

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place Room 503
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LAURENE FLAHERTY
and SHEILA McCARTHY,
Appellants

G1-08-184
G1-08-185

v.

HUMAN RESOURCES DIVISION
and BOSTON POLICE DEPARTMENT,
Respondents

Appellants' Attorney:

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**DECISION ON MOTIONS FOR RECONSIDERATION FILED BY BOSTON POLICE
DEPARTMENT AND HUMAN RESOURCES DIVISION**

Procedural Background

The Boston Police Department (hereinafter "BPD") and the state's Human Resources Division (hereinafter "HRD"), have asked the Civil Service Commission (hereinafter "Commission") to reconsider its 3-2 decision (hereinafter "majority decision") on the

Appellants' Motion for Summary Decision. The Appellants filed an Opposition to the Motions for Reconsideration.

The majority decision, which adopted as its own all of the Appellants' facts, statements, arguments and conclusions as contained in the Appellants' brief to the Commission, ordered the BPD and HRD to begin immediately processing the Appellants for the current police academy or, in the alternative, to place their names at the top of the eligibility list for appointment to the position of police officer, so that their names appear at the top of the existing certification and/or the next certification that the Boston Police Department requests from HRD.

Brief Factual Overview

In April 2008, the BPD gave conditional offers of employment to 126 applicants in an effort to fill 80 vacancies. These candidates were drawn from multiple "certifications" that BPD requested from HRD. These certifications included a "general certification"; a "reemployment certification"; a "CTO certification" (individuals whose names appeared on the list as a result of a court order); a "female certification"; a "Spanish certification"; and a "Haitian Creole" certification. All of these certifications were sent to BPD on November 16, 2007.

The Appellants were among 126 applicants given conditional offers of employment. Only 60 of these 126 applicants ultimately attended the police academy and one-third of those who attended the academy were unable to finish. As a result of the unusually high attrition rate, the Boston Police Department sought approval from HRD to extend the general certification. Pursuant to Section 8 of the Personnel Administration Rules, HRD determined that there were sound and sufficient reasons for granting the request to extend

the certification. As a result, BPD continued down the general certification and considered individuals who had yet to receive consideration for appointment.

Standard for Reconsideration

Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), a Motion for Reconsideration 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.

Conclusion

After a careful review of the Motions for Reconsideration and the Opposition of the Appellants, I conclude that the majority decision overlooked significant factors that warrant a reconsideration.

First, the majority decision overlooked the fact that there are other individuals that are similarly situated to the Appellants that were not granted the same relief. Dozens of applicants, including veterans, whose names appear before those of non-veterans, were considered for employment as police officers. As in the Appellants' situation, some of them were ultimately disqualified for one or more reasons. If the BPD had not been granted the extension and, had instead, sought the issuance of a new certification from HRD, those veterans would have been reached before the Appellants and would have been given reconsideration above the Appellants, neither of whom is a veteran.

Second, given the number of veterans' names that would have appeared higher than the Appellants on a newly issued certification, an HRD affidavit shows that the

Appellants' names would not have been high enough to be included in the "2n+1" formula used in making civil service appointments.¹

Finally, after reviewing the Motions for Reconsideration and the Appellants' opposition, I conclude that the majority decision went beyond the limited issue of determining whether the BPD had sound and sufficient reasons for seeking an extension of the certification in question. The record shows that sound and sufficient reasons were provided to HRD, thus justifying the extension that was granted in this particular case.

For these reasons, I conclude that the Motions for Reconsideration should be allowed – and the majority decision reversed. The Motions for Summary Decision submitted by HRD and the Boston Police Department are *allowed* and the Appellants' appeals are hereby *denied and dismissed*.

Civil Service Commission

Donald R. Marquis
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - Yes; Henderson, Commissioner – No; Marquis, Commissioner – Yes; Stein, Commissioner, - Yes and Taylor, Commissioner, - No on February 26, 2009)

A true record. Attest:

Commissioner

¹ I give no credence to the Appellants' argument that, since they were considered off of a special female certification, only they should be considered a second time while those listed solely on the general certification should not. Similar to other individuals who were not granted relief by the Commission, the Appellants' names appeared on the general certification. When their names were reached off of the general certification, they were already in the process of being considered after effectively being "pulled up" when the BPD requested a special female certification. For practical administrative reasons, those applicants already being considered via a special certification at the time their name is reached on the general certification, are not simultaneously considered off of the general certification. For the purposes of determining who is similarly situated, this does not distinguish the Appellants from the other individuals whose names appear on the general certification.

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:

Leah Barrault, Esq. (for Appellants)

Suzanne Faigel, Esq. (for HRD)

Sheila Gallagher, Esq. (for Appointing Authority)