

Decision mailed: 2/19/10
Civil Service Commission CB

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, SS.

One Ashburton Place - Room 503
Boston, MA 02108
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HENRY GAGNON,
Appellant

v.

CASE NO: G2-07-180

CITY OF SPRINGFIELD,
Respondent

Appellant's Attorney:

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Springfield, MA 01103

City of Springfield's Attorney:

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Commissioner:

Paul M. Stein

DECISION

The Appellant, Henry Gagnon, acting pursuant to G.L.c.31, §2(b), duly appealed a decision of the City of Springfield ("Springfield"), the Appointing Authority, to bypass him for promotion to the position of Police Lieutenant. A full hearing was held by the Commission at the Springfield State Office Building on November 12, 2008. Witnesses were sequestered. Springfield called three witnesses and the Appellant testified on his own behalf. Twenty (20) exhibits were received in evidence. The hearing was digitally recorded. Proposed Decisions were received from the parties on January 16, 2009.

FINDINGS OF FACT

Giving appropriate weight to the Exhibits, the testimony of the witnesses (the Appellant; Springfield Commissioner of Police William Fitchett; Springfield Deputy Police Chief William Noonan; and Springfield Deputy Police Chief Mark Anthony) and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

1. The Appellant, Henry Gagnon, holds the permanent civil service position of Sergeant in the Springfield Police Department (SPD). (*Exhibit 1; Testimony of Appellant*)

2. Sgt. Gagnon had a prior record of incidents investigated by the Springfield Internal Investigation Unit (IIU). Five of the incidents were unsubstantiated and resulted in no discipline and two incidents resulted in retraining (denial of medical treatment at booking desk and prisoner's property give to another prisoner by mistake). Three incidents in 1998 and 1999 (broken prisoner's finger during booking and failure to follow proper procedure in video-taping the booking of numerous other prisoners) resulted in demotion that was appealed to the Commission. Thereafter, the parties entered into a settlement by which Sgt. Gagnon waived 2½ years of back pay and seniority, agreed to make a written apology and was reinstated to the position of Sergeant effective April 1, 2002. (*Exhibits 9¹ & 10; Testimony of Comm'r Fitchet, Sgt. Gagnon*)

3. Sgt. Gagnon has had a clean disciplinary record since 1999. (*Exhibit 9; Testimony of Comm'r Fitchet, Sgt. Gagnon*)

¹ Exhibit 9 was reserved for a redacted copy of the documents originally offered, but no redacted document was submitted. Based on the testimony from Comm'r Fitchet, the Commission credits the documents originally offered as Exhibit 9, which appears on its face to be reliable SPD business record, as the evidence of the relevant IIU incidents

4. Certification No. SPRO06-0083 dated December 13, 2006 was issued to fill a vacancy for one (1) permanent-full time police lieutenant in the SPD. Sgt. Gagnon's name appeared first on the certification with a score of 90, followed by Sgt. John Bobianski, who scored 84, and Sgt. Phillip Tarpey with a lower score. (*Exhibits 1 & 6*)

5. The Appointing Authority for the SPD is the Commissioner of Police. At the time of the vacancy involved in this appeal, the Commissioner of Police was Edward Flynn, who had taken office in 2006, following abolishment of a previous five-member commission, appointed by the Mayor of Springfield, which had been the Appointing Authority. Commissioner Flynn was recruited from outside Springfield and had not previously worked in Springfield. (*Testimony of Comm'r Fitchet*)

6. At the time of the hearing before this Commission, Commissioner of Police Flynn had left Springfield and had been replaced by William Fitchet. (*Testimony of Comm'r Fitchet*)

7. Police Commissioner Flynn established a procedure for the selection of police officers for promotion. The lieutenant's vacancy was one of the first openings for which Police Commissioner Flynn's specific procedure was utilized, although somewhat similar procedures had been used in the past. (*Testimony of Comm'r Fitchet*)

8. Under Police Commissioner Flynn's procedure, each candidate was required to appear for an interview on January 10, 2007 before the Commissioner's Deputies, William Fitchet (now Commissioner), William Noonan and Mark Anthony. Each candidate was asked the same set of four questions and each answer was separately recorded and scored by each Deputy on a scale of excellent, good, acceptable, poor, or unacceptable. The Commissioner's Chief of Staff, Jennifer Flagg, also participated in the

interviews but did not grade the applicants. (*Exhibits 2,2A,2B,3,3A,3B 4A 4B 5,5A 5B; Testimony of Comm'r Fitchet; Dept. Chief Noonan; Dept. Chief Anthony*)

9. The interviewers rated Sergeant Gagnon "Acceptable" to "Poor" (Deputy Anthony); "Good" to "Acceptable" (Deputy Fitchet); and "Acceptable to Poor" (Deputy Noonan) The interviewers comments included:

- Q.1. "Response was not detailed" (Fitchet)
"Lacked specific knowledge of crime trends in division and sectors" (Noonan)
"Can't answer" (Flagg)
- Q.2. "Didn't answer question completely" (Anthony)
"No mention of follow-up with PC either before or after meeting. No mention of documenting meeting for PC" (Noonan)
- Q.3. "Sgt. Gagnon was very limited in his answers. Even when follow-up questions were asked" (Fitchet)
"Documenting incidents not clearly defined in answer" (Noonan)
"Had a recent experience. Thinks he handled it well. . . . Good follow up" (Flagg)
- Q.4. "Asked about disciplinary record and if he could assure the interview board that as a Lt. he would follow rules and not decide to obey or not obey rules he didn't like. Quote" "I can't offer assurances. I'll try." (Anthony)
"Follow-up questions about his own disciplinary record were difficult for the Sgt. But he answered forthrightly." (Fitchet)
"Discussed his '99 demotion reinstatement – 5 day suspension – 2 day suspension – 1 day suspension could not give assurances that he unacceptable behavior wouldn't be repeated if stress came back into his life. Did a poor job of explaining past discipline problems" (Noonan)

(*Exhibits 2, 4 & 5; Testimony of Comm'r Fitchet, Dep. Chief Noonan, Dep. Chief Anthony*)

10. The interviewers rated the successful candidate, Sergeant Bobianski, second on the certification: "Good" to "Excellent" (Anthony); "Good" to "Excellent" (Fitchet) and "Acceptable" to "Excellent" (Noonan). (*Exhibits 2A, 4A & 5A*)

11. The third candidate, Sergeant Tarpey was rated "Good" to "Poor" (Anthony); "Good" to "Excellent" (Fitchet); and "Acceptable" to "Poor" (Noonan). (*Exhibits 2B, 4B & 5B*)

12. On January 15, 2007, both Deputy Chiefs Anthony and Noonan and Chief of Staff Jennifer Flagg wrote memoranda to Commissioner of Police Flynn recommending the selection of Sergeant Bobianski. (*Exhibits 3C [Identification], 4C & 5C*)

13. Chief of Staff Flagg stated about Sgt. Bobianski: "I have full confidence in him that he would be an excellent representative of you in the community and with citizens. I would not hesitate to send him to a community meeting or have him interact with community leaders, as he will have to do as a Lieutenant." She states as to Sgt. Gagnon: "Despite his higher score, I cannot even stretch myself to recommend in any way, Sergeant Gagnon." She cites his lack of knowledge about the challenges in the different districts in the City, his record of 23 sick days in 2006, and his lack of candor in addressing sick leave and disciplinary issues at the interview. (*Exhibit 3[Identification]*)

14. Deputy Chief Noonan described Sgt. Bobianski as having "a thorough and clear understanding of the City divisions and the unique problems in each" and "was the only candidate interviewed who said he would consult with the Police Commissioner prior to going to a community meeting and file a report with the Police Commissioner after the meeting as well as conduct a follow up contact with the group." He recommends against Sgt. Gagnon due to his disciplinary record, his interview statements that he could not guarantee that he would not react in the same way in the future, and his lack of knowledge about the problems of the divisions of the City. (*Exhibit 4C; Testimony of Dep. Chief Noonan*).

15. Deputy Chief Anthony's memorandum cites Sgt. Bobianski's "impeccable work record", the opinion he was the "clear standout" among the three candidates in the oral interviews, in particular, citing his "thorough knowledge of the three geographic

divisions and their distinct challenges” and his “understanding of the use of crime analysis, engaging stakeholders in problem solving and formulating problem solving plans”, and his approach to preparation and follow up in handling community meetings. He also cited Sgt. Bobianski’s record of sick time (8 days) compared to Sgt. Gagnon’s 23 days, as well as Sgt. Gagnon’s poor response concerning his past discipline and inability to give assurance that he would abide by Department rules and regulations in the future.

(Exhibit 5C; Testimony of Dep. Chief Anthony)

16. The final input into the selection decision included solicitation of comments from the departments Lieutenants and Captains. The results of the responses:

- Sgt. Bobianski – 5 positive recommendations; no negative responses
- Sgt. Tarpey – 4 positive recommendations, no negative responses
- Sgt. Gagnon – 3 positive recommendations; 2 negative responses recommending he not be promoted

(Exhibit 6; See also Exhibits [Identification] 7, 8, 11, 12 & 13)

17. On February 23, 2007, Police Commissioner Flynn wrote to HRD requesting approval to bypass Sgt. Gagnon and appoint Sgt. Bobianski to the position of police lieutenant, and these reasons were approved. *(Exhibit 1)*

18. The reasons stated in Police Commissioner Flynn letter included:

- “One Deputy reported to me: ‘He (Gagnon) did not grasp the challenges of the three divisions. . . .’ I expect a Supervisor with over two decades of experience on the job and being assigned to a uniform division having first hand knowledge would have been able to articulate the issues facing the city at this time.”
- “Further, Sergeant Gagnon’s disciplinary record is extensive and makes him unfit to promote. Sergeant Gagnon was promoted to Sergeant in August 1992 and within three years he was give a verbal warning, a written reprimand and suspended for two days. In 1999 he was demoted to patrol officer from the rank of Sergeant. To my knowledge, the Springfield Police Department has not demoted any other supervisor in the past twenty years. Despite the fact that the demotion was overturned on appeal, it does not discount the unprofessional and inexcusable behavior from a superior officer.”

- “It is clear to me that Sergeant Gagnon does not possess the knowledge of Department challenges and is not able to represent the Department in a professional manner as he would be required to do as a Lieutenant.”
- “His answers regarding his disciplinary record show a lack of personally accountability and understanding that his actions reflect poorly not only on himself but on the Department.”

(Exhibit 1)

19. Former Police Commissioner Flynn did not appear at the hearing but Springfield did call all three Deputy Chiefs who served on the interview panel, one of whom, William Fitchet, had replaced Police Commissioner Flynn. Each of these men have served with the SPD for many years. They all presented as accomplished, sincere professionals who undertook to perform their assignment on the interview panel fairly and impartially to the candidates and to make the recommendations that they concluded were in the best interest of the SPD. I perceived no personal animus against Sgt. Gagnon from any of them. *(Testimony of Comm’r Fitchet, Deputy Chief Noonan, Deputy Chief Anthony)*

20. Each of the interviewers kept their own notes and ratings of the candidates during the interview. There was no evidence that the interviewers had discussed the candidates amongst themselves in advance or had been lobbied by any other persons prior to making their recommendations to Police Commissioner Flynn. *(Testimony of Comm’r Fitchet, Deputy Chief Noonan, Deputy Chief Anthony)*

21. While the interviewers differed in some minor respects in how they viewed each of the applicants, all three interviewers came to the same overall conclusions about the relative strengths and weakness of the candidates. All three interviewers explained that they perceived Sgt. Bobianski as the superior candidate for the position, principally because of his superior performance in responding to interview questions regarding the

challenges he would face in the job and how he would handle assignments along with his unblemished record of experience with the SPD. (*Testimony of Comm'r Fitchet, Deputy Chief Noonan, Deputy Chief Anthony*)

22. In describing why they did not recommend Sgt. Gagnon, the interviewers stressed disappointment that he could not give assurances that the lapse of good judgment that resulted in his prior discipline would not be repeated in the future. I find that what they found troubling was not simply the record of discipline, itself, but that Sgt. Gagnon appeared to lack the poise and self-assurance to promise that he had learned his lesson and to state, convincingly, that he would do everything within his power to see that he followed proper procedure in the future. (*Testimony of Comm'r Fitchet, Deputy Chief Noonan, Deputy Chief Anthony*)

23. The second reason that Sgt. Gagnon was marked down by the interviewers was his relative lack of institutional knowledge about the challenges facing the SPD and his incomplete approach to how he would address an assignment which required him to prepare for and address a community meeting on relatively short notice. (*Testimony of Comm'r Fitchet, Deputy Chief Noonan, Deputy Chief Anthony*)

24. The third aspect of Sgt. Gagnon's interview performance that the interviewers found inadequate was his approach to the question: "If we decide not to promote you, who would you recommend we pick?" His response was: "Take the next person in line on the list". Deputy Chief Anthony explained that, while there was nothing "wrong" with that answer, he had expected a candidate to use the question to speak well of his peers. Sgt. Gagnon, apparently, took the question as asking him "to criticize or taint" the other candidates. (*Testimony of Chief Anthony, Sgt. Gagnon*)

25. None of the interviewers doubted that Sgt. Gagnon was a “more than satisfactory” performer, nor questioned his honesty or truthfulness. I find that the basis for the interviewers conclusions boils down to an honest assessment that Sgt. Gagnon’s interview performance raised substantial doubts in the minds of the interviewers that he was prepared for advancement to a higher level of command, whereas they had no such reservations about Sgt. Bobianski. (*Testimony of Comm’r Fitchet, Deputy Chief Noonan, Deputy Chief Anthony*)

26. Sgt. Gagnon acknowledged that he had made mistakes in the past but believed that he had “paid his debts” and that his past disciplinary record should not be held against him forever. He testified that he did not respond affirmatively when asked if he could offer assurances that he would follow procedure in the future, because he believed he should “tell the truth” and he it was possible that he “might do something stupid in the future” and could not promise anything with certainty. (*Testimony of Sgt. Gagnon*)

27. Commissioner Flynn’s decision adopted the recommendations of his interview panel for the first two reasons expressed above, as set forth in his letter to HRD, and he promoted Sgt. Bobianski, and bypassed Sgt. Gagnon. (*Exhibit 1*)

28. This appeal duly ensued. (*Claim of Appeal*)

CONCLUSION

Summary

The Commission concludes that Springfield has met its burden to establish that “sound and sufficient” reasons justify bypassing Sgt. Gagnon, and are supported by substantial evidence in the record and application of correct principles of law. The Appellant’s point is well-taken that Springfield’s use of his record of prior discipline,

which included a demotion that was subsequently rescinded, was problematic. However, the Appellant was not bypassed because of the prior discipline, alone, but because of a consensus among his superior officers that he lacked the knowledge, experience, self-confidence and maturity necessary to serve in the position of Police Lieutenant. His reluctance to assure his superiors that he would not repeat his past mistakes was just one example. The substantial evidence fails to prove that an improper motive or bias tainted the decision-making process to the Appellant's prejudice with respect to the disciplinary record or otherwise.

Applicable Standard of Review

The authority to bypass a candidate for permanent promotion or appointment to a civil service position is governed by G.L.c.31, Section 27. That statute provides:

"If an appointing authority makes an original or promotional appointment from certification of any qualified person whose name appears highest [on the certification], and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator [HRD] a written statement of his reasons for appointing the person whose name was not highest."

Civil service law and rules also require that the reasons for bypassing a candidate must be presented in writing for approval by HRD and no reasons not set forth in the written statement provided to HRD may be used as a justification for bypass in any hearing before the Commission. See generally, G.L.c.31, §27; HRD Rules, PAR.08(3). See also MacHenry v. Civil Service Comm'n, 40 Mass.App.Ct. 632, 635 (1995), rev.den., 423 Mass. 1106 (1996) (noting that personnel administrator [then, DPA, now HRD] (and Commission oversight thereof) in bypass cases is to "review, and not merely formally to receive bypass reasons" and evaluate them "in accordance with basic merit principles"); Bielawski v. Personnel Admin'r, 422 Mass. 459, 466 (1996) (rejecting due process

challenge to bypass, stating that the statutory scheme for approval by HRD and appeal to the Commission “sufficient to satisfy due process”)

These requirements create a rebuttable presumption that candidates will be selected according to their relative placement on the eligibility list, which creates a rank ordering based on their scores on the competitive qualifying examination administered by HRD for the position. See, e.g., Sabourin v. Town of Natick, 18 MCSR 79 (2005) (“A civil service test score is the primary tool in determining relative ability, knowledge and skills and in taking a personnel action grounded in basic merit principles.”).

When the appointing authority seeks to justify bypassing a candidate higher on the list in favor of a lower-ranked candidate, the Commission applies the standard of review required by the governing statute, G.L. c. 31, § 2(b): “to find whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving [by a preponderance of the evidence] that there was reasonable justification for the action taken by [it]”. Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 260 (2001) citing, Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 303 (1997); Mayor of Revere v. Civil Serv. Comm’n, 31 Mass.App.Ct. 315, 320n.10, 321n.11, 322n.12 (1991). Reasonable justification is established when such action is “done upon adequate reasons sufficiently established by credible evidence, when weighted by an unprejudiced mind, guided by common sense and by correct rules of law.” See Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Tuohey v. Massachusetts Bay Transp. Auth., 19 MCSR 53 (2006) (“An Appointing Authority must proffer *objectively legitimate* reasons for the bypass”) (*emphasis added*)

The preponderance of evidence test imposed by G.L. c. 31, §2(b) requires the commission to determine whether, on the basis of the evidence before it, the reasons assigned for the non-selection of the Appellant were, more probably than not, sound and sufficient. Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321, (1991) citing Gloucester v. Civil Serv. Commn., 408 Mass. 292, 297 (1990). 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 (2001) In the event of a failure of proof, the commission has the power to reverse the bypass decision. Id.

All candidates must be adequately, fairly and equivalently considered. Evidence of undue political influence is one relevant factor, but it is not the only measure of arbitrary and capricious decision-making by an appointing authority. See, G.L.c.31,§1 (definition of basic merit principles). See also Suppa v. Boston Police Dep't, 21 MCSR 685 (2008). The Commission has been clear that it will not uphold the bypass of an Appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988). See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001) (“The [Civil Service] commission properly placed the burden on the police department to establish a reasonable justification for the bypasses [citation] and properly weighed those justifications against the fundamental purpose of the civil service system [citation] to insure decision-making in accordance with basic merit principles. . . .”); City

of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (Commission may not substitute its judgment for a “valid” exercise of appointing authority discretion, but the Civil Service Law “gives the Commission some scope to evaluate the legal basis of the appointing authority’s action, even if based on a rational ground.); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct.315, 321n.11, 326 (1991) (“discretionary acts of public officials . . . must yield to the statutory command that the mayor produce ‘sound and sufficient’ reasons to justify his action”. . . “consistently with ‘basic merit principles’ as provided in G.L.c.31,§1, which gives assurances to all civil service employees that they are ‘protected from arbitrary and capricious actions’.”)

Applying these principles, the Commission concludes that Springfield has adequately proved by a preponderance of the credible evidence that its decision to bypass Sgt. Gagnon for promotion to the position of Police Lieutenant in the SPD is justified.

The Commission agrees that Springfield’s selection process, including the interview process, meets acceptable standards to assure that such procedures give all applicants a fair and level chance and are not incapable of meaningful review. Some degree of subjectivity is inherent (and permissible) in any interview procedure, so long as care is taken to preserve a “level playing field” and “protect candidates from arbitrary action and undue subjectivity on the part of the interviewers”, which is the lynch-pin to the basic merit principle of the Civil Service Law. E.g., Flynn v. Civil Service Comm’n, 15 Mass.App.Ct. 206, 208, 444 N.E.2d 407, 409, rev.den., 388 Mass. 1105, 448 N.E.2d 766 (1983). The Commission’s Decisions have commented on a wide range of interview plans, some of which are commendable and some more problematic. Example of the

former: Boardman v. Beverly Fire Dep't, 11 MCSR 179 (1998). Examples of the latter: Mainini v. Town of Whitman, 20 MCSR 647, 651 (2007); Horvath v. Pembroke, 18 MCSR 212 (2005); Fairbanks v. Town of Oxford, 18 MCSR 167 (2005); Saborin v. Town of Natick, 18 MCSR 79 (2005); Sihpol v. Beverly Fire Dep't, 12 MCSR 72 (1999); Bannish v. Westfield Fire Dep't, 11 MCSR 157 (1998); Roberts v. Lynn Fire Dep't, 10 MCSR 133 (1997). While Springfield's procedures might bear some updating and improvement – the Commission strongly urges that current technology warrants video or audio recording – they were not so patently subjective as to be grounds for disturbing the selection of candidates as procedurally arbitrary and capricious.

The Commission also is satisfied that the evidence presented demonstrates that Springfield's interview process was established in good faith and without any intent or effect to tip the scales in favor of or against any of the three candidates for promotion. Police Commissioner Flynn, who established the procedure, and wrote the interview questions, was relatively new to Springfield. There was no evidence that he had any predetermined preferences.

The choice of the three Deputy Chiefs to serve on the interview panel is certainly an appropriate device in the case of a lieutenant's position. There is always the risk that when an interview panel is composed entirely of internal supervisory personnel, one or more of whom may have a close working relationship with one or more of the candidates that might lead to a subjective preference for the candidate with whom they are most familiar. In this case, however, the candidates in question are three grades removed from the superior officers who interviewed them, and any potential risk of favoritism by virtue

of familiarity is minimal. The testimony and demeanor of the interview panel members who testified infers that, in fact, no such favoritism played a role in the ultimate decision.

The inclusion of the Police Commissioner's Chief of Staff as a member of the interview panel could be fairly questioned, as she apparently had no prior law enforcement experience. It is also fair to critique some of the interview questions as possibly poorly drafted. However, all candidates were presented with the same playing field in these respects and, in the absence of any evidence of bias, the Commission has no cause to micro-manage an otherwise fair and honest interview process.²

The more troubling aspect to Sgt. Gagnon's bypass is Police Commissioner Flynn's express reliance on Sgt. Gagnon's past disciplinary record as "extensive and makes him unfit to promote." Police Commissioner Flynn relies on discipline that was 8 years old at the time of the bypass which, in a minor respect, may have been misstated and in, major part, was rescinded by his reinstatement in 2002. Sgt. Gagnon's record since 1999 is unblemished. Under these circumstances, the Commission has concern that such a past disciplinary record comes close to becoming irrelevant to a candidate's present fitness to perform. See, e.g., Ramirez v. Springfield Police Dep't, 10 MCSR 256 (1997) (appointing authority may be additional reasons in future by-pass appellant on grounds of past criminal record to rebut appellant's claim of rehabilitation); Radley v. Brookline Police Dep't, 10 MCSR 289 (1997) (noting appellant's "redeeming factors must be given added weight" and "past indiscretions should play a lessened role")

² Although the evidence indicated that some of the evaluators considered Sgt. Gagnon's possible sick leave abuse as another factor, Commissioner Flynn's letter to HRD does not incorporate that as a reason for bypass and the Commission does not need to further consider that point.

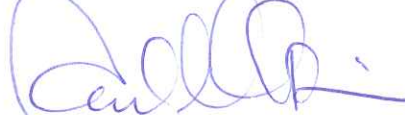
If it were the disciplinary record, alone, that resulted in this bypass, the Commission might have been swayed to find the bypass unjustified. However, it is clear that, in this particular case, it was Sgt. Gagnon's ambivalence about his prior wrongdoing, and not just the record itself, that is a primary contributing factor to the decision to bypass him for a stronger candidate. Given his admission of past poor judgment, for which he agreed to forfeit years of seniority and Sergeant's pay, and make a written apology, it should have come as no surprise to Sgt. Gagnon that he would be asked, given that record, why should he be promoted, or something to that effect. The fact that he had prepared nothing more than an admission that he very well "might do something stupid" again, certainly supports the Police Commissioner's conclusion that Sgt. Gagnon's "answers regarding his disciplinary record show a lack of personal accountability and understanding that his actions reflect poorly not only on himself but on the Department" and that he was "not able to represent the Department in a professional manner as he would be required to do as a Lieutenant." Moreover, the Police Commissioner's independent conclusion that "Sergeant Gagnon does not possess the knowledge of Department challenges" was also supported by the credible evidence in the record.

Thus, while the Commission will not disturb the 2007 bypass decision made by Springfield in this case, this decision does not preclude the potential that Sgt. Gagnon could prove himself qualified for promotion to Lieutenant in the future. As the Commission has noted, hiring and promotion of civil service personnel requires that candidates be evaluated on criteria that fairly relate to their present fitness to perform the duties of the position, and, and at some point, stale discipline may not be deemed to meet that criteria. The other positive aspect to Sgt. Gagnon's future is that the other two

criteria which caused his bypass here are within his control to rectify. Taking time to become more knowledgeable about the challenges facing the SPD and learning to express himself with command presence and greater tact will serve him well, not only in the next promotional cycle, but on the job as well.

Accordingly, for the reasons stated above, the appeal of the Appellant, Henry Gagnon, is hereby *dismissed*.

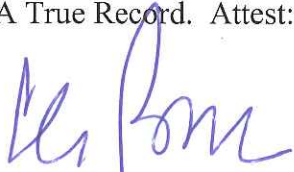
Civil Service Commission



Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman[AYE]; Henderson [NO], Marquis {absent}, Stein [AYE] and Taylor[AYE] Commissioners) on. February 18, 2010

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)(l), 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 to:

Thomas John Rooke, Esq. (for Appellant)

Maurice M. Cahillane, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)