

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

NICHOLAS GOON,
Appellant

v.

G2-23-197

TOWN OF BROOKLINE,
Respondent

Appearance for Appellant:

Mitchell J. Notis, Esq.
27 Harvard Street
Brookline, MA 02445

Appearance for Respondent:

Susan Harris, Esq.
Associate Town Counsel
Town of Brookline
333 Washington Street, 6th Floor
Brookline, MA 02445-6853

Commissioner:

Christopher C. Bowman

SUMMARY OF COMMISSION ORDER

The Appellant, a Brookline Police Officer, filed an appeal contesting the decision of the Town of Brookline to bypass him for promotional appointment to Police Sergeant in favor of the brother-in-law of the Town's Police Chief, who participated in the interview and selection process. The Town has agreed to re-do the process, using an independent, outside review panel. This appeal is being dismissed with a future effective date to allow that process to be completed.

ORDER OF DISMISSAL EFFECTIVE JUNE 30, 2024

On October 13, 2023, the Appellant, Nicholas Goon (Appellant), a police officer employed by the Town of Brookline (Town)'s Police Department (BPD), filed an appeal with the Civil Service Commission (Commission), contesting the BPD's decision to bypass him for promotional appointment to police sergeant.

On December 17, 2023, I held a remote pre-hearing conference with Commission Deputy General Counsel Caroline De Luca which was attended by the Appellant, his counsel, counsel

for the Town, the Town's Police Chief and Human Resources Director. As part of the pre-hearing conference, the parties stipulated to the following:

- A. The Appellant is currently employed as a police officer in the BPD.
- B. On September 19, 2020, the Appellant took the promotional examination for police sergeant and received a score of 81.
- C. On December 15, 2020, the state's Human Resources Division (HRD) established the eligible list for Brookline Police Sergeant.
- D. In 2023, there was one vacancy for the position of Brookline Police Sergeant.
- E. The Appellant was ranked first among those willing to accept promotional appointment.
- F. The BPD selected a candidate ranked below the Appellant for promotional appointment.
- G. On October 12, 2023, the BPD notified the Appellant of the reasons for bypass.
- H. On October 13, 2023, the Appellant filed a timely appeal with the Commission.

As part of the pre-hearing conference, counsel for the BPD summarized the process used in making this decision, including use of an interview Panel which included the BPD's Police Chief. Regarding the reasons for bypass, which were included in a bypass letter signed by the BPD's Police Chief, counsel for the BPD stated that the selected candidate had more experience overall, more patrol experience and more experience in specialized units. The BPD also stated as a reason that the Appellant, in August 2022, had resigned from the BPD to join a police department in Washington State, only to return in January 2023.

Counsel for the Appellant stated that the Appellant was equally as qualified, if not more qualified than the promoted candidate and that the decision was made due to personal favoritism, as the selected candidate is the brother-in-law of the Police Chief.

On December 14, 2023, the Commission issued a Procedural Order, outlining that years of Commission decisions have reiterated that Appointing Authorities must ensure that employment-related decisions are made free of impermissible factors such as personal or political favoritism *and* that Appointing Authorities must take appropriate, proactive steps, to prevent even the appearance that employment decisions are influenced by such impermissible factors. As such, the Commission urged the Town to re-do the selection process to ensure a fair and impartial review of the candidates.

On May 7, 2024, I held a status conference attended by the Appellant, his counsel, counsel for the Town and the Town's Human Resources Director. The Town reported that the Police Chief has since recused herself entirely from the promotional process here. Both parties reviewed a potential settlement agreement in which the review process would begin anew, using

an independent, outside review panel. The Town agreed to make additional refinements to the agreement, including, but not limited to, ensuring that all interviews are recorded.

In order to allow sufficient time for this selection process to be re-done, the Appellant's appeal under Docket No. G2-23-197 is hereby *dismissed nisi*, to become effective June 30, 2024. If the Appellant is bypassed for promotion after this new selection process, the Civil Service Commission will allow a Motion to Revoke this Order of Dismissal Nisi, to be filed no later than June 30, 2024. No additional filing fee would be required. In the absence of a Motion to Revoke within this time period, the dismissal of this appeal shall become final for purposes of G.L. c. 31, § 44, on June 30, 2024.¹

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney and Stein, Commissioners [Markey – Absent]) on May 16, 2024.

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:

Mitchell Notis, Esq. (for Appellant)
Suan Harris, Esq. (for Respondent)

¹ As discussed at the status conference, the Town, with the apparent support of the local police union to which the Appellant belongs, is seeking to remove its police department from civil service at an upcoming Town Meeting. Nothing in this decision prohibits the Town from contesting whether the Commission has any further jurisdiction over this matter if such removal is successful.