

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900

MATTHEW FAIRCHILD,

Appellant

v.

CITY OF SOMERVILLE,

Respondent

G1-21-097

Appearance for Appellant:

John J. Green, Esq.
15 Foster Street
Quincy, MA 02169

Appearance for Respondent:

Timothy D. Zessin, Esq.
KP Law
101 Arch Street – 12th Floor
Boston, MA 02110

Jason Piques, Esq,
Assistant City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Paul M. Stein

DECISION ON MOTION FOR LIMITED RECONSIDERATION

The Appellant, Matthew Fairchild, acting pursuant to G.L. c. 31, § 2(b), appealed from the decision of the City of Somerville (Somerville) to bypass him for appointment to the position of a reserve police officer with the Somerville Police Department (SPD). By Decision dated August 11, 2022, the Commission allowed his appeal and ordered Somerville to provide Mr. Fairchild with another opportunity for appointment consistent with the Commission’s Decision. Somerville moved for limited reconsideration of the Commission’s Decision, asserting that the Commission’s

Order of Relief was overly broad and, in effect, amounted to a total freeze on all future appointments to the SPD. Mr. Fairchild opposed Somerville's motion.

After careful review, a clarification of the relief ordered is warranted.

In particular, the Commission did not intend that the Order of Relief operate as a freeze on future appointments to the SPD, but only meant to ensure that, upon Mr. Fairchild's next consideration, if he were unlawfully bypassed again, the Commission would not be limited solely to granting him a third opportunity for consideration in a future hiring cycle, but would have the option, should the circumstances so warrant, to issue an order that would result in his immediate appointment. As the Decision indicated, a successful bypass appellant is not typically awarded such extraordinary relief, but, especially in cases in which an appellant has been unlawfully bypassed more than once, the Commission has the discretion to grant such relief when the traditional relief (placement at the top of the next certification) might put the appellant on a potentially endless treadmill, which would not fully redress the violation of the appellant's civil service rights.

The Commission does note Mr. Fairchild's concern that Somerville's motion asserted:

"It is conceivable that there will be legitimate reasons for a future by-pass [of Mr. Fairchild]. It is furthermore conceivable that the Commission will find that the City had sound and sufficient reasons for the bypass of the appellant [Mr. Fairchild]."

The Commission agrees that, in any future consideration, Somerville must have the discretion generally afforded to an appointing authority to satisfy itself that Mr. Fairchild, as any applicant for a sensitive law enforcement position such as an SPD police officer, possesses the essential qualifications and is presently suitable for appointment. The Commission's Decision was not meant to interfere with the proper exercise of that discretion. Thus, the Commission's Decision provides that Mr. Fairchild cannot be bypassed for any of the reasons that the Commission found

unlawful—but Mr. Fairchild may be required to complete an updated application and demonstrate his continued suitability for appointment as an SPD police officer and, if new facts are established about Mr. Fairchild arising since he was last considered for appointment provide “sound and sufficient reasons” for another bypass, the Commission Decision did not intend to prevent Somerville from doing so.

However, the facts presented to the Commission lead to the strong inference that, after a thorough vetting by the SPD and the Mayor, Mr. Fairchild was found to be a highly qualified candidate with a promising future with the SPD. While anything is “conceivable”, the possibility that Somerville would now find Mr. Fairchild unsuitable seems remote and, should it come to pass, the Commission concluded that it would deserve heightened scrutiny. Thus, the Commission Decision provided that Mr. Fairchild would have an opportunity to receive an expedited appeal to the Commission and, should he prevail on such an appeal, immediate relief would be available.

For these reasons, the Order of Relief will be modified to clarify that Somerville may continue to make appointments to the SPD in the ordinary course, save only that, in any appointment from the next certification on which Mr. Fairchild’s name appears first, if he is bypassed, that at least one of the lower ranked candidates must be appointed as a temporary police officer, pending the decision on any future appeal by Mr. Fairchild. This modification should enable Somerville to fill vacancies as they arise in the SPD while preserving for the Commission the option to order Mr. Fairchild’s appointment without delay should he prevail in a future bypass appeal.

The Appellant argues, in effect, that making any modification to the Commission’s Order of Relief would vitiate the Commission’s mandate to Somerville that it comply with civil service law. The Commission is confident that Somerville does understand that, in future civil service

appointments, it must strive to “get it right” and the Commission finds no reason to doubt that Somerville will use its best efforts to do so.

Accordingly, Somerville’s Motion for Limited Reconsideration in Appeal No. G1-21-097 is ***allowed, in part***. The Order of Relief set forth in the Commission’s Decision dated August 11, 2022 is hereby amended to provide the relief forth below. Except as so modified, the Commission’s Decision in Appeal No. G1-21-097 remains in full force and effect.

Amended Order of Relief

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby ORDERS that the Massachusetts Human Resources Division and/or the City of Somerville, in its delegated capacity, take the following actions:

A. Place the name of Matthew Fairchild at the top of all current and future certifications for appointment to reserve and/or permanent, full-time police officer with the Somerville Police Department (SPD) so that he is first in line for appointment to the next available vacancy in a position as a permanent, full-time SPD Police Officer until he is so appointed or bypassed.

B. Mr. Fairchild shall not be bypassed for appointment to the position of a reserve and/or permanent full-time SPD Police Officer for any of the reasons found insufficient in this Decision or based on any other facts that were known or reasonably should have been known at the time of his bypass in February 2021.

C. If Mr. Fairchild is bypassed for appointment as a permanent, full-time SPD Police Officer, at least one candidate appointed from that certification shall be made as a temporary appointment until such time as: (1) Somerville has provided Mr. Fairchild with reasons for bypass; (2) Mr. Fairchild has had the opportunity to file an appeal with the Commission and receive an expedited hearing; and (3) the Commission has issued a final, expedited decision related to the bypass.

D. If and when Mr. Fairchild is appointed to the position of a reserve and/or permanent full-time SPD Police Officer, Mr. Fairchild shall be given a retroactive civil service seniority date that is the same civil service seniority date he would have received had his appointment to the position of an SPD Reserve Police Officer been confirmed in February 2021 as the top ranked candidate on Certification 06794.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair, Stein & Tivnan, Commissioners) on September 8, 2022.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

John J. Greene, Esq. (for Appellant)

Timothy D. Zessin, Esq. (for Respondent)

Jason Piques, Esq. (for Respondent)

Michele Heffernan, Esq. (HRD)

Regina Caggiano, (HRD)