

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

DAVID IRWIN,
Appellant

v.

G2-18-167

TOWN OF LUDLOW,
Respondent

Appearance for Appellant:

William J. Fennell, Esq.
84 Park Street, 2nd Floor
West Springfield, MA 01089

Appearance for Respondent:

Stanley L. Weinberg, Esq.
11 John Robinson Drive
Hudson, MA 01749

Commissioner:

Christopher C. Bowman

DECISION

On August 31, 2018, the Appellant, David Irwin (Sgt. Irwin), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Ludlow (Town) to bypass him for promotional appointment to the position of police lieutenant. On October 24, 2018, I held a pre-hearing conference at the Springfield State Building in Springfield, MA. I held a full hearing at the same location on March 27, 2019.¹ The full hearing was digitally recorded and both parties received a CD of the proceeding.² On May

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 If 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

30, 2019 and May 31, 2019, the parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Ten exhibits were entered into evidence at the full hearing (Town Exhibits 1-9 (Exhibits 1-9)) and Appellant Exhibit A (Exhibit A). Based on the documents submitted and the testimony of the following witnesses:

For the Town:

- Pablo (Paul) Madera, Police Chief, Town of Ludlow;
- Derek DeBarge, Selectman, Town of Ludlow;

For Sgt. Irwin:

- David Irwin, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, I find the following:

1. The Town of Ludlow (Town), located in Hampden County in Western Massachusetts, has a population of approximately 21,000. A five-member Board of Selectmen serves as the Appointing Authority.
<https://www.census.gov/quickfacts/fact/table/worcestercitymassachusetts/PST045217>
2. The Ludlow Police Department (LPD) has forty sworn officers including a Police Chief and two lieutenants, one who serves as an operations lieutenant and one who serves as an administrative lieutenant. The position that is the subject of this appeal is the operations lieutenant. (Testimony of Chief Madera)

substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

3. The duties and responsibilities of the operations lieutenant include: patrol scheduling, supervision, training, accreditation, public information, special police force management, emergency management, K-9, dispatch training oversight, policy and procedure review and implementation and oversight of the day-to-day operations of the department. (Exhibit 8; Testimony of Chief Madera)
4. On September 16, 2017, Sgt. Irwin took the civil service promotional examination for police lieutenant and received a score of 90. (Stipulated Fact)
5. On November 1, 2017, the state's Human Resources Division (HRD) created an eligible list of candidates for Ludlow Police Lieutenant. Sgt. Irwin was ranked first and the candidate ultimately selected by the Town, Sgt. Daniel Valadas (Sgt. Valadas), was ranked third. (Stipulated Facts)
6. Sgt. Valadas commenced his employment as a Ludlow Police Officer in 1993; he was promoted to Sergeant in 2003. He served in the U.S. Army as a military police officer/staff sergeant and was honorably discharged after twelve years of service. Sgt. Valadas has a master's degree and a bachelors degree, both in criminal justice. He was a recipient of the political science excellence award from American International College; additionally, he is an adjunct professor (criminal justice departments) at Western New England University and Holyoke Community College, and is an instructor for the Municipal Police Training Committee. During his employment with the LPD, Sgt. Valadas has performed many specialty assignments; there are 120 entries in his departmental training record. Sgt. Valadas served as Provisional Lieutenant for six months, ending in March 2014; he developed and implemented the Field Training Officer (FTO) Program, and he served as commander of the Department's Special Police Force, which, although comprised of volunteers, was a

“department within the department,” performing regular patrol functions and trained to the same standards as regular officers. (Testimony of Chief Madera; Exhibits 4 and 5)

7. Sgt. Irwin became a police officer in 2010. He served as a patrol officer in Longmeadow, Massachusetts for four years. He was ranked first in his class at the Western Massachusetts Regional Police Academy. Sgt. Irwin came to the Town of Ludlow in March 2014 as a patrolman and was promoted to sergeant in March 2016. He holds a bachelor’s degree and a master’s degree in criminal justice and was recognized as a summa cum laude student in both programs. Sgt. Irwin has held many specialized assignments throughout his career including field training officer, domestic violence coordinator, sexual assault investigator, field training officer, assistant court officer among others. (Testimony of Sgt. Irwin; Exhibit 3)
8. Throughout his career, Sgt. Irwin has availed himself of multiple and varied opportunities for specialized training including, among others, incident command, grant writing, use of force instructor, command training, child abuse and neglect and many others. (Testimony of Sgt. Irwin)
9. Following his promotion, Sgt. Irwin has regularly served as an acting lieutenant This is because on the overnight shifts the scheduled shift sergeant was the senior ranking officer within the department on duty at least fifty per cent of the time and shared that same duty with another sergeant the balance of his weekly shift. (Testimony of Sgt. Irwin)
10. On June 19, 2018, the Board of Selectmen interviewed three candidates, including Sgt. Irwin and Sgt. Valadas. Prior to the interviews, the members of the Board received and reviewed the personnel packages of each candidate. (Testimony of Chief Madera; Exhibit 1)
11. The interviews were audio and video recorded. (Exhibit 1)

12. Each Board member asked their own questions of each candidate. There was no formal rating or scoring process used. (Testimony of Mr. DeBarge)
13. At the conclusion of the interviews, Chief Madera, who was present for the interviews, did not recommend any one candidate, but emphasized that the Board should take into consideration the candidates' level of experience, years of service and what they bring to the table in order to perform the duties of lieutenant on day one. (Exhibit 1; Testimony of Chief Madera)
14. With all three candidates present, each member of the Board of Selectmen stated his/her recommendation regarding who should be promoted to lieutenant. At times speaking directly to each candidate, the individual Board members provided specific reasons for their recommendation. The Board voted unanimously to promote Sgt. Valadas, the third-ranked candidate, to lieutenant. (Exhibit 1)
15. On July 25, 2018, the Town notified Sgt. Irwin of the reasons for his bypass. It was authored by the Human Resources Director who attended the interviews and deliberations of the Board. The reasons were:
- Lack of professional supervisory experience;
 - The selected candidate brings 25 years of community knowledge;
 - The selected candidate demonstrated progressive professional development;
 - The selected candidate demonstrated organizational knowledge of the command structure and police operations. (Exhibit 2)
16. This appeal followed. (Stipulated Fact)

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass.256, 259 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, § 1.

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." Cambridge at 304. 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).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions (City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 814, 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. Beverly. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining

whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited.

Analysis

I listened carefully to the witness testimony and reviewed all of the exhibits, including the audio and video recorded interviews conducted by the Board of Selectmen and their public discussion at which time each Board member explained the reasons behind their recommendation. The process wasn't perfect, but, generally, it was fair, uniform, impartial and refreshingly transparent.

The Board members appeared to carefully listen to and consider the responses of each candidate. They did not defer to, but, rather, gave appropriate consideration to the Police Chief's recommendation regarding the need to give the candidates' level of experience the most weight. Their public comments show that they did not simply decide to promote the candidate with more years of experience, but, rather, considered how Sgt. Valadas's detailed and passionate responses demonstrated that he is more prepared and qualified for the position of lieutenant, the second-highest position in the Town's Police Department.

The Board's comments are supported by the audio and video recorded interviews that I reviewed. Sgt. Valadas's responses showed a deep understanding of the history and current challenges of the Ludlow Police Department. Without hesitation, he was able to recount incidents that were directly related to the subject matter of the questions and the lessons he learned from each incident. Over a short period of time, he spoke positively of many other Ludlow police officers and their contributions, mentioning them specifically by name. He spoke with specificity about the duties and responsibilities of the operations lieutenant and how he would perform those duties, stressing the need to be a dependable and trustworthy leader.

I did consider that there was an 8-point differential in the scores between the two candidates, which is afforded significant weight by the Commission. Based on the facts in this particular case, however, the Board of Selectmen has shown that it had reasonable justification to bypass the two other higher ranked candidates. In short, Sgt. Valadas's responses showed how his twenty-five years of experience and passionate commitment to the Department make him the best candidate for the position, providing the Board of Selectmen with reasonable justification to bypass the two other higher ranked candidates.

The Board's high praise for Sgt. Irwin is also well supported by the record. His educational and professional background is impressive and he displayed a high degree of professionalism during these proceedings. The Town is fortunate to have someone of his caliber working in the Ludlow Police Department.

For all of the reasons stated above, the Appellant's appeal under Docket No. G2-18-167 is *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 27, 2020.

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 to:

William J. Fennell, Esq. (for Appellant)

Stanley L. Weinberg, Esq. (for Respondent)