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NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

## COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

TOWN OF READING vs. CIVIL SERVICE COMMISSION &amp; another. [FN1]

+09-P-2221+

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

Matthew Edson appeals from an order of the Superior Court which granted the motion of the town of Reading (town) for judgment on the pleadings. The judge determined that the decision of the Civil Service Commission (commission) was not supported by substantial evidence, and was therefore arbitrary and capricious. We affirm.

The judge determined that the key factual findings made by the commission were not supported by substantial evidence. First, the commission found that the selection process employed by the town was mere 'window dressing' for the town manager, as the appointing authority, to choose a sergeant because only he reviewed the candidates' employment files. As the judge found, the appointing authority testified several times that his general practice in asking other Reading officials to participate in candidate interviews is meant to assist him in making his appointment decisions, because he relies on their opinions and expertise. With the interview panel's input, he chooses an initial candidate, and then he waits at least a day or two before he makes an appointment. This permits him and the other members of the interview panel to fully consider the appointment, which in the end he, as the appointing authority, must make. If the interview process had been merely 'window dressing' there would be no need to go through such a process.

In addition, even though only the appointing authority reviewed the personnel files of the candidates, and even if the information contained therein was not reviewed for accuracy, these facts would have affected the candidates equally. Edson points to nothing in the personnel records to illustrate any unfairness. [FN2]

Second, the commission found that the interview process was overly subjective because the candidates' answers were not measured against standard responses and because it did not measure abilities, knowledge, and skills rationally related to the sergeant position. The judge determined that this finding was not supported by substantial evidence. We agree. As noted by the judge, there is no commission policy requiring that interview panels compare candidates' answers to standardized responses. Nor is there a town policy to that effect. Although there is a police department policy regarding the use of standardized questions, the evidence demonstrated that the appointing authority is not bound by that policy.

If standardized questions measured against model answers was all that was permitted, there

would be no need to provide the appointing authority with any discretion to make a choice, as candidates would be chosen based on scores alone. However, this is not the case. See *Cambridge v. Civil Service Commn.*, 43 Mass. App. Ct. 300, 304-305 (1997) ('In the task of selecting public employees of skill and integrity, appointing authorities are invested with broad discretion'). Interview results have an inevitable subjective component, but not one that delegitimizes the process. How a candidate responds to questions and how he interacts with those posing the questions are reasonably related to their skills and ability to perform the responsibilities of a police sergeant. A police sergeant must not only possess supervisory skills, but must be able to interact with the public. Here, there was a wide disparity in the performance of Edson and David J. Clark at their interviews. Edson appeared nervous and confused whereas Clark was sharp and focused. [FN3] Edson has not challenged this finding. Also, the appointing authority thought that Clark's performance was one of the best he had seen, and Edson's had been one of the worst.

Finally, the commission found that Cormier's presence on the interview panel created an unfair advantage to Clark because Cormier had directly supervised and evaluated Clark for a number of years. The judge determined that this finding was not supported by substantial evidence. We agree.

As the judge found, there is no evidence in the record that Cormier was biased in Clark's favor because he had been his supervisor. The evidence revealed that Cormier had worked with all three candidates and that prior to the interviews, Cormier thought that all three candidates were sergeant material. Cormier's testimony indicated that his ranking of Clark ahead of Edson was based in large part on how well they did or did not do during the interviews, not on his level of familiarity with them. Even if Cormier was biased in favor of Clark, both Roberts and Silva ranked Clark ahead of Edson as well. In addition, the appointing authority also chose Clark ahead of Edson. Thus, there is no substantial evidence to support the commission's finding that Clark benefitted from Cormier's participation on the interview panel. In the end, the commission overruled the appointing authority's choice between two qualified candidates where that choice had been reasonably justified. By doing so, the commission acted arbitrarily and capriciously. See *Cambridge v. Civil Service Commn.*, 43 Mass. App. Ct. at 304 (the commission does not have the authority 'to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority').

*Judgment affirmed.*

By the Court (Grasso, Trainor & Meade, JJ.),

Entered: November 4, 2010.

FN1. Matthew Edson.

FN2. It is also noteworthy that the other members of the panel worked closely with and supervised the candidates, including the out-going police chief who approved the evaluations of each candidate.

FN3. Edson's answers to questions regarding sick time abuse and diversity were not in line with the police department's philosophy. Also, Edson spoke negatively about the other candidates, which made the interview uncomfortable.

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