

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

IAN HUNT,
Appellant

v.

G2-17-168

CITY OF WOBURN,
Respondent

Appearance for Appellant:

Michael Reilly, Esq.
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Woburn, MA 01801

Appearance for Respondent:

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Commissioner:

Cynthia A. Ittleman

DECISION

On August 31, 2017, Ian Hunt (the Appellant or Mr. Hunt) filed the instant appeal with the Civil Service Commission (the Commission) under G.L. c. 31, s. 2(b) challenging the decision of the City of Woburn (the Respondent, the City or Woburn) to bypass the Appellant for promotion to Sergeant in the Woburn Police Department (the WPD or the Department). The Commission held a prehearing conference in this regard in Boston on September 26, 2017 and a full hearing was held at the same location on November 21, 2017.¹ The hearing was digitally

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

recorded and copies of the recording were sent to the parties.² The witnesses, with the exception of the Appellant, were sequestered. Both parties submitted post-hearing briefs. For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT:

Eleven (12) Exhibits (Ex.) were entered into evidence.³ Based on the Exhibits and the testimony of the following witnesses:

Called by the Appointing Authority:

- Scott D. Galvin, Mayor of Woburn
- Robert J. Ferullo, Jr. Chief, Woburn Police Department (WPD)
- Robert Rufo, Captain, WPD

Called by the Appellant:

- Ian Hunt (Appellant)

and taking administrative notice of all matters filed in the case; stipulations⁴; pertinent statutes, case law, regulations, rules, and policies; and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following facts:

1. The Appellant has been a Woburn Police Officer since 2008. He is married, with three (3) children, a homeowner and has served in the U.S. Coast Guard Reserves. (A.Ex. 1; Testimony of Appellant) He began work at the Department on the 3pm to 11pm shift but in 2014, he began working on the overnight shift instead of the 3pm to 11pm shift.

²If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

³Five (5) exhibits were filed jointly (Jt.Ex.); the Appellant filed five (5) separate exhibits (A.Ex.). In addition, on November 27, 2017, the Respondent submitted the affidavit of Police Chief Ferullo (R.Post-Hrg.Ex. 1) regarding the 2015 assignment of Officer A to the position of detective in the WPD Vice/Narcotics unit, attaching thereto Officer A's letter to Captain Murphy expressing his interest in the assignment and Officer A's resume. Also on November 27, 2017, the Appellant submitted a letter (A.Post-Hrg.Ex. 1) in response to my order at hearing, indicating that when the detective assignment was available in 2015 he could not be considered for the assignment because of family commitments; Officer A informed the Department of his interest in the detective assignment in 2015 and he was subsequently assigned to the detective position.

⁴ At the prehearing conference in this case, the parties stipulated to certain facts. (Administrative Notice)

(Testimony of Appellant)

2. The WPD has seventy-six (76) fulltime police officers, twenty (20) part-time officers and twenty (20) civilian employees. The employees include approximately fifty-six (56) Patrol Officers, nine (9) Sergeants and seven (7) Lieutenants in the Department.

(Testimony of Ferullo) Mayor Galvin is the city's appointing authority. (Testimony of Galvin⁵)

3. The Appellant took and passed the 2015 promotional exam for Police Sergeant. The state's Human Resources Division (HRD) issued an eligible list on March 1, 2016 indicating that five (5) members of the WPD had passed the promotional exam, with the Appellant ranked second and Officer A ranked third. (Administrative Notice – HRD Information⁶) However, the Sergeant's promotional Certification, prepared by Woburn as a delegated civil service community, indicates (and the parties stipulate) that there were four (4) candidates, that the Appellant was ranked first and that Officer A was ranked second. (Jt.Ex. 1; Stipulation (signed by the parties at the Commission prehearing conference); "Agreed Upon Facts and Exhibits")
4. Since 2014, the Appellant has been working on the WPD night shift, where he is one of the most senior officers, if not the most senior officer, on the shift and he is the field training officer on the shift. There are usually a minimum of four (4) police cruisers on the night shift, with no outside resources, such as a traffic unit. When the night shift does not have a supervisor, the Appellant takes on supervisory roles, such as assisting in

⁵ Mayor Galvin and Chief Ferullo are licensed attorneys but they do not practice law. (Testimony of Galvin and Ferullo)

⁶ The information provided by HRD includes eligible list 03156 but lists another candidate ranked first, the Appellant ranked second, and Officer A ranked third. However, the parties here have stipulated that at the pertinent time, the Appellant was ranked first and Officer A was ranked second. ("Agreed Upon Facts and Exhibits" and Stipulation (signed by the parties at the prehearing conference in this case) In addition, the Certification prepared by Woburn that candidates signed indicates that there were four (4) candidates, that the Appellant was ranked first on the list and that Officer A was ranked second. (Jt.Ex. 1)

booking, fingerprinting and running any crime scenes on his shift. (Testimony of Appellant) The Appellant has also participated in the North Eastern Massachusetts Law Enforcement Council (NEMLEC), which is a mutual aid association, providing aid to member communities in need of additional law enforcement resources. (Post-Hearing Affidavit of Chief Ferullo⁷ - Attachments from Officer A) Police Departments in the NEMLEC region are required to provide ten (10) percent of their officers to NEMLEC. WPD officers interested in working with NEMLEC can sign a WPD posting, although selection may reflect the WPD officer's seniority. Participating officers are trained once or twice per month. (Testimony of Ferullo)

5. In addition to required training, the Appellant has taken every training course he has been permitted by his superiors to take. As a result, for example, he is an EMT, he is certified to conduct CPR training, he is a suicide prevention instructor, a Nasal Narcan Instructor, a designated infection control officer; a first responder instructor; and, as a field training officer, the Appellant has trained approximately twelve (12) officers. He is the only field training officer on the night shift. In addition, the Appellant is trained in police mountain biking and in domestic drug interdiction. (A.Ex. 1; Testimony of Appellant) Certain other trainings were not available to the Appellant. (Testimony of Appellant; Testimony of Chief Ferullo)
6. The Appellant has been involved in more than 380 arrests and has been the lead arresting officer in more than 284 cases. He has been involved in more than 625 incident investigations and has been the lead officer in 554 of those cases. A 2013 performance evaluation of the Appellant rated his performance as "outstanding".

⁷ The only documentation attached to Chief Ferullo's affidavit about Officer A's detective assignment are Officer A's June 3, 2015 letter of interest in the assignment and his resume. There is no copy of the detective assignment posting or any indication how long the assignment was posted.

7. The Appellant has advanced his academic and professional credentials. He has a Bachelor's degree in criminal justice and a Master's degree in criminal justice magna cum laude, both degrees from the University of Massachusetts at Lowell. In the Coast Guard Reserves, the Appellant rose to the rank of E6⁸, supervising eleven (11) others when he has been deployed (not overseas), and he leads search and rescue operations, albeit under supervision. His Coast Guard assignments have included deployment to the Deepwater Horizon oil leak off the coast of Texas as the lead agency to clean up the oil spill, preserve water safety, and address commercial ocean traffic. (A.Exs. 1 – 5; Testimony of Appellant)
8. The Appellant repeatedly applied for the WPD detective assignment when there was an opening, except in 2015 because of a family commitment, but his requests were denied. (Testimony of Appellant) The detective assignment is a highly sought-after position at the WPD. (Testimony of Capt. Rufo) A detective can receive a stipend of between \$600 and \$2,000, in addition to overtime opportunities. (Testimony of Chief Ferullo)
9. An officer's community involvement plays a big role in promotions. (Testimony of Chief Ferullo) The Appellant steps up when officers are needed for many city events; the Appellant is always there for the Department and/or the City. (Id.) In addition, the Appellant represented the Department in the Boston Run to Remember (a half-marathon to remember fallen law enforcement officers and first responders), he led the Los Angeles Run to Remember (which his union sponsored), and he has worked with the Cops for Kids with Cancer program and the Special Olympics. (Testimony of Appellant)
10. The WPD has received letters from local residents, another police department and the Rear Admiral of the Coast Guard (First Coast Guard District) commending the Appellant

⁸ I take administrative notice that the Coast Guard rank of E6 is a Petty Officer First Class.

for his actions on various occasions. His direct supervisor, Sgt. T, highly recommended the Appellant for a previous detective assignment. Sgt. D commended the Appellant and others for their roles in apprehending someone charged with assault and attempt to murder. The Appellant also received the Middlesex District Attorney's Office Team Investigation Award. (A.Exs. 2 and 4)

11. The Appellant has no disciplinary history. (Testimony of Galvin)

Officer A

12. Officer A was hired by the WPD in 2009. (Jt.Ex. 4) He took and passed the 2015 promotional exam for Police Sergeant and was ranked second thereon, after the Appellant, who was ranked first. (Jt.Ex. 1; Stipulation; Administrative Notice: HRD Information) Prior to working at the WPD, Officer A worked at the Suffolk County Sheriff's Department as a caseworker, where he was a detainees' liaison to the courts, parole, attorneys and various programs, as well as formulated institutional service plans for detainees and conducted board of probation reports. (Chief Ferullo's Post-Hearing Affidavit and Attachments)

13. In 2015, Officer A was selected for the WPD detective assignment in the narcotics unit. As a detective working in the WPD narcotics unit, Officer A was a "lone wolf" who worked mostly independently (while informing the narcotics unit Sergeant as needed) and worked on matters outside of Woburn. Chief Ferullo received good feedback from federal law enforcement authorities with whom Officer A interacted. (Testimony of Chief Ferullo) As a detective, the Appellant was involved in federal cases that yielded significant searches and seizures. He also took on "aggressive" street cases but also worked well with crime victims and family members to obtain additional information.

As a detective, Officer A was involved in a case that began as a heroin drug investigation but, with Officer A's efforts, in conjunction with other authorities, became a human smuggling case for which Officer A obtained warrants that led to prosecution in Boston. (Testimony of Ferullo)

14. Officer A's training includes suicide prevention, police mountain biking, field training officer, and cell phone investigation techniques. As a detective, Officer A took required detective training courses, including CrimeNtel criminal intelligence software certification, 80 hour Street Level Narcotics Investigations, and Interviews and Interrogation and Forensic Statement Analysis. (Jt.Ex. 4)
15. Officer A has been involved in more than 150 narcotics cases and was lead investigator in more than 70 cases; he has cultivated, managed, and supervised police informants; been an undercover officer in dozens of investigations; authored 40 search warrants and executed more than 75 search warrants; participated in numerous search and rescue operations with NEMLEC; and participated in multiple crowd control operations with NEMLEC. (Jt.Ex. 4)
16. Officer A has a Bachelor's degree in criminal justice from Westfield State University, a Master's degree in criminal justice from the UMass/Lowell, and certificates in Leadership and Police Development and Forensic Criminology (both from UMass/Lowell). (Jt.Ex. 4)
17. With respect to community involvement, Officer A apparently indicated during his interview for the Sergeant promotion that he has participated in events at the Boys Club, the Lions Club and unspecified charity events. (Jt.Ex. 4) As a detective, Officer A worked Monday through Friday but sometimes irregular hours, given the nature of the

assignment. He likes to take the weekends off like some other members of the Department. (Testimony of Chief Ferullo)

18. Among the “achievements” listed on Officer A’s resume are two (2) letters of commendation from the WPD Police Chief in 2011 and 2012, a letter of commendation from WPD Sgt. D in 2012, and Squad Leader at the MBTA Transit Police Academy. (Post-Hearing Affidavit of Ferullo and Attachments)

19. Like the Appellant, Officer A has no disciplinary history. (Testimony of Galvin)

Sergeant Promotion Process

20. Following receipt of the rank of each candidate who passed the 2015 Sergeant exam, Mayor Galvin asked Chief Ferullo for information about the candidates and he received a file for each candidate, including each candidate’s certifications, resume and aspects of their personnel files. (Testimony of Galvin and Ferullo)

21. After receiving the Sergeant candidates’ records, Mayor Galvin met with Chief Ferullo and/or Capt. Rufo to discuss the candidates. Thereafter, Mayor Galvin, by himself, interviewed all four (4) candidates, including the Appellant and Officer A, using the same questions each time, taking notes of the candidates’ responses to the questions. (Testimony of Galvin and Ferullo; Exs. 3 and 4)

22. The questions and the Mayor’s notes about the responses of the Appellant and Officer A indicate,

Question 1 - “Please describe your understanding of the duties and responsibilities of a Police Sergeant.”

Answer of Appellant: “Big jump up more responsibility”.

Answer of Officer A: Supervising men + woman on shift[.] – **Lead by example.** Expectations (illegible word) know”[.]

Question 2 – “Describe your leadership style and abilities, especially in difficult situations.”

Answer of Appellant: - “**up front ... accountability, make decisions, employees need to know**”.

Answer of Officer A: “- **Pro-active leader**[.] Difficult – situations – As to (illegible word)/**more Democratic** (word illegible) with time Permit”.

Question 3 – “What basic values do you bring to your job ... and how would they be changed by your becoming a superior officer?”

Answer of Appellant: “**Hard work, reliability, integrity, friendly. – reputation will do job, approachable, lead by example.**”

Answer of Officer A: “**Integrity, ambitious, success driven**, motivated (illegible word) **dedicated**”.

Question 4 – “If selected for the position of Sergeant, you would be supervising other police officers who have been your peers. What would be the biggest challenge for you in doing this?”

Answer of Appellant: “Challenges – **treat fairly**”.

Answer of Officer A: “Consistent w/ everyone. **No favoritism respect for consistency.**”

Question 5 – “How do you view discipline ..., the role of discipline in a police department, and it should be imposed?”

Answer of Appellant: “There is discipline – now **there are ways around it. Favoritism. Discipline immediate when necessary** other times more measured. Should be **fair + consistent.**”

Answer of Officer A: “Could be better – lack of discipline in previous years, can hurt. If someone violates rule, it **should be consistent.**”

Question 6 – “Please tell me how you would handle one of your police patrol officers who was being insubordinate and not following your directions.”

Answer of Appellant: “On the street in public – **correct immediately. Supervisor can’t be undermined.**”

Answer of Officer A: “**Right (sic) them up. Consistency**”.

Question 7 – “As a Police Superior Officer you will be working as part of a team with other Superior officers and as a team leader with your subordinates. Tell me about any related experiences you have had.”

Answer of Appellant: “Throughout life – **served as captain in various sports.** In work always steps up – in various circumstances. **Military rose up quickly.**”

Answer of Officer A: Detective – **lead Detective** – works with Sgt. McManus – **Directing officers w/more longevity**”.

Question 8 – “Why are you interested in becoming a Sergeant in the [WPD] and what sets you apart from the other candidates for Sergeant? Please include any community involvement you have had or currently have.”

Answer of Appellant: “Push to reach new goals. Applied for promotions ...

(illegible) move forward. **Senior officer involved in different cases – reliable – special events, Cops for Kids, running, fear.**”

Answer of Officer A: “Concerned about Dept Reputation – strong leadership – Education (**Masters CJ) Certificate Forensics – 2 year, cert. in Leadership + Policy – Experience on job sets him apart from other officer. NEMLEC. Crowd control.**) (Chief Ferrero

Question 9 – “Would you like to add anything further regarding your candidacy for this position?”

Answer of Appellant: “**military, Masters degree,** [illegible word], **EMT, community service,** well rounded”

Answer of Officer A: “**Mt. Bike Unit – NEMLEC** – not now [-] 150”

Ethics Issues:

Scenario 1: What do you do when, as a new Sgt., you see an officer who is a close friend “in a remote location” in a cruiser with another friend (not an officer) in the cruiser talking. The officer says he and his friend are just “catching up”.

Answer of Appellant: “**Send friend home** – (male or female?) – this is work time”.

Answer of Officer A: “**order him to have friend leave – verbally address – discipline**”.

Scenario 2: What do you do, as Sgt. and supervisor on a shift, when you are called to an altercation between a number of people and it’s unclear who is at fault. One of the three (3) officers there does not follow your orders.

Answer of Appellant: “**If not following orders and detracting from operation – send him home. If not detracting from operation** – discuss. **After – discipline, (illegible word) immediate** – necessary to keep people in check.”

Answer of Officer A: - **Remove him from scene, discuss privately – delegate different task.**

The last part of the interview questions, entitled “Observations”, requires the interviewer to assign a numerical score to the candidate’s appearance, poise, communication and experience. The Mayor did not score the Appellant or Officer A in this section of the questionnaire. The Mayor made no additional notations in the “Observations” section of the questionnaire regarding the Appellant but he made the following notations there for Officer A,

- Boys Cub, Lions, charity events
- Maguire golf tournament
- Human Trafficking
- 150 drug cases
- **Handled drug informants**
- Many ethical issues w/ informants
- **Works w/ other officers 20/30 years older.**
- Directs Forfeiture assets

(Jt.Exs. 3 and 4)(emphasis added)

23. Mayor Galvin had interviewed the Appellant and Officer A when they applied for the Sergeant position previously. (Testimony of Galvin)

24. From his interviews⁹ of the Appellant and Officer A pertaining to this appeal, Mayor Galvin determined, in part, that,

- neither the Appellant nor Officer A had a disciplinary record;
 - both of the candidates are well educated;
 - the Appellant had military experience but Officer A did not;
 - choosing between the Appellant and Officer A was a difficult decision;
 - Officer A did not have the same level of involvement in the community as the Appellant;
 - the Appellant is trustworthy, very visible in the community, a very good officer, and a strong family man;
 - the Appellant did a very good job at the interview but his command presence was not as strong as that of Officer A; Mayor Galvin was most impressed with Officer A and found that Officer A was decisive;
 - Officer A showed leadership as a successful detective in the WPD Narcotics Unit, sometimes working alone (but keeping his WPD supervisor informed of his actions), working effectively with informants, crime victims and federal law enforcement officials; and
 - Officer A showed leadership by his participation in NEMLEC activities;
 - Mayor Galvin is aware that the Appellant sometimes leads his overnight shift when a more senior officer is not available.
- (Testimony of Galvin)

25. Mayor Galvin defines “command presence” to mean that someone has an air of confidence and is sure of himself. (Testimony of Galvin)

26. The Mayor understood that officers are granted detective assignments following the determination of a panel selected by the WPD and based on the training and based, in

⁹ There is no indication in the record that the interviews for the Sergeant promotion at issue were recorded.

part, on the candidates' detective training/s. (Testimony of Galvin) However, no such panel convened to determine which officer should receive the detective assignment in 2015 because Officer A was the only person who expressed an interest in it at that time. (R.Post-Hrg.Ex. 1) In addition, the Appellant informed the Department that he was not interested in the detective assignment in 2015. (A.Post-Hrg.Ex. 1)

27. The Mayor also believed that officers (like Officer A) are assigned to the detective position, at least in part, because of detective training they have taken. (Testimony of Galvin) However, Officer A did not receive detective training until he was granted the detective assignment. (Testimony of Ferullo)
28. Chief Ferullo would like the Department to offer training as much as possible but there is usually a fee that the Department would need to pay for each course. Chief Ferullo has assigned the WPD Captains and Lieutenants the task of processing training requests. (Testimony of Ferullo) The Appellant has been authorized to attend certain courses but not others. (Testimony of Appellant)
29. After Mayor Galvin interviewed the Sergeant candidates, he met again with Chief Ferullo and Capt. Rufo to discuss the candidates. The Chief and Captain orally recommended that the Mayor promote Officer A, even though Officer A was ranked second on the certification and the Appellant was ranked first. (Testimony of Galvin and Ferullo)
30. By letter dated July 20, 2017, Mayor Scott Galvin informed the Appellant that he had been bypassed by Officer A, a WPD detective, attaching the reasons for Officer A's selection and informing the Appellant of his right to file an appeal at the Commission. Neither the July 20 letter, nor the letter attached thereto, listed any negative reasons for the Appellant's bypass but listed seven (7) positive reasons for appointing Officer A over

the Appellant:

- “1. [Officer A] has a history of superior leadership qualities and diversity of public safety service while serving as a Woburn Police Officer.
 2. [Officer A] has a Master’s Degree in Criminal Justice with Graduate Certificates in Forensic Criminology and Leadership & Police Development.
 3. [Officer A] has numerous accomplishments, training experience, and letters of commendation from superior officers in the Woburn Police department.
 4. [Officer A] was highly recommended for the position by Woburn Police Chief Robert Ferullo Jr. and Captain Robert Rufo.
 5. [Officer A] has served on NEMLEC and the Southern Middlesex Drug Task Force.
 6. [Officer A] has served as a Detective with the [WPD], and has demonstrated strong leadership and self-started skills in that position.
 7. [Officer A]’s experience on the job clearly sets him apart from the other candidates for the position of Sergeant.”
- (Jt.Ex. 2)

31. The Appellant timely filed the instant appeal. (Administrative Notice)

Applicable Law

G.L. c. 31, the civil service statute, is based on basic merit principles. That phrase is defined in section 1 of the G.L. c. 31, in part as,

(a) 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; ... ; (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens
Id.

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of

Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928).

Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence.

A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient."

Mayor of Revere v. Civil Service Commission, 31 Mass.App.Ct. 315 (1991).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

Analysis

The Respondent has failed to establish by a preponderance of the evidence that it had reasonable justification to bypass the Appellant, who was ranked first on the certification for promotion to Sergeant. The Appellant and Officer A have certain things in common. Specifically, their tenure is similar, they both have a Master's degree in pertinent subjects (although the Appellant graduated with honors), neither has a disciplinary record, both have participated in NEMLEC, and the WPD has received letters of support from a number of

individuals (including a letter from the Appellant's supervisor and a letter from the Chief in support of Officer A).

However, the Appellant and Officer are also dissimilar. For example, the Appellant steps up when officers are needed for many city events and he is always there for the Department and/or the City. In addition, the Appellant listed detailed activities in which he has participated and organized. The Police Chief specifically testified that an officer's community involvement plays a big role in promotions. By comparison, Officer A provided little information about his community involvement, with the Police Chief testifying that Officer A, who works Monday through Friday with some irregular hours because of the nature of the detective work he has performed, likes to take the weekends off like some other members of the Department.

The Appellant and Officer A also differ with regard to training. The Appellant has taken every training course he has been permitted by his superiors to take, not just the courses that are required. In addition, the Appellant has trained to be an instructor in a number of courses and he is an EMT. The courses Officer A has taken as a detective are required courses. Further, the Appellant is the only trained field officer on his night shift and he has trained approximately twelve (12) officers whereas Officer A has trained approximately two (2) officers.

The evidence in the record establishes that the Appellant has experience as a supervisory. On his shift, the Appellant supervises other officers when there is no supervisor, he takes on related supervisory roles such as assisting in the booking and fingerprinting of detainees, and running any crime scenes. By comparison, the Police Chief testified that Officer A worked mostly independently as a "lone wolf" and, although he was involved in cases involving significant searches and seizures in which he worked with federal and other authorities and

informants, there is no indication in the record that he supervised other officers.¹⁰ The Appellant has served in the military, where he supervised a number of others when deployed but there is no indication in the record that Officer A has served in the military. Thus, in addition to having the higher exam score, the Appellant has superior leadership on his shift performing as a supervisor as needed, he has supervised others in the military, he has been deeply and reliably involved in city activities, he has participated in and organized specific charitable and commemorative activities in support of his own Department as well as other law enforcement departments, obtained training in every course available to him, and become a training instructor in a variety of training courses.

This evidence notwithstanding, the Respondent also asserts that it promoted Officer A, rather than the Appellant, because Officer A has “command presence”, an inherently subjective characterization that has been applied by some appointing authorities to justify a promotion decision. I have carefully reviewed the Appellant’s testimony at the Commission hearing. The Appellant testified, responding to questions carefully and, on occasion, he paused to clarify his responses to questions. My perception of the Appellant’s testimony was that, as a serious candidate, he carefully considered his responses and he did not want to appear to be bragging. I have also carefully reviewed the candidates’ responses at the interviews and I find that the responses of both the Appellant and Officer A to interview questions had their strengths and their weaknesses, with there being no clear indication that Officer A was better qualified than the Appellant, if that is the intended application of the phrase “command presence”. However, the Commission has found that even when all factors for selection are equal between a selected candidate and an appellant bypassed with a higher civil service examination score, deference

¹⁰ Officer A became a detective in 2015 when no one else (including the appellant, because of family needs, requested the assignment. I find it odd that Officer A was the only person who requested the detective assignment that year when testimony indicated that it is a highly sought-after assignment)

should be given to the candidate with the higher score. Belanger v. Ludlow, G2-03-518 (2007).

In view of the Appellant's higher score on the civil service exam, his repeated displays of leadership and commitment to the Department, the city of Woburn, and the law enforcement community at large, the Respondent erred when it bypassed him.

The Appellant asserts that the promotional process is flawed. Specifically, the Appellant complains that Mayor Galvin met with Chief Ferullo and Capt. Rufo prior to the candidate interviews. While the purpose of the Mayor's meeting with the Chief and Captain prior to the interviews, purportedly, was to provide the candidates' files to the Mayor, it also presented an opportunity for the Chief and Captain to convey their recommendations, directly or indirectly, to the Mayor prior to the interviews. While it is understandable that the Mayor would be interested in the working knowledge that the Chief and Captain may have that is not reflected in the candidates' files, in the interest of civil service basic merit principles and transparency, the Chief and Captain should not meet with or otherwise discuss the candidates with the Mayor prior to the candidate interviews to avoid even the appearance of unacceptable bias. Further, and for the same reasons, the Chief's and the Captain's recommendations should not be submitted to the Mayor prior to the interviews and the recommendations should be in writing, indicating the reasons for the recommendation. If the Respondent does not begin recording promotional interviews, at least one (1) additional person of the Mayor's choosing should participate in the interview.

Police departments and other public safety agencies are properly entitled, and often do, conduct interviews of potential candidates as part of the hiring process. In an appropriate case, a properly documented poor interview may justify bypassing a candidate for a more qualified one. *See, e.g., Dorney v. Wakefield Police Dep't*, 29 MCSR 405 (2016); Cardona v. City of Holyoke,

28 MCSR 365 (2015). Some degree of subjectivity is inherent (and permissible) in any interview procedure, but care must be 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 lynchpin to the basic merit principle of civil service law. *E.g.*, Flynn v. Civil Service Comm’n, 15 Mass.App.Ct. 206, 208, *rev.den.*, 388 Mass. 1105 (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: Anthony v. Springfield, 23 MCSR 201 (2010), Gagnon v. Springfield, 23 MCSR 128 (2010); Boardman v. Beverly Fire Dep’t, 11 MCSR 179 (1998). Examples of the latter: Conley v. New Bedford Police Dep’t, 29 MCSR 477 (2016); Phillips v. City of Methuen, 28 MCSR 345 (2015); Morris v. Braintree Police Dep’t, 27 MCSR 656 (2014); Monagle v. City of Medford, 23 MCSR 267 (2010); Mainini v. Town of Whitman, 20 MCSR 647, 651 (2007); Belanger v. Town of Ludlow, 20 MCSR 285 (2007); Horvath v. Town of 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).

The Appellant also argues that he has been treated unfairly leading up to the promotional process. For example, the Appellant asserts that the Chief and/or Captain oppose the Appellant’s candidacy for Sergeant because the Appellant is friends with a problematic officer and that Officer A was granted the Narcotics Unit detective assignment because he is close friends with a Sergeant in the Narcotics Unit.¹¹ There is insufficient evidence in the record to support these assertions.

¹¹ To consider the Appellant’s allegation that Officer A was inappropriately granted the detective assignment and the Respondent relied on Officer A’s experience as a detective, *inter alia*, to bypass the Appellant, at the hearing I

Conclusion

For reasons stated herein, the Appellant's appeal under Docket No. G2-17-168, filed pursuant to G.L. c. 31, s. 2(b), is *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders that:

HRD, or the City in its delegated capacity, is ordered to place the name of Ian Hunt at the top of any future Certification for the position of Police Sergeant in the Woburn Police Department until such time as he is appointed or bypassed.

CIVIL SERVICE COMMISSION

/s/ Cynthia A. Ittleman
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman [absent]; Camuso, Ittleman, Stein and Tivnan, Commissioners) on January 16, 2020.

Either party may file a motion for reconsideration within ten days of the receipt of the Commission's 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. 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 to:

ordered the parties to provide related information. Post-hearing, the parties submitted the information ordered and it was entered into the record as indicated in fn 3, *supra*. Although the Respondent's witnesses had testified at the hearing that six (6) officers (including Officer A) applied for the detective assignment in 2015 and they were each interviewed by a panel of interviewers, the Respondent's post-hearing information indicates that there were no interviews when Officer A was granted the detective assignment because Officer A was the only one who had applied for the assignment. The Appellant's post-hearing information indicates that although he requested the detective assignment on other occasions, he did not apply for the detective assignment in 2015. At the hearing, Chief Ferullo and Capt. Rufo testified that there are no policies or procedures for considering detective assignment requests. In the interest of transparency and objectivity, the Respondent should make every effort to standardize the process for considering such assignment requests.

Michael Reilly, Esq. (for Appellant)
Ellen Callahan Doucette, Esq. (for Respondent)
Michele Heffernan, Esq. (HRD)