

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

TIMOTHY FLOOD,
Appellant
v.

Case No.: G1-10-317

TOWN OF WAYLAND,
Respondent

PROCEDURAL ORDER

On November 16, 2010, the Appellant filed an appeal with the Commission. A pre-hearing conference was held on December 13, 2010 and was attended by the Appellant, counsel for the Town and counsel for HRD.

Based on the pre-hearing conference, the procedural and factual background of this appeal appears to be as follows:

1. On September 22, 2010, HRD sent Certification No. 202399 to the Town of Wayland regarding the appointment of two (2) permanent full-time police officers.
2. The Certification contained five (5) names with instructions that selection must be made from 2 of the first 5 highest who will accept appointment. All five of these individuals were residents of Wayland.
3. Shortly after receiving the Certification, the Town requested additional names from HRD, apparently concluding that the Certification issued on September 22nd did not have a sufficient number of names to generate five individuals willing to accept employment.
4. On September 30, 2010, HRD sent the Town ten (10) additional names.
5. With the exception of the Appellant, all of the individuals on the September 30th list of additional names were non-residents and should have been considered after the fifth name on the initial Certification sent to the Town on September 22, 2010.
6. The Appellant, who was listed a resident and veteran, should have had his name inserted at the top of the names on the September 22, 2010 and been considered first on the Certification. When sending the additional names to the Town on September 30th, HRD did not inform the Town that the Appellant's name should be considered first.
7. The Town eventually appointed one permanent full-time police officer (Mark Hebert) and did not select the Appellant.
8. As the Appellant's name should have been first on the Certification, the Appellant's non-selection constituted a bypass.
9. Believing that the Appellant was ranked below Mr. Hebert, the Town did not provide the Appellant with non-selection reasons or inform the Appellant of his right to appeal his non-selection to the Commission.

As agreed to by the parties at the pre-hearing conference, I hereby order the following:

- A. Within ten (10) days, the Town will determine if it documented sound and sufficient reasons for bypassing the Appellant.
- B. If such reasons exist, the Town will forward them to the Appellant and he will have sixty (60) from receipt of the Town's notice to inform the Commission if he seeks to pursue his bypass appeal with the Commission, contesting the reasons proffered by the Town.
- C. If such reasons do not exist, the Town will inform the Commission of this and the Commission will enter an order granting the Appellant relief by ordering his name to be placed atop the next Certification for the position of permanent full-time police officer in Wayland until such time as he receives at least one additional consideration.

This order is to be posted by the Clerk of the Town of Wayland and posted conspicuously in the headquarters of the Wayland Police Department for at least ten days after receipt.

Civil Service Commission



Christopher C. Bowman
Chairman

December 14, 2010

Notice to:

Timothy Flood (Appellant)

Brian Magner, Esq. (for Appointing Authority)

Elizabeth Whitcher, Esq. (HRD)