

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

SEAN T. GIBBONS,
Appellant

CASE NO. G1-17-067

v.
CITY OF WOBURN,
Respondent

Appearance for Appellant:

Michael Reilly, Esq.
P.O. Box 64
Woburn MA 01801

Appearance for Respondent:

Ellen Callahan Doucette, Esq.
City Solicitor
Woburn City Hall
10 Common Street
Woburn MA 01801

Commissioner:

Paul M. Stein

DECISION

The Appellant, Sean T. Gibbons, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b)¹, to contest his bypass by the City of Woburn (Woburn) for appointment as an Intermittent Reserve Police Officer with the Woburn Police Department (WPD). A pre-hearing conference was held on April 25, 2017 at the Commission’s offices in Boston. A full hearing, which was digitally recorded, was held at that location on June 13, 2017.² Eleven exhibits (Exh.1 through Exh.11) were received in evidence at the hearing. On August 28, 2017, the Appellant submitted a Post-Hearing Brief and also provided two additional documents (a “flash drive” and a DVD) which are marked, over Woburn’s objections, as P.H.Exh.12 & P.H.Exh.13, respectively. Woburn submitted a Proposed Decision on August 31, 2018.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- Woburn Mayor Scott D. Galvin
- WPD Police Chief Robert J. Ferullo, Jr.

Called by the Appellant:

- Sean T. Gibbons, Appellant
- Mark Gibbons

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Sean T. Gibbons, is a life-long Woburn resident. He received a Bachelor of Science Degree from UMass Lowell in August 2016, majoring in Criminal Justice and Psychology, with a Minor in Arabic Studies. (*Exh. 8; Testimony of Appellant*)

2. While in college, Mr. Gibbons served with three law enforcement authorities – two years as a paid, uniformed Police Cadet with the Lexington Police Dep't, as well as internships with the Burlington Police Dep't and the Money Laundering Division of the Federal Drug Enforcement Agency. While a Lexington Police Cadet, on his employer's recommendation, he was granted an Unrestricted License to Carry a firearm. (*Exhs. 5, 8 & 9; Testimony of Appellant*)

3. Mr. Gibbons is a certified Forensic Sketch Artist and a certified Rape Aggression Defense (RAD) counselor, expertise that he has provided to various police and school departments, including Woburn. (*Exh. 8; Testimony of Appellant & Chief Ferullo*)

4. Mr. Gibbons' father (Mark) is a WPD Patrol Officer.³ His uncle (Joseph) is a WPD Lieutenant. His late grandfather also was a retired WPD police officer. (*P.H.Exhs. 12 & 13; Testimony of Appellant, Mayor Galvin, Chief Ferullo & Mark Gibbons*)

³ I take notice that Officer Mark Gibbons was awarded a 2012 Hanna Medal of Honor and honored as one of 2012's Top Cops by President Obama for his actions in interdicting a gang fleeing the scene of an armed robbery in which a fellow officer was gravely wounded (and who also received a Hanna award). (*Exhs. PH12 & PH13; Testimony of Mark Gibbons; <https://www.woburnma.gov/government/police/woburn-pd-hanna-award-recipient/>*)

5. Mr. Gibbons took and passed the civil service examination for municipal police officer, administered by the Massachusetts Human Resources Division (HRD), on April 25, 2015. His name was placed on the eligible list generated from this examination effective from October 2, 2015 through October 31, 2017. (*Exh. 1; Stipulated Facts*)

6. The Mayor of Woburn is the appointing authority for civil service appointments to the WPD. (*Stipulated Fact; Testimony of Mayor Galvin*)

7. Woburn has a sworn officer staff of approximately 80 full-time officers and maintains a roster of 19 Reserve Police Officers (the “Reserve List”). Reserve Officers are fully uniformed, carry a firearm and are called to provide extra coverage for special events, to perform walking beats in densely populated areas on weekends and to cover details. WPD may employ up to four of the most senior Reserve Officers on a full-time basis, generally assigned to desk duty. Permanent WPD officers are appointed from the Reserve List. (*Testimony of Chief Ferullo*)

8. On November 18, 2016, HRD issued Certification #04221 authorizing Mayor Scott Galvin to appoint 11 Intermittent Reserve Police Officers to the WPD Reserve List. (*Exh. 1*)

9. Thirty candidates signed Certification #04221 as willing to accept appointment as an Intermittent Reserve Police Officer. Twelve candidates ranked above Mr. Gibbons signed willing to accept, followed by a tie group including Mr. Gibbons and one other candidate, and fifteen candidates who signed willing to accept ranked below Mr. Gibbons’ tie group. (*Exhs. 1 & 2*)

10. The WPD conducted background investigations on each candidate’s application packet, which included employment history and reference checks. (*Exh.8; Testimony of Chief Ferullo*)

11. Mr. Gibbons’ background investigation confirmed his clean criminal record and driver history. His personal references included, among others, two officers with agencies for whom he had interned. A Burlington Police Detective, called him “highly motivated” and “highly

recommended him” to the WPD. A DEA Special Agent called him a “hard worker” and “a good fit.” (*Exh. 8*)⁴

12. Mayor Galvin reviewed all completed application packages and conducted 20 to 30 minute interviews with all twenty-three of them. Mr. Gibbons was one of those he interviewed. As was his custom, Mayor Galvin interviewed each candidate alone, using set, pre-determined questions. He took notes of the responses as well as his overall impressions. He did not use numerical scoring or relative ranking of performance. (*Exh. 5; Testimony of Mayor Galvin*)

13. According to Mayor Galvin, after completing his interviews, the factors he considers in making his decision about each candidate’s suitability as the type of “well-rounded” individual he is looking for, include: (1) results of background checks; (2) education (college degree preferred but not required); (3) “post graduate” law enforcement experience; (4) community involvement, and (5) maturity and “life experiences”. (*Testimony of Mayor Galvin*)

14. Overall, Mayor Galvin’s interview with Mr. Gibbons left “no negative impressions”. His interview notes expressed concern for a “Lack of Maturity, Felt he deserved job because of his family’s prior service,⁵ no pursuit of job in Criminal Justice after graduation.” In describing his work with the DEA and as a Lexington PD Cadet (“writing reports, assisting Sergeant”), Mayor Galvin wrote that Mr. Gibbons appeared “a little immature about extent and importance of his work.” (*Exh.5; Testimony of Mayor Galvin*)⁶

⁴ Mr. Gibbons did not include his Lexington PD supervisor as a “personal” reference because he was a paid cadet and had listed that information in the “Work History” section of the application. (*Exh. 8; Testimony of Appellant*)

⁵ On cross-examination, Mayor Galvin clarified that his written note did not mean that Mr. Gibbons said he “felt he deserved the job” due to his family connections, but represented the Mayor’s interpretation of the statement that he recalled Mr. Gibbons made to the effect: “My family has a long history of serving with the WPD and I want to do the same.” (*Testimony of Mayor Galvin*)

⁶ As noted below, Mr. Gibbons credibly explained how Mayor Galvin’s perception of the work he did as a paid cadet, and his satisfaction with that work, misconstrued his experience in some important and material respects. See Finding No. 19.

15. Mr. Gibbons was not selected. Mayor Galvin appointed 11 candidates, four ranked above Mr. Gibbons, one who was tied with Mr. Gibbons (Candidate A) and six ranked one to four tie groups below Mr. Gibbons (Candidates B through G). (*Exhs. 1, 2 & 4*)

16. By letter dated February 10, 2017, Mayor Galvin informed Mr. Gibbons that he had been bypassed, stating the following reasons about his suitability and why he found the six other lower ranked candidates more suitable for appointment:

1. Mr. Gibbons has a lack of post graduate experience in the Criminal Justice field, currently working as a math tutor 20 hours per week.
2. Subsequent candidates selected were stronger and more mature due to significant experience in the Criminal Justice field on a full time basis, or stronger on the combination of academic performance and experience working post-graduation in the Criminal Justice Field.

This appeal ensued. (*Exhs. 3 & 4*)

17. Chief Ferullo's nephew was a candidate (Candidate G). The Chief took no part in the hiring process (and he normally did not do so), save to welcome candidates at an introductory meeting. He did speak to the Mayor at the end of the hiring process and expressed his support for giving Mr. Gibbons a place on the Reserve List, but the Mayor had already made up his mind to the contrary. (*Testimony of Mayor Galvin, Chief Ferullo & Mark Gibbons*)

18. Based on the statements contained in Mr. Gibbons' bypass letter and other evidence, the following facts were established about appointed Candidate A (tied with Mr. Gibbons) and appointed Candidates B through G (who ranked below Mr. Gibbons and bypassed him):

Candidate A

- Background - One criminal citation and several driving infractions over ten years old, which Mayor Galvin discounted as too stale
- Education – Associates Degree in Criminal Justice (graduation date unknown)
- Law Enforcement Experience – Suffolk County Sheriff (4 years)
- Community Involvement – “Very involved in Woburn”; wife’s grandfather is member of Woburn Registrar of Voters
- Maturity – “Excellent” personal and employment references; owns his own home

Candidate B

- Background - Poor credit record, which Mayor Galvin discounted as due to an isolated period after losing his job
- Education – No degree noted
- Law Enforcement Experience – 911 Dispatcher for Waltham Police Dept; history of law enforcement in family
- Community Involvement – “Strong community service record”; brother recently appointed to WPD
- Maturity – “Very positive” references: “working hard” to improve credit rating

Candidate C

- Background - OUI conviction in college (discounted by Mayor Galvin as youthful indiscretion) and speeding, surchargeable accident (Mayor did not recall)
- Education – Bachelor’s Degree in Criminal Justice, Minor in Coaching (2012)
- Law Enforcement Experience – Essex County Sheriff (2 years)
- Community Involvement – Summer camp counselor; Mother is Administrative Assistant to Woburn Superintendent of Schools
- Maturity - “Very positive” references; developed leadership skills playing team sports

Candidate D

- Background - No evidence of criminal or driver history
- Education – Bachelor’s Degree in Criminal Justice (2014)
- Law Enforcement Experience – Reserve Academy Trained; College Security Officer (1 year); Summer Jobs as Reserve Officer in Nantucket and Billerica
- Community Involvement – None noted; Mother and two other relatives employed with Woburn Public Schools
- Maturity – “Very positive” references

Candidate E

- Background – No criminal record or driver’s history noted
- Education – Bachelor’s Degree in Criminal Justice
- Post-Graduate Experience – Sergeant (supervision 5-7 personnel) at Health Care Facility
- Community Involvement – Nothing noted
- Maturity – “Very positive” references

Candidate F

- Background – No criminal record or driver’s history
- Education – Bachelor’s Degree in Criminal Justice
- Law Enforcement Experience – Security Guard; “worked security in college”
- Community Involvement: Active in Woburn Youth Soccer; Sister is Head Cook for Woburn Fire Dep’t
- Maturity – Bilingual; good public speaker; “Very positive” references

Candidate G

- Background – No criminal record or driver’s history
- Education – Bachelor’s Degree in Criminal Justice
- Law Enforcement Experience – Victim Compensation Bureau, Massachusetts Attorney General
- Community Involvement – None noted; Nephew of Chief Ferullo
- Maturity – “Very positive” references

(Exhs. 4 through 7; Testimony of Mayor Galvin & Chief Ferullo)

19. At the Commission hearing, Mr. Gibbons provided succinct, articulate, convincing and credible evidence of his passion for police work and his training and experience in the field:

- He pointed out that serving as Lexington Police Cadet was the “best two years of my life.” He listed the specific details about the duties of the job and contact information for his supervisor in the Work History section of his application (“Asst. with communications/traffic/records/patrol/and detective bureau.”) and elaborated with examples during his testimony, presenting a picture of a dedicated employee who was relied upon for special assignments, allowed to operate a patrol car and perform many of the regular duties of a police officer and a police detective (under supervision).
- He explained that he used an issue at the Lexington PD when asked for an example of how he handled an ethical issue because it showed how he managed to resolve it, not because he had a problem with the job, as Mayor Galvin seemed to infer. Rather, his response showed how he politely defused a potential conflict with an administrative secretary who wanted him to take more time helping her file traffic tickets, for which she was responsible, which he did less of than other cadets because he was being regularly pulled off by his supervising officers for more substantive assignments.
- He explained that his training and subsequent assignments as a forensic sketch artist involved more than learning how to draw. The curriculum included training on

interview techniques and study of human anatomy. He explained how knowledge of both of those subjects was essential to being a good forensic artist, as well as enhanced the skills for conducting interviews and in making “positive” identification of persons that a police officer must apply in the regular course of his or her duties.

(Exh. 8; Testimony of Appellant)

20. Mr. Gibbons’ father, Officer Mark Gibbons, provided un rebutted testimony regarding Mayor Galvin’s actions several years ago, when he “vetoed” a Home Rule proposal approved by the City Council (more specifically, refused to sign off on the petition which was a requirement for it to be submitted to the legislature for approval), that would have enhanced the pension of a retired WPD police officer who had been gravely injured in the line of duty (loss of an eye and finger) while confronting an armed gang engaged in robbing a jewelry store. Officer Gibbons was one of the officers who responded to the crime scene and prevented the gang’s escape. Officer Gibbons was brought to tears as he recounted the incident. *(Testimony of Mark Gibbons)*⁷

21. Officer Gibbons recounted how his late father was one of many people who had spoken out at the City Council meeting in support of providing his disabled fellow officer an enhancement to his pension of 100% of his pay after age 65 – words to the effect that “he gave 100% and he deserves 100%.” Despite this plea, and the support of the City Council, Mayor Galvin insisted that the pension should not exceed 80%, for reasons that he explained in his remarks to the City Council. *(Exhs. PH12 & PH13; Testimony of Mark Gibbons)*

22. Evidence was also introduced which established that Mr. Gibbons’ uncle, a WPD Lieutenant, was twice bypassed for promotion to Captain, once by a prior Mayor (which resulted in a successful Commission appeal) and once by Mayor Galvin in May, 2012, when Lt. Gibbons

⁷ Although Officer Gibbons did not mention it during his testimony, as noted earlier, both officers were decorated for their valor. *(Finding No. 3, fnt. 3)*

stood at the top of the eligible list established in March 2012, as a result of his prior Commission appeal). (*Exh. 10; Testimony of Mayor Galvin, Chief Ferullo & Mark Gibbons*)

23. Evidence was also introduced which established that, on June 14, 2014, three months after the prior eligible list had expired on or about March 31, 2014, Mayor Galvin promoted another Lieutenant to Captain whose name appeared first on the new eligible list, generated after an assessment center examination. Lt. Gibbons' name appeared fourth on that new eligible list. (*Exhs. 10 & 11; Testimony of Mayor Galvin, Chief Ferullo & Mark Gibbons*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1. The mechanism for ensuring adherence to basic merit principles in hiring and promotion is the provision for regular competitive qualifying examinations, open to all qualified applicants, from which eligible lists of successful applicants are established, ranking them according to their scores on the qualifying examination, along with certain statutory credits and preferences, which then may be used by appointing authorities to make civil service appointments based on a “certification” of candidates according to their standing on the applicable eligible list. G.L.c. 31, §§6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the “2n+1” formula. G.l.c.31,§27; PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08. Pursuant to the Personnel Administration Rules (PAR) promulgated by the Massachusetts Human Resources Division (HRD), the statement of reasons must be specific and complete:

“Upon determining that any candidate on a certification is to be bypassed . . . an appointing authority shall, immediately upon making such determination, send . . . a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked. . . . Such statement shall indicate all . . . reasons for bypass on which the appointing authority intends to rely or might, in the future, rely to justify the bypass. . . . No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed . . . shall later be admissible as reasons for selection or bypass in any proceeding before the . . . Civil Service Commission.” PAR.08(4)

A person who is bypassed may appeal that decision under G.L.c.31,§2(b) for de novo review by the Commission. When a candidate appeals from a bypass, the Commission's role is not to determine if the candidate should have been bypassed. Rather, the Commission determines whether, by a preponderance of evidence, the bypass decision was made after an “impartial and reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012) citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006) and cases cited; Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003). See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (appointing authority must prove, by a preponderance of evidence, that the reasons assigned to

justify the bypass were “more probably than not sound and sufficient”); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (same)

“Reasonable justification in this context means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’ ” Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006) and cases cited; 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).

In selecting public employees of skill and integrity, appointing authorities are vested with a certain degree of discretion. City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997). It is not necessary, however, for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Rather, the governing statute, G.L.c.31,§2(b), gives the commission broad “scope to evaluate the legal basis of the appointing authority's action, even if based on a rational ground.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997). In deciding “whether there was reasonable justification” shown for an appointing authority’s exercise of discretion, the Commission's primary concern is to ensure that the action comports with “[b]asic merit principles.” G.L.c.31,§1. *See* Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 188 (2010); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), *rev.den.*, 423 Mass.1106 (1996); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991). Although it is not within the authority of the commission “to substitute its judgment about a *valid* exercise of *discretion based on merit or*

policy considerations by an appointing authority”, when there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” *Id. (emphasis added)*

ANALYSIS

The preponderance of the evidence established that Woburn’s decision to bypass Mr. Gibbons was made without an impartial and reasonably thorough review and is not reasonably justified. Although the evidence falls short of establishing the Appellant’s contention that Mr. Gibbons’ bypass was part of a larger pattern of bias against his family, there is a preponderance of evidence that, contrary to the requirements of basic merit principles under civil service law, Mayor Galvin’s decision was based on unsupported, overly subjective and flawed conclusions about Mr. Gibbons qualifications that unfairly set a higher standard for him than other candidates whose qualifications are not materially distinguishable from his.

First, the record of Lt. Gibbons’ three unsuccessful attempts to win a Captain’s position does not warrant an inference that those efforts were due to some unlawful bias by Mayor Galvin against Lt. Gibbons. The original bypass did not come at the hand of Mayor Galvin but was the decision of his predecessor. There is no specific evidence about the reasons provided for the second bypass and, if unjustified, the recourse for addressing any bias would have been another appeal to the Commission. Evidence now offered, here, about that 2012 promotion does not, and could not now, be expected to fairly revisit and assess whether that bypass was justified or not. As to the third promotion, the candidate ranked first was promoted. Lt. Gibbons stood fourth on the list and was not within the “2n+1” range even to be considered for that promotion. Although the Appellant argues that something untoward was afoot because the third promotion was made from a fresh list created from an Assessment Center in April 2014, immediately after the prior

list was “allowed” to expire. The experience of civil service candidates who “die on the vine” when they are not promoted before the expiration of an eligible list (normally, as here, after two years) is a well-known consequence of the system, which ensures that promotions are based on examination results that are reasonably current as well as enables opening promotional opportunities for newly eligible candidates. Again, here, the promoted candidate was on both the 2012 and 2014 lists and the evidence now is far too stale and cannot support any inference that Lt. Gibbons’ fate in this regard was not simply another classic case of “dying on the vine.” Were it otherwise, again, the recourse was to have appealed to the Commission.

Second, I have carefully reviewed the evidence related to the Home Rule issue regarding an enhanced disability pension for the heroic WPD officer whose career was cut down prematurely in the line of duty. The proponents of the “100%” pension benefit approach included Mr. Gibbons’ grandfather as well as a majority of Aldermen, other WPD personnel, and citizens of Woburn. The Mayor did not disagree that the officer deserved an enhanced pension and explained why the alternative package he supported (at a pension 80% of pay and other benefits) was fair to the officer and consistent with the enhanced pensions granted to others, particularly one most recently approved by the General Court for a police officer in nearby Somerville. Much of the difference between the two proposals is highly technical, and I find nothing in the evidence presented to the Commission that warrants any conclusion about it other than that there was a good faith dispute over what it would take to make the officer “whole.” It strains credulity to believe that Mayor Galvin harbored any animosity, must less let it fester, and took it out on Mr. Gibbons many years later.

I do not agree with Woburn, however, when it comes to the stated reasons for bypassing Mr. Gibbons. I agree with the Appellant that the preponderance of the evidence does not support the conclusion that his bypass was reasonably justified. Two examples illustrate my conclusion.

First, Woburn used a flawed method of distinguishing the suitability of Mr. Gibbons' employment record, and applied a higher standard to him, compared to other lower-ranked hired candidates whose "post-graduate" work experience made them "more mature," which was the core distinguishing characteristic that purportedly justified his bypass. In particular, Woburn provides no logical rationale for discounting Mr. Gibbons' employment with the Lexington PD (and other law enforcement experience) on the grounds that only "post-graduate" employment was useful to assess his suitability, and either overlooked or misconstrued his experience. Surely, his two-year stint as a Lexington Police Cadet, during which time he performed substantially all of the duties that would be required as a part-time WPD Reserve Officer (as well as additional duties assisting detectives), has equivalent value, and probably is more relevant, than the work of Candidate B (who worked as a 911 dispatcher and did not finish college); Candidate C (who had worked for two years as a county corrections officer after college); Candidate D (one year as a campus security guard and credited in the bypass letter for having a "summer" job as a Nantucket Reserve Police Officer); Candidate F (who worked "in college" and thereafter as a security guard); or Candidate G ("currently working" with Attorney General's Victim Witness Bureau). Moreover, in concluding that "Mr. Gibbons has a lack of post graduate experience" in criminal justice, Woburn took no account of the fact that Mr. Gibbons graduated from college barely three months before applying to the WPD, although it appears that it took other candidates a year (Candidate D) or two (Candidate C) to settle in to their "post graduate" law enforcement experience.

Second, the “positive” reasons for hiring other candidates, most also with family members employed by Woburn, were touted in the bypass letter as “very involved in the Woburn community” (Candidate A) and “active in community service with Woburn Youth Soccer” (Candidate F). As to Mr. Gibbons, Woburn’s bypass letter states only that he works for an unnamed employer “as a math tutor 20 hours per week”, neither noting that the employer is the Woburn Public Schools, where he also trains students on rape resistance techniques. Similarly, one of the “positive” reasons for hiring one (Candidate B) was the “history of law enforcement in his family”. When Mr. Gibbons alluded with pride to a desire to be the third generation in his family to serve the WPD with distinction, however, his comment was misconstrued as implying that he “felt he deserved the job” because of his family connections.

Finally, I do not overlook the fact that a police officer, who carries a badge and a gun, holds a sensitive job, and the Commission recognizes that, ordinarily, it should give considerable deference to an appointing authority to decide whether to “bear the risk” of hiring a particular candidate to such a position. See Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 188-190 (2010) That principle, however, is not absolute, and it has limited relevance in the particular facts of this case. The decision to bypass Mr. Gibbons did not reference any negative history or traits that posed a “risk” to his employment as a police officer, per se. Indeed, he had held such positions in the past. Moreover, the bypass decision here was not made, as in other cases, based on the recommendation of the police department. Indeed, one needs to look no further to dispel the perception that Mr. Gibbons posed any “risk” than the fact that Chief Ferullo was fully prepared to welcome Mr. Gibbons to the WPD, and advocated for his selection as a Reserve Officer, even though that might have meant his own nephew would not have been hired.

CONCLUSION

In sum, for the reasons stated herein, this appeal of the Appellant, Sean T. Gibbons, is *allowed*. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the City of Woburn in its delegated capacity take the following action:

- Place the name of Sean T. Gibbons at the top of any current or future Certification for the position of WPD Intermittent Reserve Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Gibbons is appointed as a WPD Intermittent Reserve Police Officer, he shall receive a retroactive civil service seniority date and ranking on the Reserve Roster for purposes of future permanent appointment to the WPD which is the same date as the first candidate ranked below Mr. Gibbons who was appointed from Certification No. 04221. This retroactive civil service seniority date is not intended to provide Mr. Gibbons with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission
/s/Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on January 17, 2019.

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:
Michael Reilly, Esq. (for Appellant)
Ellen Callahan Doucette, City Solicitor (for Respondent)
John Marra, Esq. (HRD)