
4. On or about October 16, 2004, the Commonwealth's Human Resources Division (HRD) conducted a Civil Service Promotional Examination to establish a list of eligible candidates for promotion to the rank of sergeant in the Reading Police Department. (Testimony)
5. The Appellant took the examination for the position of Sergeant and received a score of 87, ranking him first on the certified eligible list. (Exhibit 6)
6. The Town Manager, Peter Hechlenbleikner, is the Appointing Authority for the purpose of promotional appointments in the Town of Reading. On or about March 4, 2005, he requested a certification from an existing departmental promotional eligible list for the position title of Police Sergeant. (Exhibit 4)

7. On or about April 1, 2005 Certification Number 250219 was issued to the Appointing Authority for one permanent full-time Police Sergeant. The list contained the following persons and scores as they appeared on the certified list: Matthew C. Edson (87), first; David J. Clark (85), second; John T. McKenna (85), third. All signed that they were willing to accept for appointment to the position of Police Sergeant, Reading Police Department. (Exhibits. 5 and 6)
8. At the time of this promotion, John T. McKenna had seniority of eighteen (18) years of service in the Department; the Appellant had seniority of thirteen (13) years of service in the Department; David J. Clark had seniority of thirteen (10) years of service in the Department. (Testimony of Hechlenbleikner)
9. Both Clark and the Appellant possessed all of the necessary qualifications that were established as prerequisites for taking this competitive promotional civil service examination. Each of these competing candidates also received from HRD, the appropriate credit for their respective past relevant training and experience. HRD determines the appropriate credit, which is weighted, calculated and then added to the exam score so that the candidates did each receive an augmented final score which included training and experience credit. The Appellant did receive a higher final civil service score than did Clark.
(Administrative notice of G.L. c. 31§5, §21 and §22, PAR.06 (1) (b))
10. Town Manager, Hechlenbleikner testified that he was involved in the process for the selection of a candidate for promotion to Sergeant and has been involved in “about a dozen” promotional decision cases in the past. In this present matter, Sometime prior to the commencement of the interview process, the Town

Manager appointed then Sergeant James Cormier, who is now Chief, outgoing Chief of Police Silva, and Human Resources Administrator, Carol Roberts to serve with him on the interview panel, whose purpose it was to interview Appellant, Clark and McKenna. (Testimony of Hechlenbleikner)

11. Hechlenbleikner chose Sgt. Cormier to participate on the interview panel because the Town Manager knew that he would be appointing Cormier as Police Chief shortly and he wanted Cormier to be involved in the promotion process. (Testimony of Hechlenbleikner)
12. In accordance with the Reading Police Department Policy and Procedure Manual, the Criminal Division Commander, Lieutenant Robbins, is required to prepare a packet of police department related information on each potential candidate for review and consideration in the promotion process. No such informational packet was prepared regarding any of the candidates. (Testimony of Cormier)
13. Cormier testified that prior to the interview process all candidates were offered an opportunity to submit resumes or an application packet. Each of the candidates submitted a packet of information that included resumes for consideration. Cormier stated that he was not familiar with the personnel records of the three candidates, nor did he review them in advance or attempt to validate any of the information provided by any of the candidates in his promotional packet.
14. Hechlenbleikner testified that he reviewed the annual evaluations for each of the candidates. He stated that he did not make these evaluations available for review to the interview committee at the interviews; that these evaluations were kept in a separate file kept by the Director of Human Services. Cormier stated that he did

not review Appellant's evaluations as part of the interview process. However, Cormier was familiar with Clark's prior evaluations, since he, Cormier, had written them as Clark's supervisor. (Testimony of Hechlenbleikner and Cormier)

15. No evidence was submitted at this hearing by the Appointing Authority to substantiate that any member of the interview panel, other than the Town Manager, reviewed the candidates' personnel files or the annual performance evaluations conducted on behalf of each of the candidates (reduced to writing and filed with the Office of the Human Resources Administrator) prior to the commencement of the interview process. (testimony and Exhibits)
16. Neither Cormier nor Hechlenbleikner contacted the Appellant's immediate supervisor, Sergeant Mark O'Brien, to discuss his annual evaluations of the Appellant from the period 2000 through 2005 and O'Brien's recommendation that Appellant was fully qualified for promotion to the rank of Sergeant. (Testimony of Cormier and Hechlenbleikner)
17. On or about April 6, 2005 the panel conducted the interviews for promotional appointment to the position of Police Sergeant.² The interview panel members were not given a written set of questions and evaluation forms to complete prior to the commencement of the interview process. (Testimony of Cormier and Hechlenbleikner)
18. On or about April 23, 2005, Sergeant James Cormier was appointed Police Chief by Town Manager Hechlenbleikner. (Testimony of Cormier and Hechlenbleikner)

² As of April 6, Chief of Police Cormier was still employed by the Department in the position of Sergeant. Subsequent to the completion of the promotional process at issue in this case, he was appointed to the position of Chief of Police.

19. During the interview process, one of the questions asked by Chief Cormier concerned a hypothetical misuse of sick leave. Cormier was critical of Appellant's response to this question, but the Chief acknowledged later in his testimony that there is no sick leave policy in the Reading Police Department that "even outlines the appropriate uses of sick time" against which a reasonable judgment of a candidate's response could be balanced. (Exhibit 10 and testimony of Cormier)
20. Hechenbleickner testified that Appellant's performance during the interview was "very poor" and "the worst that I have ever seen".
21. Hechenbleickner testified that Clark's performance during the interview was "good" and "one of the best that I have seen" "...it was crisp and focused" "...It was an excellent interview.
22. Hechenbleickner testified repeatedly that the interview panels only provided him with advice and consultation, as the final decision was exclusively his to make. He was not bound in any way by the recommendation of the panel.
23. Hechenbleickner admitted in his testimony that in choosing Clark he picked the candidate with the least seniority of the three and the one tied for the second highest score. He admitted that seniority and civil service exam scores were objective measures and that his personal choice was subjective. However, he justified employing a subjective standard of measure over objective ones by claiming that he was "trying to pick the best candidate."
24. Hechenbleickner testified that he has never considered the use of audio-video equipment to record these interviews; so that there would be a verbatim record for later purposes of determining accuracy, impartiality and fairness.

25. Cormier testified credibly that Appellant appeared nervous at the interview, but that he also said that he thought that he was qualified for promotion to the position of Sergeant. Cormier felt that the Appellant was qualified, both before and after the interview.
26. Immediately after the interviews were concluded, the interview panel ranked the candidates. Two of the three panelists, Chief Silva and Cormier, ranked the candidates as follows: Clark, Edson and McKenna. Roberts ranked the candidates as follows: McKenna, Clark and Edson. At the end of this process, Town Manager indicated that he was going to appoint Clark but gave the panel a brief time for reflection. (Exhibit 11 and testimony of Cormier)
27. Town Manager Hechenbleickner's influence over the other members of the panel is not discounted. Hechenbleickner also had the prior opportunity to review all of the Department's records, prior to his selection of any criteria and/or process he would employ for measuring the competing candidates. Hechenbleickner chose a process here, involving an interview panel with a non-binding recommendation. Hechenbleickner retained the exclusive prerogative to make this promotional decision. The interview panel employed here was a mere formality or window dressing. The use of an interview panel with no real power might also be employed as a means of deferring responsibility while still maintaining control over the process. The Town Manager might not be the best qualified person to determine the relative ability, knowledge and skill of the officers competing for promotion to the position of police sergeant, and besides the civil service exam

had already determined that issue. (Testimony and exhibits, administrative notice)

28. The interview panel members were not given a written set of questions and evaluation forms, prior to the commencement of the interview process, for completion and calculation of respective performance.(Testimony and Exhibits)
29. The Town submitted no evidence to substantiate that each candidate was asked the same questions during the interview. (Testimony and Exhibits)
30. The Town submitted no evidence to substantiate that each candidate's answers were measured against a predetermined set of standard correct answers. The Town submitted no authoritative or recognized standard for determining the correctness or the relative quality of the candidates' answers. The Town did not produce reliable and authoritative evidence on which to determine the accuracy and/or weight of the candidates' respective answers. The answers were judged on impression and subjective feelings, not clearly stated right and wrong answers as would be found on a civil service exam. The interview process seems to have been overly subjective in its design and scoring. It was closer to a personality contest or the hiring of a salesman. This interview process and candidate evaluation did not measure the knowledge, abilities and skills which are rationally related to the position of police sergeant. (Testimony and Exhibits)
31. The Town did not produce sufficient evidence to objectively base a determination that the two candidates' respective answers to interview question were right or wrong or better or worse, comparatively. The make-up of the interview panel and the prior familiarity of some of the members with Clark and Clark's putative

background information created an unfair advantage for him. The result is that the Appellant did not receive a fair opportunity for consideration. (Testimony and Exhibits)

32. On or about April 9, 2005 the Appointing Authority apparently notified the Human Resources Division (HRD) that it was bypassing the Appellant for promotional appointment for the following reasons: David J. Clark was selected for the position of police Sergeant because he has demonstrated supervisory skills by being both a Field Training Officer [appointed position] for new officers and a Local Instructor for the Rape Aggression Defense (RAD) Program for the Reading Police Department. He was also a Squad Leader for the Military Police in the United States Army and Squad Leader at the Police Recruit Academy. David also exhibited a great deal of personal motivation by completing a Master of Science in Criminal Justice Administration while continuing to be a very productive police officer for the Town of Reading. David also showed a great deal of maturity and self-confidence during the interview process. (Exhibit 16)
33. HRD apparently approved the Town's reasons for bypass on April 15, 2005, by sending a. form letter to the Appellant with a copy to the Town. On or about June 7, 2005, the Appellant filed a Bypass Appeal with the Commission pursuant to G.L. c. 31, §2(b). (Exhibits 5, 13, 16 and 17)
34. No representative of the personnel administrator, (HRD) appeared at this hearing and no direct evidence was produced at this hearing by the personnel administrator. (Exhibits and testimony, Administrative notice.)

35. The Town's stated reasons for the bypass of the Appellant, besides interview performance, mostly involved the claim that the bypassing candidate Clark possessed past relevant training and experience which was superior to the Appellant's. The Town failed to produce any evidence to show that the Appellant lacked the ability, knowledge and skills to perform as a police sergeant. The Town also failed to introduce any evidence to show that there was even a single past incident or circumstance, in which the Appellant failed to exhibit the proper ability, knowledge or skill required. (Exhibits and testimony)
36. The Appellant testified credibly and in a forthright manner as to his educational background and his work experience qualifying him for promotion to the rank of Sergeant. He stated that he was the Department's representative as a member of the NEMLEC Regional Response Team (RRT) and was the designated Officer In Charge of the NEMLEC RRT Mountain Bike Unit. He was a certified weapons instructor for the Department in the use of the Monadnock Expandable Baton and had been a certified instructor for the COBWEB Program for the Massachusetts Criminal Justice Training Council from May 1997. This program provided classroom and practical application training in the use of the mountain bike for tactical and patrol purposes. He was also a certified Emergency Medical Technician and instructed police officers and civilian personnel in emergency medical techniques, has assisted with and participated in numerous community related activities and is a member of the Department's Honor Guard and its Uniform Committee. (Exhibits 7 and 8 and testimony of Appellant)

37. The Appellant has initiated several community policing activities, including the Reading Police Youth Mountain Bike Club. The Appellant has assisted with and participated in numerous community related activities, including the Citizen Police Academy and Ride Along Program; the Governor's Auto Theft Task Force Glass Etching Program; multiple DARE activities; Annual Children's Holiday Party; Senior Citizen Ham and Bean Dinner; and the Special Olympic Basketball Tournament and Special Olympic Challenger Baseball.(Testimony of Appellant)
38. Officer Clark testified as to his educational background and his work experience as a member of the Department. He stated that he became employed as a Police Officer with the Department in 1995 and was appointed by the Chief of Police as Field Training Officer to assist with other officers so designated in the training and supervising of new officers in patrol techniques, policies and procedures. He developed and implemented the Rape Aggression Defense (RAD) Program in Reading and serves as the program's lead instructor. He is trained and in CPR, Automatic External Defibrillator (AED'S) and is a First Responder Instructor. He instructs department personnel in the use of AED'S and is a member of the Department's Honor Guard and its Uniform Committee. (Exhibit 27 and testimony of Clark)
39. Officer Clark testified that he served as a "squad leader" and "platoon leader" while on active duty in the United States Army from June 1989 to July 1992. He stated he served as a "squad leader" while serving with an advanced party at Guantanamo Bay Cuba and acted as a "platoon leader" on a couple of occasions

while at Guantanamo Bay and a couple of times back on base at Fort Carson, Colorado when he returned from duty during Operation Desert Storm.

40. Hechlenbleikner testified that there was something in Officer Clark's resume that indicated that he had been a squad or platoon leader in the military. Under cross-examination, however, he corrected his testimony to say that he could not recall whether it was part of the personnel file or was part of the interview.
41. Hechlenbleikner admitted in testimony that he was not familiar with military terminology and process. He did not know what a "Form DD214" was. He did not attempt to verify any of the military background claimed by Clark.
42. On cross-examination, Cormier acknowledged that he did not know the source of the information about Clark being a "platoon or squad leader" in the Army. He admitted that he did not attempt to validate the information provided by Clark that he had served as a "platoon or squad" leader while serving in the United States Army; that he did not know that the Police Academy rotated the position of Squad Leader during the 22 week Academy Training Period and that he did not know Clark had only served as a squad leader for a portion of the 22 week period. Cormier also admitted that Clark's past experience as a "platoon and squad leader" was a factor in the panel's scoring of Clark in the area of leadership.(Testimony of Cormier)
43. Lieutenant Patricia A. Sherrill, a staff member at the Police Training Academy attended by Officer Clark. She testified as to her recollection of the period of Clark's service as a squad leader at this Academy, revising her recollection that Clark did

not serve as a squad leader for the full 22 week training period, and that he was not selected to serve in the position of squad leader by Academy staff.

44. Cormier, a member of the interview panel, was the Sergeant responsible for conducting the annual performance evaluations for Officer Clark from 1995 through the end of April 2005. Cormier testified that he had worked with Officer Clark on a regular shift and that Officer Clark worked as a subordinate to him in his capacity as a supervisor most of the time he was a Sergeant. In his evaluation of Officer Clark, undertaken as part of his role as Sergeant and as Officer Clark's supervisor, Chief Cormier noted that in general the evaluations for Officer Clark were always very positive. When Officer Clark was assigned calls, he was a person that Chief Cormier could depend on to handle calls and take control when necessary. (Ex 27 and testimony of Cormier)
45. Sergeant Mark O'Brien, of the Reading Police Department, testified credibly and in a forthright manner concerning his positive annual evaluations of the Appellant. He had been the Appellant's supervising officer from 2000-2005. His recommendation and opinion was that the Appellant was well qualified to be promoted to the rank of Sergeant.
46. Sergeant Paul Timmons of the Cambridge Police Department, testified credibly concerning Appellant's work as an instructor in the COBWEB program and his qualifications for appointment to the position of Sergeant in the Department.
47. Lieutenant William MacKenzie, of the Andover Police Department, testified credibly concerning Appellant's service as a member on the NEMLEC Regional

Response Team (RRT) and his service as the designated Officer In Charge of the NEMLEC RRT Mountain Bike Unit.

48. Trooper Thomas Murphy, of the Massachusetts State Police, testified credibly concerning Appellant's efforts to assist new officers in gaining an "on the job" understanding of departmental policies and procedures, the application of Massachusetts General Laws, and the giving of general advice regarding patrol techniques and legal applications to situations, to the extent that he was considered as a "go to guy" for these purposes.
49. Sergeant Mark O'Brien, Sergeant Paul Timmons, Lieutenant William MacKenzie and Trooper Thomas Murphy were each straight forward and professional witnesses. They each testified in detail of their professional relationship and work experience with the Appellant. They each held the Appellant in high esteem. They took the time to appear and testify on his behalf and to affirm their belief that he was talented, knowledgeable, well trained, dedicated and possessed the ability to perform the duties of police sergeant.(Testimony)

CONCLUSION:

In reviewing hiring and promotional decisions, The Commission seeks to ensure that basic merit principles prevail in the selection process. Chapter 31 defines "basic merit principles" as requiring that employees be selected and advanced on the basis of their relative ability, knowledge and skills, that they are assured fair and equal treatment in all aspects of the personnel administration, and that they are protected from arbitrary and capricious actions. The main method by which the Commission and the Human

Resources Division (HRD) ensure the application of basic merit principles in the hiring and promotional process is through the use of civil service exams and eligibility lists.

The eligibility lists are compiled, except for preferences, mainly on the basis of civil service examination scores. However, the competing candidates must first “pass” the exam before they receive consideration. The personnel administrator, prior to the exam, determines the entry requirements for qualification to take the exam and the passing requirement for the exam. The candidates also receive credit for their relevant training and experience. This credit is calculated by HRD and added on to the candidate’s exam score for a final civil service score.

Both Clark, the bypassing candidate here and the Appellant possessed all of the necessary qualifications that were established by the administrator as prerequisites for taking this competitive promotional civil service examination. Each of these competing candidates also received from HRD, the appropriate credit for their respective past relevant training and experience. HRD determines the appropriate credit, which is weighted, calculated and then added to the exam score so that the candidates did each receive an augmented final score which included training and experience credit. The Appellant did receive a higher final civil service score than did Clark. See G.L. c. 31 § 21 and §22, PAR.06 (1) (b).

The Town mentions in its statement to HRD, Clark’s “Master of Science” degree, as a reason for his selection, however, educational attainment is not a valid basis for bypass since the education attainment has already been factored in applicant’s score and inappropriate double counting would result were it again cited to justify the bypass.” MacHenry v. Civil Service Commission, 40 Mass. App. Ct. 632 (1995). The Town also

stated to HRD that Clark being a Field Training Officer and instructor for the RAD program in the Department as a reason for bypassing the Appellant. However the Appellant's Department credentials and activities appear to be at least as impressive as Clark's. The Town's appraisal here seems to be subjective and unfairly slanted in favor of Clark.

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 vs. 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 vs. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, §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 probable than not sound and efficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991). 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).

Applying these applicable standards in the circumstances of the present case, the Commission concludes that the Town of Reading's bypass of the Appellant for appointment to the position of police sergeant did not comport with basic merit principles resulting in harm to the Appellant's employment status through no fault of his own

Appointing Authorities are rightfully charged with the burden of producing reliable evidence to show that sound and sufficient reasons existed to justify choosing an individual whose name appeared lower on a certified list of eligible candidates. 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 Ser. V. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App. Ct. 726, 727-728 (2003). 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.

The Commission is empowered to overturn an Appointing Authority's bypass decision based on a finding that the reasons given for the bypass were vague, untrue, not applied equally to the bypassed candidate, are incapable of substantiation or are a pretext for other impermissible reasons. Reilly and McCarthy v Lawrence Police Department, 13 MCSR 144, 146 (2000) When, as here, the Appointing Authority considers subjective factors in addition to the written examination score, the Commission must determine

whether any such interview process has subverted the purposes of G.L. c. 31, in order to ensure fairness and impartiality in the selection process for promotion without infringing on the prerogatives of the Appointing Authority.

Chief Cormier also testified concerning the qualifications of Officer Clark for promotion. He testified that he had worked with Officer Clark on a regular shift and that Officer Clark worked as a subordinate to him in his capacity as a supervisor most of the time he was a Sergeant. With regard to Chief Cormier's "familiarity" and "working relations" with Officer Clark; Chief Cormier testified that as of April 2005, he was aware that Clark was a Field Training Officer and had been so for some time; that Officer Clark was an instructor in the Rape Aggression Defense(RAD) program and had been instrumental in establishing the program in the community; that prior to becoming a police officer, Officer Clark had served in the Army, had attained the rank of Sergeant and was a "platoon leader"; that when Officer Clark was at the Police Academy he was a "squad leader" and had taken on a leadership role within the Academy as well. He also noted that Officer Clark had attained a Masters Degree in Law Enforcement while he was employed in the Reading Police Department.

Cormier's prior close working relationship with Clark and his independent knowledge of Clark's background created an unfair advantage for Clark. This advantage for Clark should have been some how counter balanced by Cormier and the panel but instead it seems that the panel avoided garnering any positive information on the Appellant's behalf. Appointing Sergeant O'Brien to the interview panel would have been some effort to balance the panel.

In this matter, the Town has not sustained its burden of proving reasonable justification for its bypass of Appellant. First, the Appellant presented credible evidence that he is at least equal in qualifications and experience as a police officer to the qualifications and experience of Officer Clark as well as being more senior than Officer Clark in terms of years of service with the Department. The Appellant has demonstrated by a preponderance of the evidence that in addition to his qualifications and experience, he has been active in the community affairs of the Town of Reading, that he is professionally active within the law enforcement community specifically, is well respected in the department as well as the local community and has a Master's Degree in Criminal Justice.

Second, and equally significant, the selection process in this case was flawed in a number of ways. No evidence was submitted by the Appointing Authority to substantiate that any member of the interview panel, other than the Town Manager, reviewed the candidates' personnel files or the annual performance evaluations conducted on behalf of each of the candidates prior to the commencement of the interview process. It appeared that no effort was ever made by any panel member to validate the authenticity of any of the information or documentation considered by the panel ranking each of the candidates for promotion. Further, then Sergeant and now Chief Cormier, who conducted the annual evaluations of Officer Clark that were at issue in this proceeding interviewed, rated and ranked the same officer, Clark, after having evaluated Clark's job performance for some ten years. While Cormier testified from memory and personal experience with Clark he also testified that he had failed to secure comparable information of on the job performance of both the Appellant and Officer McKenna. The process allowed then

Sergeant Cormier, who had little or no interaction with Appellant or McKenna, to rank those candidates in the same way as Officer Clark, a candidate with whom he had worked and supervised every day for some ten years.

The fact that Officer Clark may have served as a “Squad Leader”, while in Army and while at the Police Academy, was neither clearly defined nor clearly established. The Town made no serious attempt to verify this information and was not even sure of the source of this information. However it was clearly established that the Town relied on that information as reasons for bypassing the Appellant for promotion. The Town claims that Clark allegedly showed a great deal of maturity and self-confidence in his interview yet offered scant support for that subjective determination.

The Town made no serious effort to create and preserve a reliable record of the interview and evaluation process. There is no effective method now, to backtrack and recreate such a record. The Town offered insufficient substantiation of their claimed reasons for bypassing the Appellant. The process employed by the Town to gauge the candidates respective interview performance was seriously flawed and amounted to mere window dressing for the Town Manager’s absolute prerogative to choose the candidate he decided was “best”.

The later establishment of a clear and accurate record of the interview aspect of the promotional process is difficult. The difficulty increases over time, with the fading of memories. Sometimes faded memories are not sufficiently revived, even with the assistance of then contemporaneous notes and other memoranda. Subsequently, the Commission is faced with this problem during a hearing and may be unable to properly review the accuracy and fairness of the interview process and results. Clearly, the best

evidence of the interview process is a verbatim, accurate and objective record of the interviews, such as an audio-video recording. See minority opinion of Daniel M. Henderson in Dufresne v. Town of Webster, (G1-04-492), dated February 25, 2008.

The Appellant was the most qualified candidate, by appearing highest on the certified eligible list, having scored the highest on the civil service exam. The Appellant had greater seniority in the Department than the bypassing candidate, Clark.

The interview procedures conducted in this matter was so flawed as to produce unsubstantiated and therefore unjustified results.

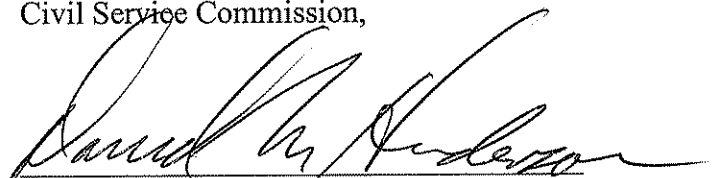
The Appellant was not provided a fair and equal opportunity for consideration.

For all of the above reasons, the appeal under Docket No. G2-05-195 is hereby *allowed*.

The Commission, after hearing finds that the Appellant's rights were prejudiced through no fault of his own and, pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, orders the Human Resources Division, (HRD) to take the following action:

Place the name of Matthew Edson, forthwith, at the top of the existing and/or next certification list of individuals eligible for promotion to the rank of Police Sergeant in the Town of Reading Police Department, which is requested by the Town of Reading from the Human Resources Division and from which the next promotional appointment to the position of police sergeant in the Reading Police Department shall be made by the Town, so that he shall receive at least one opportunity for consideration. If Matthew Edson is selected for promotion to the position of police sergeant, then his seniority date for civil service purposes only, shall be established back to the date of this improper bypass.

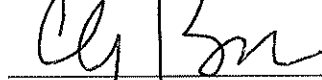
Civil Service Commission,



Daniel Henderson, Commissioner

By 3-2 vote of the Civil Service Commission (Bowman, Chairman No, Henderson Yes, Marquis No, Stein Yes and Taylor Yes, Commissioners) on August 21, 2008.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:

Richard O'Neill, Jr., Atty.

Nathan L. Kaitz, Atty.

John Marra, Atty. HRD

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MATTHEW EDSON,
Appellant

v.

G2-05-195

TOWN OF READING,
Respondent

DISSENT OF CHRISTOPHER BOWMAN AND DONALD MARQUIS

We respectfully dissent.

The instant appeal involves a promotional appointment to the position of sergeant in the Town of Reading (hereinafter "Town"). The Appellant and the selected candidate were separated by two points on the certification issued to the Town by the state's Human Resources Division (hereinafter "HRD"): the Appellant had a score of 87 and the selected candidate had a score of 85.

In its decision, the majority concludes that, "[t]he Appellant was the most qualified candidate, by appearing highest on the certified eligible list, having scored the highest on the civil service exam." (Decision at Page 22) We disagree. The fact that the Appellant scored two points higher on a civil service examination does not demonstrate that he was the most qualified candidate for the position of sergeant. (See Francis E. Murphy, III v. Cambridge and Mass. Civ. Serv. Comm'n, No. 03-0815, Middlesex Super. Court (2004). (City was not required to given any particular weight to the 8-point score differential on the civil service exam for two candidates competing for the position of Fire Chief.)

In the instant case, the Town chose to conduct interviews and consider factors beyond the civil service scores of the respective candidates. The authority to interview candidates is inherent in G.L. c. 31 § 25. Flynn, 15 Mass. App. Ct. 206, 208 (1983). The interview panel consisted of Town Manager Peter Hechenbleikner, the outgoing Police Chief, the incoming Police Chief (Chief Cormier) and the Town's Human Resources Director.

Both Town Manager Hechenbleikner and Police Chief Cormier offered testimony before the Commission regarding the interview performance of the Appellant and the selected candidate, David Clark. The Town Manager testified that the Appellant's interview was one of the poorest he had seen in his twenty-one (21) year career as Town Manager. He found that Edson was "nervous, fidgety, confused and rambled." Chief Cormier, whose testimony the hearing officer found credible, confirmed that the Appellant was extremely nervous during his interview.

In contrast to the interview of Officer Edson, The Town Manager testified that the interview of Officer Clark was outstanding describing Clark as "crisp and focused." Officer Clark presented a relaxed and focused demeanor and answers that were straight forward. Chief Cormier's testimony before the Commission was consistent with the four pages of notes he took during the interview, admitted into evidence as Exhibit 11. At the end of the interviewing process, all four members of the interview panel ranked David Clark above the Appellant.

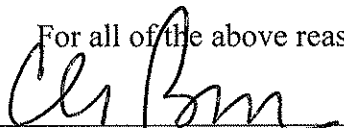
The majority discounts this interview process, stating "[t]he process employed by the Town to gauge the candidates respective interview process was seriously flawed and amounted to mere window dressing for the Town Manager's absolute prerogative to choose the candidate he decided was 'best.'" It is undisputed that the Town Manager in this case is the Appointing Authority and is statutorily charged with making the final decision regarding the promotion in question. Moreover, the evidence before the Commission, including the credible testimony of Chief Cormier, does not support this sweeping condemnation of the interview process. The

Town was entitled to give due weight to the performance of the candidates during the interview process in this case and the majority erred by concluding otherwise.

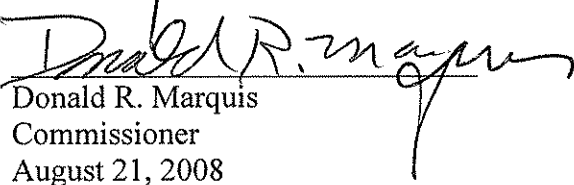
The majority also discounts the weight of other positive reasons stated by the Town for the selection of Sergeant Clark; partly because “no effort was ever made by any panel member to validate the authenticity of any of the information or documentation considered by the panel in ranking each of the candidates for promotion.” While this conclusion might have some validity had the Town chosen to investigate or verify data of only the Appellant, the Town had no obligation to investigate or verify the information supplied by the candidates. This conclusion also appears to ignore the fact that both the outgoing Police Chief and the incoming Police Chief were members of the interview panel.

Finally, it is not disputed that both the Appellant and Sergeant Clark were both “qualified” for the position of sergeant, and that they both have accomplished careers in law enforcement. However, after weighing various factors and conducting an interview of the candidates, the Town found that David Clark was a stronger candidate for the promotional appointment to Sergeant. The record shows that the Town presented sound and sufficient reasons for this decision which were based on sound policy considerations. It is not within the authority of the Commission “to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Cambridge v. Civ. Serv. Comm’n, 43 Mass. App. Ct., (1997) at 305.

For all of the above reasons, we respectfully dissent.



Christopher C. Bowman
Chairman



Donald R. Marquis
Commissioner
August 21, 2008