

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**MICHAEL GONCALVES,**  
*Appellant*

**CASE NO. G1-17-140**

v.

**CITY OF NEW BEDFORD,**  
*Respondent*

Appearance for Appellant:

Christopher T. Saunders, Esq.  
Saunders & Saunders, LLP  
700 Pleasant Street  
New Bedford, MA 02740

Appearance for Respondent:

Jane Medeiros Friedman, Esq.  
First Assistant City Solicitor  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

Solicitor

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Michael Goncalves, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b)<sup>1</sup>, to contest his bypass by the City of New Bedford (New Bedford) for appointment as a Police Officer with the New Bedford Police Department (NBPD). A pre-hearing conference was held on July 28, 2017, and a full hearing, which was digitally recorded<sup>2</sup>, was held on October 27, 2017, both at the UMass School of Law in Dartmouth. Twenty exhibits (Exh.1 through Exh.19 & Exh.21) were received in evidence, one document marked for identification (Exh.20ID). The Commission received Proposed Decisions from the parties on December 31, 2017.

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<sup>1</sup> 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.

<sup>2</sup> 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:*

- NBPB Captain Dennis Hebert
- NBPB Captain Adelino Sousa
- NBPB Captain Dennis Ledo
- NBPB Lieutenant Ricard Rezendes

*Called by the Appellant:*

- Michael Goncalves, Appellant

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, Michael Goncalves, is a New Bedford resident and a 1998 graduate of the Greater New Bedford Regional Vocational Technical High School. He received an Associate's Degree in Elementary Education from Bristol Community College in 2001 and later attended two years of study at Bridgewater State College. His brother is currently employed with the NBPB as a sworn police officer. Mr. Goncalves also has a number of other members of the NBPB who consider him a good friend. (*Exhs. 3, 4, 10 & 11; Testimony of Appellant*)

2. Mr. Goncalves was employed as a Deputy Sheriff<sup>3</sup> with the Bristol County Sheriff's Office (BCSO) from June 2013 until October 2014, when he was suspended and discharged two weeks later for reasons that are more fully discussed below. In March 2016, he became employed for a private security firm, and worked as a security guard assigned to the Registry of Motor Vehicles in Taunton, MA at the time of the Commission hearing. (*Exhs. 3, 4, 10 & 11*)

3. On April 25, 2015, Mr. Goncalves took and passed the civil service examination for Police Officer administered by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list established in October 2, 2015. (*Exh. 1; Stipulated Facts*)

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<sup>3</sup> A BCSO Deputy Sheriff is a non-union position whose duties primarily involve transporting inmates and supervising "pre-release" work crews, which differs from the position of a BCSO Correction Officer, which is a union position working "within the walls" of the institution. Both positions have responsibility for "care and custody" of inmates. (*Testimony of Appellant & Capt. Ledo*)

4. Mr. Goncalves also passed the previous (2013) police officer's examination and his name appeared on a May 2015 Certification #02505 issued to New Bedford for appointment of Police Officers. He submitted an Employment Application to the NBPD on or about May 16, 2015 and the NBPD conducted an extensive background investigation on his application at that time. (*Exhs. 3 through 5 & 8; Testimony of Lt. Rezendes*)

5. The 2015 background investigation into Mr. Goncalves included the typical review of the application itself for completeness, checking residency, education, credit, criminal and driver history, all of which turned up no significant issues. The background investigation into his employment record and, in particular, the circumstances surrounding his termination from his position with the BCSO, however, became a focus of the investigation. Eventually, responsibility for that aspect of the investigation was transferred from the initially assigned background investigator and assumed by his superior officer, Lt. Ricard Rezendes, the commanding officer of the NBPD Planning and Training Unit, who oversees the NBPD hiring process. (*Exhs. 4, 5 & 8; Testimony of Lt. Rezendes*)

6. Mr. Goncalves listed his employment in his Employment Application as a Deputy Sheriff with the BCSO from 6/2013 to 10/2014 and stated the "Reason For Leaving" as "Terminated". He provided the name and phone number for Lt. Williams as his supervisor. He stated in the Employment History Notes: "I'm currently unemployed [a]fter being terminated from Bristol County. I was never told or received anything to inform me why I was terminated." (*Exh. 3*)

7. After assuming responsibility to obtain further details about Mr. Goncalves' employment and termination from his position of BCSO Deputy Sheriff, Lt. Rezendes obtained a copy of a report dated 10/24/2014 prepared by the BCSO Special Investigations Unit (SIU), a copy of the termination letter dated 11/10/2014, and excerpts from the BCSO Code of Ethics and Rules of

Conduct (that, among other things restricted social and romantic interaction with inmates), along with a signed acknowledgement by Mr. Goncalves that he was responsible to review and become familiar with these requirements. (*Exhs. 5 through 7, 20ID & 21; Testimony of Lt. Rezendes*)

8. The SIU report disclosed that, as a result of an Incident Report from a Confidential Informant, the SIU initiated an investigation into allegations that Mr. Goncalves was engaged in unprofessional conduct with a female inmate (Inmate A) who was one of members of the all-female work crew whom he had recently been assigned to supervise on road work out of the facility. As a result of the investigation, the SIU investigator identified eight (8) completed telephone calls on the inmate phone system from 10/17/2014 to 10/20/2014 by Inmate A to a telephone number that later matched up with a phone number found in one of a series of letters confiscated from Inmate A's cell exchanged between a person who called himself "Manny" and had told Inmate A to call him at that number. (*Exhs. 6 & 8*)

9. Subsequent interviews with Inmate A, Inmate B (her cellmate) and other inmates confirmed that "Manny" was an alias that Mr. Goncalves used when he communicated with Inmate A and that the telephone number in his letter was associated with a body shop that turned out to be owed by a mutual friend with whom they were bot acquainted.<sup>4</sup> Inmate A had previously socialized with Mr. Goncalves when they were teenagers "back in the day". Inmate A recognized Mr. Goncalves soon after he started supervising her work crew. (*Exhs. 6, 9 & 12; Testimony of Appellant*)

10. Inmate A denied any contacts of an intimate or sexual nature with Mr. Goncalves, but claimed they had planned to be together after she was released from jail. The other inmates who were interviewed claimed that all of the contacts between the two were "out in the open" and no

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<sup>4</sup> No record of Mr. Goncalves previous or present employment at this body shop was on file with the Bristol County Sheriff. (*Exh. 6*)

one claimed to have observed any contacts of a romantic or sexual nature between the two. (Exh.6 & 8)<sup>5</sup>

11. Inmate A was placed in a segregation unit. She wrote to Mr. Goncalves twice thereafter, using the nickname “Mike” or “Mikey” instead of “Manny”. She assumed that the authorities were keeping tabs on his home address and the body shop, and wrote “make up an address and a name: I’ll definitely know it’s you.”<sup>6</sup> (Exh. 6)

12. On October 21, 2014, the SIU investigator called Mr. Goncalves to a meeting, read him his “Miranda Rights” and asked to speak with him about allegations that he had a dating relationship with inmates on his work crew. Goncalves chose to remain silent and said he wanted to talk to a lawyer. The investigator took Mr. Goncalves badge/ID and informed him he was suspended at that time. (Exh. 6)

13. By letter dated November 11, 2014, BCSO Assistant Superintendent Silvia informed Mr. Goncalves that his employment was terminated for “improper conduct”, effective 10/22/2014. (Exh. 7).<sup>7</sup>

14. As part of his own independent investigation, in addition to reviewing the SIU report, Lt. Rezendes spoke to the SIU supervisor; to Mr. Goncalves’ BCSO immediate supervisor, Lt. Jeffery Williams; to Inmate A; and to the owner of the body shop used by Mr. Goncalves to communicate with Inmate A. (Exh. 8; Testimony of Lt. Rezendes)

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<sup>5</sup> Most of the recorded telephone calls and correspondence is set forth at length in the SIU report and is replete with highly flirtatious statements, and sexual innuendo by both Inmate A and Mr. Goncalves, including specific reference to their reconnoitering when Inmate A was released from jail and Mr. Goncalves stating that he was in love with her and wanted her to meet his family. (Exh.6)

<sup>6</sup> I heard no satisfactory explanation for why neither Inmate A nor Mr. Goncalves were so naive as to conduct such extended telephone and mail communications, both of which they knew were subject to monitoring. (Exhs. 6, 8,9)

<sup>7</sup> At the Commission hearing, Mr. Goncalves claimed he never received the termination letter (sent to the address where he then resided) and did not fully read the Code of Ethics and Rules of Conduct. (Exh. 9; Testimony of Appellant)

15. The SIU supervisor confirmed Mr. Goncalves' dates of employment (6/11/2013 to 10/22/2014) and called him "a pretty good employee." The supervisor believed that the Assistant Superintendent was "overzealous" by terminating Mr. Goncalves before the SIU investigation had been completed, stating that Mr. Goncalves invoked his Miranda rights and never submitted to an interview and, had he done so, the discipline meted out might have been less than termination. The SIU supervisor also confirmed that there was no evidence that Mr. Goncalves acted inappropriately with any other female inmates or that the consensual relationship with Inmate A ever became intimate. He stated that Mr. Goncalves did not commit any crimes but he did violate policy and, since Mr. Goncalves had not used his own phone or address, and employed an alias for the purpose of communicating with Inmate A, he "knew what he was doing was wrong." (*Exh. 8; Testimony of Lt. Rezendes*)

16. Mr. Goncalves' supervisor, Lt. Williams, called Mr. Goncalves "very professional and squared away" and recommended him to Lt. Rezendes for appointment to the NBPD. Mr. Goncalves voiced concern to Lt. Williams when he was first assigned to supervise female inmates on a work crew. Lt. Williams told him "sometimes you have no choice." Lt. Williams was not involved in the SIU investigation and found out that Mr. Goncalves was terminated after the fact and, possibly, he "got the short end of the stick." (*Exh. 8; Testimony of Lt. Rezendes*)

17. The body shop owner confirmed to Lt. Rezendes that Mr. Goncalves "hung out" at his shop, watched his business and home when he was not around, and made money deposits for him. He confirmed that Mr. Goncalves used the business address and phone to communicate with Inmate A (whom he also knew), but he was not asked about it in advance and it came as a surprise to him when the first letter arrived (which he opened, thinking it was meant for another former employee, but soon connected it to Mr. Goncalves). (*Exh. 8; Testimony of Lt. Rezendes*)

18. Inmate A had been released from jail by the time Lt. Rezendes contacted her and he interviewed her over the phone. She confirmed that she and Mr. Goncalves had “hung out” with mutual friends many years ago and that, after he was assigned to take out her work crew, she remembered who he was. She confirmed, generally, the letter writing and telephone exchanges. (*Exh. 8; Testimony of Lt. Rezendes*)<sup>8</sup>

19. On July 29, 2015, Lt. Rezendes conducted a one-hour recorded interview with Mr. Goncalves at NBPD headquarters. A copy of the recording was introduced into evidence. Mr. Goncalves generally corroborated the mail letter writing and telephone exchanges with Inmate A, and, among other things, made the following statements:

- He admitted that he had put \$50.00 on Inmate A’s phone card so she could call him.
- He knew that he “did violate policy”.
- He admitted that they wrote “stupid stuff” such as “I love you” and wrote about plans for after she was released.
- He then thought it was just something to “pass time” and was a “big joke” between them, but “now I know I should not have wrote back or nothing . . . “
- “. . . I was vulnerable or what . . . I was working a lot and did not have a girlfriend . . . My girlfriend and I were on and off during that time, I don’t know it was just a bad time I guess. I F’ed up big time.”
- He admitted that he had started “falling for this inmate”, he “let his emotions take over” and that his “emotions got the best of him.”
- “I promise you this would never happen again. I learned my lesson and if anything like this came up I would . . . let someone know because like I said it was a bad choice I made.”

(*Exhs. 8 & 9; Testimony of Lt. Rezendes*)<sup>9</sup>

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<sup>8</sup> Some of the statements made by Inmate A to Lt. Rezendes were inconsistent and varied from what the SIU investigators had reported as well as irreconcilable with other credible evidence and I do not credit everything she allegedly said to the SIU or Lt. Rezendes. In particular, I do not credit her assertion that she initiated the communications by getting Mr. Goncalves address through sources at the jail, then, later stating she looked up the body shop and sent the first letter there and, finally, claiming she didn’t actually remember who sent the first letter. I also do not credit her statements that the telephone calls and letter writing was just something she did to “kill time” and there was nothing more to it than that. (*Exhs. 6, 8, 9 & 12; Testimony of Appellant & Lt. Rezendes*)

<sup>9</sup> Some of Mr. Goncalves’ story did not seem consistent with other credible evidence. For example I find it hard to fit the volume of letters and phone calls into the short time frame when they first took up with each other and his suspension; his lack of recollection (such being vague about recognizing the telephone number of the body shop); and his changing stories about certain facts (e.g., what his references to “Billy the Goat” meant). (*Exhs.6, 9 & 12*)

20. Eventually, New Bedford did not hire the complement of officers it had planned and Mr. Goncalves was never reached for formal consideration during the 2015 hiring process. His application packet was filed without action. (*Exh. 9; Testimony of Lt. Rezendes*)

21. On December 9, 2016, as amended on February 7, 2017, HRD issued a new Certification #04224 from the October 2015 eligible list for New Bedford to appoint fourteen (14) Permanent Full-Time Police Officers. (*Exh. 1; Stipulated Facts*)

10. Mr. Goncalves' name appeared on Certification #04224 in the 32<sup>nd</sup> position, tied with three other candidates. (*Exh.1; Stipulated Facts*)<sup>10</sup>

22. Mr. Goncalves completed a new Employment Application which he submitted to the NBPD on or about February 13, 2017. (*Exh.10*)

23. A background investigator was assigned to update Mr. Goncalves 2015 investigation report. The investigator confirmed that Mr. Goncalves had obtained new employment with a private security company (he had been unemployed when the 2015 investigation was completed). He spoke with the head manager of the company who called Mr. Goncalves "one of his better employees" who was "always on time" and "received only positive reviews from clients on Goncalves behalf." Except for the change in employment, the investigator reported no other significant changes from the information learned in the prior investigation. (*Exh. 11*)

24. Despite his concerns about Mr. Goncalves from the information developed during the 2015 background investigation, Lt. Rezendes decided to move Mr. Goncalves to the next stage

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<sup>10</sup> New Bedford was, at the time, a "Consent Decree" community, subject to federal court orders intended to remediate past discrimination against Black and Hispanic minority candidates for public safety positions by creating a formula for giving persons who "self-identify" as minority (or "C" candidates) priority over non-minority (or "D" candidates) in placement on future eligible lists, and requiring HRD's scrutiny and approval by of all bypass decisions. There was an issue about whether Mr. Goncalves, a Spanish-speaking individual of Portuguese decent, qualified as a "C" or "D" candidate. At some point, based on information he received from HRD, Mr. Goncalves chose to change his status from "D" status and "self-identified" as a "C" candidate for purposes of Certification #04224, but it is not clear how much, if at all, that moved him up on the Certification. (*Exhs.1, 16 through 19; Testimony of Appellant & Lt. Rezendes*) This appeal does not turn on his proper "Consent Decree" status. (*Colloquy with Counsel*)



of the process, which is a “Captain’s Board”, a loosely structured recorded interview with three NBPB Captains, with Lt. Rezendes present. (*Exh. 12; Testimony of Lt. Rezendes*)

25. In 2015, Lt. Rezendes found Mr. Goncalves “likeable” and his brother served as a well-respected NBPB police officer. He also was regarded positively in his new job. In addition, Lt. Rezendes recalled that the BCSO SUI supervisor thought the decision to terminate Mr. Goncalves was “overzealous”, and that Mr. Goncalves’ immediate supervisor at the BCSO had told Lt. Rezendes that he would recommend Mr. Goncalves be hired as a NBPB police officer. Because of these potentially mitigating factors, Lt. Rezendes chose to give Mr. Goncalves the opportunity to make his case to the Captains Board. (*Testimony of Lt. Rezendes*)

26. After answering some preliminary questions from Lt. Rezendes, the interview panelists focused in on the issue of Mr. Goncalves’ conduct while employed at the BCSO, and, in particular, his failure to control himself in dealing with a female inmate while in his custody. His demeanor clearly shifted and became equivocal and defensive when asked questions about this episode. Certain statements Mr. Goncalves made during this interview contradicted earlier statement to Lt. Rezendes, saying, for example, that he verbally reported to superiors that he knew “a couple of” female inmates and stating that he now “wasn’t sure” but “didn’t think he put any money” on Inmate A’s phone. At the end of the interview, the panelists made suggestions to Mr. Goncalves about how he could restore the faith others would have in his ability to become a police officer. (*Exh. 12; Testimony of Lt. Rezendes, Captains Hebert, Souza & Ledo*)<sup>11</sup>

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<sup>11</sup> The interview panelists also questioned Mr. Goncalves about his decision to claim minority “C” status on the 2017 certification. Some of the panelists expressed skepticism that he was entitled to do so and asked questions about his motives for doing so. Lacking any definitive answers, Lt. Rezendes indicated he would contact HRD to find out more about whether his claim to minority status was justified. HRD indicated that it does not research a candidate’s “self-identification” of minority status, but that a person may claim that status if he or she was “born in a Spanish speaking country OR any person who grew up in a household in which the predominant language spoken was Spanish.” Based on the evidence presented, I need not, and do not reach any conclusion about whether or not Mr. Goncalves’ claim to minority “C” status was bona fide or justified. (*Exhs. 1, 16 through 19: Testimony of Appellant, Lt. Rezendes, Captains Hebert, Sousa & Lido*)

27. The interview panels rated Mr. Goncalves “Unsatisfactory” or “Below Average” in Alertness (Hebert & Souza), Character & Personality (Hebert, Souza & Ledo), Ability to Converse (Hebert & Ledo) and Self-Control (Hebert, Souza & Ledo). The written comments echoed the panelists concerns about the BCSO incident, including, for example:

“Admitted to no self-control around women”

“When put in a position of trust & responsibility, Applicant violated that trust by lying about his relationship w/a female”

“Could not control himself w/female inmate @ SD. Serious lapse of judgment”

“Failed to explain discrepancies in the background account”

“Was not convincing on couple of questions”

All three Captains clearly were troubled by what Mr. Goncalves had done, but, also, that he appeared to be unable to explain how the NBPD could be assured he would handle himself any differently as a NBPD police officer. (*Exh. 12; Testimony of Captains Herbert, Souza & Ledo*)<sup>12</sup>

28. By letter to HRD dated April 19, 2017, New Bedford Mayor Jonathan Mitchell, the NBPD Appointing Authority, informed HRD that he proposed to bypass Mr. Goncalves for two reasons: (1) his termination from his job with the Bristol County Sheriff’s office and (2) and poor interview performance before the Captains Board. (*Exhs. 1 & 14; Stipulated Facts*)

29. By letter dated June 14, 2017, HRD informed Mr. Goncalves that the reasons given by New Bedford for his non-selection were accepted and his bypass was allowed. This appeal duly ensued. (*Exhs. 1, 14 & 15*)

30. On or about September 6, 2017, New Bedford provided HRD with the names of twelve candidates appointed from Certification #04224, which included two names listed as ranked below Mr. Goncalves on the Certification. (*Exh. 2; Stipulated Facts; Testimony of Lt. Rezendes*)

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<sup>12</sup> Captain Ledo, a former narcotics officers who was currently in charge of the NBPD’s Professional Standards Unit, and who also had prior experience as a Corrections Officer, gave compelling testimony on the seriousness of what Mr. Goncalves did, whether it was just “passing time” in his mind or something more nefarious. He explained how critical and obvious it would be to any corrections officer that he or she must never get involved at a personal level with inmates in any way, noting that, typically, what might start out as a benign request (“can you get me an extra milk”) eventually entraps the officer into greater and greater compromising situations. He also explained how similar confrontations arise with police officers who are constantly presented with potentially compromising situations while on patrol or investigating crimes. (*Testimony of Capt. Ledo*)

31. At the Commission hearing, Mr. Goncalves initially declined to testify, with counsel leaving it to New Bedford to call him. After I made known, however, that a failure to testify under oath could lead to a negative inference being drawn, his counsel did call him to testify. He again asserted that he did, in fact, tell his superiors in advance about his acquaintance with Inmate A, and also claimed that, at least some of the telephone conversations that were reported in the SIU report were with a person other than himself. On cross-examination he said he was unable to recall most of the specifics of his telephone and mail contacts with Inmate A. After I directed him to Lt. Rezendes' report in which he quoted Mr. Goncalves as stating that he did put \$50 dollars on Inmate A's phone account, he acknowledged that he "must have done it." (*Testimony of Appellant*)

#### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" 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. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev.den., 423 Mass.1106 (1996)

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a "certification" of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula.

G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. In order to deviate from that formula, an appointing authority must provide written reasons – positive or negative, or both, consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31,§27; PAR.08(4)

A person may appeal a bypass decision under G.L.c.31,§2(b) for de novo review by the Commission. The Commission’s role is to determine whether, by a preponderance of evidence, the appointing authority had “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of a candidate’s background and qualifications sufficient to form a “credible basis” to believe allegations of misconduct or other facts that present “legitimate doubts” about the candidate’s present fitness to perform the duties of the position. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . 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); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211,214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission

“. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, 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.”

City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (*emphasis added*)

However, the governing statute, G.L.c.31,§2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Id.

The Commission recognizes that law enforcement officers, in particular, are vested with considerable power and discretion and, when selecting candidates for such a sensitive public safety position, they must be held to a high standard of conduct:

“Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Police Comm’r v. Civil Service Comm’n, 22 Mass.App.Ct. 364, 371, 494 N.E.2d 27, 32 rev.den. 398 Mass. 1103, 497 N.E.2d 1096 (1986). An appointing authority is justified to refuse to hire and/or to terminate a police officer who repeatedly demonstrates a “willingness to fudge the truth”. See City of Cambridge v. Civil Service Comm’n, 43 Mass. 300, 303 (1997) (“a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See also Condez v. Dartmouth, 28 MCSR 515 (2015), aff’d, Bristol Sup. Ct. No. 1473CV00836 (2017); Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, aff’d, Suffolk Sup.Ct., SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), aff’d, SUCV12-2655 (2014); Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

## **ANALYSIS**

New Bedford has established by a preponderance of the evidence that its decision to bypass the Appellant was reasonably justified after an impartial and reasonably thorough review of the

relevant facts. In particular, the evidence that New Bedford developed concerning Mr. Goncalves' serious misconduct which led to his termination as a BCSO Deputy Sheriff fully supports New Bedford's conclusion that there was a "credible basis" for "legitimate doubts" about Mr. Goncalves' present fitness to serve as a NBPD police officer.

First, Mr. Goncalves admits that he violated BCSO policy by carrying on a clandestine personal relationship with an inmate under his care and custody, a relationship that he knew was wrong. He also admitted that, then in his thirties, he "did not have a girlfriend", was going through a "bad time" and was vulnerable to "letting his emotions get the best of him" and started "falling for this inmate." The evidence presented here, and in particular, the articulate and compelling testimony from NBPD Captain Ledo, Professional Standards Unit commander and former narcotics officer and correction officer, fully supports a "legitimate doubt" about Mr. Goncalves suitability to be trusted as a police officer so soon after an incident of serious and flagrant misconduct, driven by losing self-control and "letting his emotions take over" in carrying on a clandestine personal relationship with an inmate under his custody and control.

Second, New Bedford took appropriate steps to ensure that it made an impartial and thorough review of the facts before deciding to bypass Mr. Goncalves. The NBPD could have stopped at obtaining the SIU report, which, on its face, carries a substantial degree of credibility. NBPD, however, undertook its own independent investigation, interviewing the Appellant and four other percipient witnesses. Further, although Lt. Rezendes had discretion not to advance Mr. Goncalves' application in 2017, he afforded Mr. Goncalves a chance to explain himself and demonstrate that his actions since his termination from the BCSO showed that this incident was behind him and he would not be likely to "let his emotions" control him in the future. I listened carefully to the recorded Captain's Board interview. Lt. Rezendes and the NBPD Captains

showed courtesy when appropriate, as well as asked all the tough questions when necessary. The panelists uniformly came to the conclusion that Mr. Goncalves did not acquit himself to their satisfaction on the critical issue of whether or not he could be trusted when he promised that his past behavior was no longer a legitimate concern. I find the interview panelists' conclusion to be entirely reasonable and justified in this regard.

Third, I have considered the Appellant's point that the SIU supervisor thought that the BCSO pulled the trigger on Mr. Goncalves too early and, had his side of the story been told, he still would have been disciplined, but might not have been terminated. I also considered that Mr. Goncalves' current and past immediate supervisors thought highly of him. These factors, however, are not sufficient to change the outcome here. To the extent the point relies on the contention that Mr. Goncalves was terminated before the SIU investigation had been completed, that assumption is factually incorrect. Mr. Goncalves was suspended on October 21, 2014, he was terminated on November 10, 2014, more two weeks after the SIU investigator submitted his report taken into account by the NBPD. Moreover, the NBPD fully considered all of these factors. The judgment ultimately made by Lt. Rezendes and the three NBPD Captains was that the underlying evidence of misconduct, revealed in the SIU report and through the NBPD independent investigation and interview of Mr. Goncalves, did not override these mitigating factors. In sum, after considering both the positive and negative factors, the NBPD properly concluded, with "reasonable justification" that there was a "credible basis" to have "legitimate doubt" about Mr. Goncalves suitability to serve as an NBPD police officer.

Fourth, I also considered the Appellant's argument that the Captains Board was a flawed process that began with a pre-determined conclusion to bypass Mr. Goncalves and placed undue weight on his efforts to change his status from non-minority "D" to a minority "C" candidate so

that he moved himself up on the eligible list, claiming that was a further example of poor character. I agree that the interview process was highly subjective and largely unstructured and, in most other cases, it would be problematic under basic merit principles to bypass a candidate solely because of such subjective scores. The evidence, however, demonstrated that, under the particular circumstance of this case, the Captains Board interview was not used as a method of ranking Mr. Goncalves against other candidates. Rather, the interview here was largely dedicated to probing Mr. Goncalves on the particular concerns that his background investigation revealed and meant to give Mr. Goncalves a fair chance to explain why his record should not disqualify him. To be sure, he faced a high hurdle going into the Captains Board, but he was treated fairly and professionally. There was no indication of any pre-determined result.

I also agree it would be inappropriate to hold the issue of “Consent Decree” status against Mr. Goncalves. After carefully reviewing the recording of the Captains Board interview and the Commission testimony of the NBPD witnesses, however, I conclude that the inquiry on that subject (on which little time was spent) was, in part, a properly designed information gathering process and, in part, an interviewing technique to “test” Mr. Goncalves ability to explain himself when pressed by a doubtful interrogator. The inquiry did not stray from the permissible limits of interview procedures. The “Consent Decree” issue did not influence the bypass decision.

Fifth, I detected no indicia of bias, political influence or ulterior motives in New Bedford’s decision. Indeed, as noted above, the NBPD gave Mr. Goncalves more than the minimum due process that basic merit principles require. He was given two chances to explain himself, first in an hour-long interview with Lt. Rezendes and in a 45-minute Captains Board. The Captains Board panelists took time to explain their concerns and offered concrete suggestions for specific actions Mr. Goncalves could take that would demonstrate, beyond mere verbal promises, that he



could be trusted when he says that he is no longer vulnerable to “fudging the truth”, losing control or getting carried away by emotions (e.g., establishing a strong employment record in his current job or seeking part-time police work). When, if ever, Mr. Goncalves can meet that challenge is not for the Commission to predict, but remains a matter between him and the NBPD.

### **CONCLUSION**

For the reasons stated herein, this appeal of the Appellant, Michael Goncalves, is *denied*.

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 March 14, 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:

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