

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

WILLIAM JEBB,
Appellant

v.

G2-13-153

CITY OF CHICOPEE,
Respondent

Appearance for Appellant:

Thomas A. Kenefick, III, Esq.
73 Chestnut Street
Springfield, MA 01103

Appearance for Respondent:

Gordon D. Quinn, Esq.
Sullivan, Hayes & Quinn, LLC
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Springfield, MA 01144

Commissioner:

Christopher C. Bowman

DECISION

On July 3, 2013, William Jebb, (Mr. Jebb), acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from a decision of the City of Chicopee (City) to bypass him for promotional appointment to the position of permanent Police Chief in the Chicopee Police Department (Department) by promoting a lower-ranked candidate, Thomas Charette. A pre-hearing conference was held on July 24, 2013 at the Springfield State Building in Springfield. A full hearing was held over two (2)

days on November 20, 2013 at the Springfield State Building and on December 17, 2013 at Chicopee City Hall.¹ With the exception of Mr. Jebb, all witnesses were sequestered.

After the first day of hearing, I concluded that Mr. Charette may be substantially affected by the proceedings. Consistent with 801 CMR 1.01 (9)(a-d) and 801 CMR 1.01(7)(a), I granted leave for Mr. Charette to file a petition to intervene in this appeal. He chose not to do so.²

The full hearing was digitally recorded and copies of the recordings were provided to the parties.³ Post-hearing briefs were submitted on January 4, 2014 (City) and January 5, 2014 (Mr. Jebb).

FINDINGS OF FACT

Twenty-four (24) exhibits were entered into evidence by the Appointing Authority on November 20, 2013.⁴ Fifty-seven (57) exhibits were entered into evidence by Mr. Jebb on November 20, 2013.⁵ Mr. Jebb entered one additional exhibit into evidence on December 17, 2013 which was marked as Exhibit 84. An additional exhibit was

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

² To ensure timely notification to Mr. Charette, I asked, via email, with a copy to counsel to the Appellant, counsel for the City to forward my order to Mr. Charette via email. At the commencement of the second day of hearing, counsel for the City confirmed that the email communication was sent to Mr. Charette. Further, counsel for the City stated that Mr. Charette informed him that he would not be filing a motion to intervene. The Commission never received a petition to intervene and neither party was served with a copy of a petition to intervene.

³ 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 substantial evidence, arbitrary or 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.

⁴ Exhibits 1 through 12 were the Appointing Authority's initial proposed exhibits; Exhibits 13 through 71 were Mr. Jebb's initial proposed exhibits; Exhibits 72 through 83 were the Appointing Authority's rebuttal exhibits which it only intended to introduce if its objections to certain of Mr. Jebb's proposed exhibits were overruled. All but one of Mr. Jebb's proposed exhibits were allowed into evidence over the Appointing Authority's objection. As a result, the Appointing Authority introduced the additional twelve (12) rebuttal exhibits into evidence, for a total of twenty-four (24) exhibits.

⁵ Appellant's proposed Exhibit 58 was not allowed into evidence.

submitted as part of the record at my request at the conclusion of the second day of hearing and marked as Exhibit 85.⁶ Based upon the documents, the testimony of:

Called by the City:

- Michael Bissonnette, Mayor, City of Chicopee;⁷
- Thomas G. Charette, Police Chief, City of Chicopee;
- Barbara Pininski, Budget Analyst, City of Chicopee;

Called by Mr. Jebb:

- Wayne Sampson, Public Safety Consultants, LLC;
- Scott Szczebak, Human Resources Director, City of Chicopee;
- Karen Betournay, City Solicitor, City of Chicopee;
- John Ferraro, former Police Chief, City of Chicopee;
- William R. Jebb, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

Chicopee

1. Chicopee is a city located in Western Massachusetts on the Connecticut River in Hampden County. Home to Westover Air Reserve Base and Elms College, the City has a total area of 23.9 square miles and a population of approximately 55,000. The City's structure of government includes an elected Mayor and a thirteen (13)-member City Council. (Administrative Notice: www.mass.gov and www.chicopeema.gov)

⁶ The voluminous documents contain large amounts of information which it was not practical to redact, including, but not limited to, personnel record-related information of other police officers, names of citizens who filed citizen complaints, etc. For this reason, I have deemed all of the exhibits as confidential.

⁷ Over the objection of the Appellant, Mr. Bissonnette's testimony was taken via Skype as Mr. Bissonnette was on vacation in Hawaii at the time of the hearing.

2. The Chicopee Police Department employs one hundred thirty-two (132) sworn personnel and six (6) civilian personnel. The Department's operating budget is approximately \$10.5 million. (Testimony of Mr. Charette)

Mr. Bissonnette

3. In 2005, Michael Bissonnette was elected as the City's Mayor and took office in January 2006. In the most recent City election in November 2013, he failed to win re-election. He previously sought election to the Massachusetts State Senate. He won the Democratic primary but lost in the General Election. (Testimony of Mr. Bissonnette)
4. Prior to his service as Mayor of Chicopee, Mr. Bissonnette was an attorney in private practice for seventeen (17) years, primarily as a criminal and civil litigator in Chicopee District Court. Other members of this three-lawyer firm handled domestic relations, real estate-related matters, wills, trusts and probating of estates. As an attorney, Mr. Bissonnette represented several members of the Chicopee Police Department as well as Massachusetts State Troopers on various matters. (Testimony of Mr. Bissonnette)
5. On one occasion in 2003, Mr. Bissonnette represented *Mr. Charette* (the candidate subsequently selected by Mr. Bissonnette for Police Chief in 2013) at a hearing related to continuing a restraining order that had been sought by Mr. Charette's sister-in-law. After a hearing, the restraining order was dismissed one (1) day after it was issued. (Testimony of Mr. Bissonnette, Mr. Charette and Exhibit 80)
6. Also in 2003, another lawyer in Mr. Bissonnette's law firm represented *Mr. Jebb* (the Appellant) and his wife in a real estate-related matter. (Testimony of Mr. Bissonnette)

7. In 2005, when Mr. Bissonnette was running for Mayor, Mr. Jebb was president of the police supervisors' union which had endorsed and strongly supported Mr. Bissonnette's opponent. (Testimony of Mr. Jebb)
8. During his 2005 mayoral campaign, Mr. Bissonnette had concerns about the release of potentially embarrassing information contained in his criminal records dating back to the 1980s. (Testimony of Mr. Bissonnette)
9. At the time, Mr. Bissonnette suspected that Mr. Jebb had a role in the release of this information. (Testimony of Mr. Bissonnette)
10. As referenced above, Mr. Bissonnette won the 2005 election and served as the City's Mayor until January 6, 2014. (Testimony of Mr. Bissonnette)
11. The decision to promote Mr. Charette as the permanent Police Chief, and bypass Mr. Jebb, occurred in June 2013 in the midst of Mr. Bissonnette's most recent campaign for re-election. The two (2) days of hearing before the Commission regarding this bypass occurred in November and December 2013, after Mr. Bissonnette lost his bid for re-election, but before his opponent, former Mayor Richard Kos, was sworn into office. Per my direction, both parties submitted their post-hearing briefs to the Commission prior to the expiration of Mr. Bissonnette's term on January 6, 2014.

Mr. Charette (the candidate promoted to permanent Police Chief)

12. Mr. Charette is a resident of Chicopee. He is married and has three (3) children, ages 21, 19 and 17. He speaks with pride about their accomplishments. (Testimony of Mr. Charette)
13. Mr. Charette served in the United States Air Force from 1981 to 1987. He served as a base patrolman in Korea for one (1) year and as an assistant flight chief or flight chief

for four (4) years at an Air Force base in Nebraska. (Testimony of Mr. Charette and Exhibit 5)

14. Mr. Charette has a bachelors degree in criminal justice from Anna Maria College. (Testimony of Mr. Charette and Exhibit 5)

15. Prior to joining the Chicopee Police Department, Mr. Charette was employed as a correction officer for the Connecticut Department of Correction and a police officer for the Veterans' Affairs Medical Center in Northampton, MA. (Testimony of Mr. Charette and Exhibit 5)

16. Mr. Charette joined the Department in 1992 as a patrolman. He was promoted to the rank of Sergeant in 1998, the rank of Lieutenant in 2003 and to the rank of Captain in 2009. Upon the abrupt retirement of former Police Chief John Ferraro in June 2012, he was appointed as Provisional Police Chief in June 2012. (Testimony of Mr. Charette and Exhibit 5)

17. Mr. Charette is involved in various civic organizations including the Knights of Columbus, the Fraternal Order of the Eagles; the Chicopee Boys and Girls Club; and the American Cancer Society Relay for Life. He has coached local youth football and soccer teams. (Testimony of Mr. Charette)

18. Mr. Charette spent the majority of his career as part of the Uniform Division, in both patrol and supervisory capacities. He has been involved in over 1,900 bookings. (Testimony of Mr. Charette, Exhibits 3 & 11)

19. Mr. Charette has received seven (7) commendations from the Department for his involvement in a variety of incidents. He also received a Meritorious Service Medal from the Department, a Medal of Merit from the Massachusetts Police Association

and a Medal of Valor from the Massachusetts State Police for his on-scene command of operations during a hostage and shootout situation in the City's West End on April 13, 2012. (Testimony of Mr. Charette and Exhibits 5 & 10)

20. During his career, Mr. Charette was formally disciplined on two (2) occasions for minor offenses. One (1) of those disciplinary actions was overturned by the Civil Service Commission. (Exhibit 73)
21. Although Mr. Charette was once asked (over ten (10) years ago) to write a letter about his level of sick time usage, he has never received any formal discipline in this regard and has not used a sick day in the past five (5) or six (6) years. He typically sells back approximately six (6) days of sick time per year. (Testimony of Mr. Charette & Ms. Pininski and Exhibit 12)

Mr. Jebb (the candidate bypassed for promotion to permanent Police Chief)

22. Mr. Jebb grew up in a housing project in Chicopee and lived in the City until 1995. Mr. Jebb's youngest brother was murdered in Chicopee and his oldest brother was killed in an automobile accident in Chicopee. Seeking some distance during off-duty hours from the constant reminders of those tragic events, Mr. Jebb and his wife moved to Wilbraham in 1995. In the event that he is appointed as Police Chief, he would move back to Chicopee. (Testimony of Mr. Jebb)
23. Mr. Jebb is married and has two (2) daughters, ages 20 and 16. He speaks with pride about their accomplishments. (Testimony of Mr. Jebb)
24. Mr. Jebb and his wife own a sixteen (16)-unit apartment complex in Chicopee. (Testimony of Mr. Jebb)

25. Mr. Jebb served in the United States Air Force and/or Air Force Reserves for over twenty-one (21) years. He served in the Security Police Squadron in Greenland for four (4) years and has served in various capacities at Westover Air Reserve Base including: Flight Chief / Unit Career Advisor; and First Sergeant. (Testimony of Mr. Jebb and Exhibit 6)
26. Mr. Jebb has a bachelors degree in criminal justice from Westfield State University. (Testimony of Mr. Jebb and Exhibit 6)
27. Mr. Jebb joined the Chicopee Police Department in 1987 as a patrolman. He was promoted to the rank of Sergeant in 1994, to the rank of Lieutenant in 1996 and to the rank of Captain in 2003. As the most senior Captain, consistent with the terms of the applicable collective bargaining agreement, Mr. Jebb currently holds the title of Deputy Police Chief. (Testimony of Mr. Jebb and Exhibit 6)
28. During his career with the Department, Mr. Jebb served in the patrol division for five (5) years and has served in a number of other capacities, including serving as the Commanding Officer of Special Investigations (which included the Narcotics Division), Bureau of Services (which included the Homicide Division), Special Response Team and Detective Bureau. From 2009 to 2013, he was also in charge of internal affairs investigations. (Testimony of Mr. Jebb and Exhibit 6)
29. Mr. Jebb received a commendation from the Police Chief for an act of bravery during a hostage situation. (Testimony of Mr. Jebb and Exhibit 6)
30. During his career, Mr. Jebb has never been disciplined and has an excellent attendance record. (Testimony of Mr. Jebb)

Provisional Promotion

31. Former Police Chief John Ferraro retired in June 2012. Because of the short notice, there was not an active civil service eligible list for Police Chief, requiring the appointment of a provisional Police Chief. (Testimony of Mr. Bissonnette)
32. Chief Ferraro recommended that the Appellant, Mr. Jebb, be provisionally promoted based on his seniority and the various roles he had played in the Department over his career. Mr. Bissonnette, after conducting interviews, did not accept the recommendation of Chief Ferraro and appointed Mr. Charette. (Testimony of Chief Ferraro)
33. Mr. Charette served as the provisional Police Chief for approximately one (1) year. During that time, Mr. Jebb retained his contractually-dictated title of Deputy Police Chief and continued to oversee all internal affairs investigations. (Testimony of Mr. Charette and Mr. Jebb)
34. The working relationship between Mr. Charette and Mr. Jebb quickly deteriorated. (Testimony of Mr. Charette and Mr. Jebb)
35. Mr. Jebb failed to keep Mr. Charette apprised of ongoing internal affairs investigations in a timely manner. For example, when Mr. Jebb became aware of a video showing a police officer potentially engaged in excessive force, he first consulted with the City Solicitor and then waited days to apprise Mr. Charette of the issue. (Testimony of Mr. Charette)
36. On another occasion, when Mr. Charette referred an allegation of insubordination by an officer to Mr. Jebb, Mr. Jebb penned an internal affairs report accusing *Mr. Charette* of misconduct. (Testimony of Mr. Charette)

37. In April or May of 2013, Mr. Charette requested that the Mayor appoint an independent investigator regarding this incident as well as other internal affairs investigations⁸ completed by Mr. Charette. (Testimony of Mr. Charette and Mr. Bissonnette)
38. Mr. Charette penned a seven-page, single spaced letter to the investigator alleging that Mr. Jebb went outside the chain of command in regard to the investigation related to alleged excessive force. The letter also accuses Mr. Jebb of: untruthfulness, incompetence and immaturity. (Exhibit 68)
39. After multiple individuals (including a retired Judge) declined the Mayor's request to serve as an independent investigator, Mr. Michael Pavone of Integrity Investigations and Consulting, was hired to conduct an investigation. (Testimony of Mr. Bissonnette and Exhibit 85)
40. Mr. Pavone's investigation was not concluded until December 4, 2013, at which time he issued a twenty-six (26) page report to the Mayor. (Exhibit 85)
41. While questioning the light discipline regarding the Amanda Plasse-related incident and recommending improvements to the overall internal affairs process, Mr. Pavone largely concluded that, of those investigations reviewed, Mr. Jebb's investigations were conducted in conformance with applicable policies and procedures. He

⁸ I heard rather extensive testimony related to another high profile internal affairs investigation completed by Mr. Jebb regarding the death of Amanda Plasse in 2011. Her body was photographed by Chicopee police officers and those pictures were shared with members of the public. An investigation commenced in August 2011. The investigation, completed by Mr. Jebb, concluded in April 2012 with four (4) police officers, including one who was untruthful, receiving relatively minor discipline. Mr. Bissonnette testified that he was unaware of the investigation until April 2012; that he was upset with the light discipline imposed; and that attempts were made to downplay the role of individual officers. Former Chief Ferraro and Mr. Jebb both testified that they informed Mr. Bissonnette of the investigation shortly after it began in August 2011 and kept him apprised of the ongoing investigation in 2011 and 2012; and that the only objection raised by Mr. Bissonnette was that the "language" in the disciplinary letters could be "stronger".

concluded that Mr. Jebb's investigation of the Amanda Plasse-related incident was "comprehensive and transparent." (Exhibit 85)

42. More broadly, Mr. Pavone noted that "there exists many divisions and allegiances that separate the rank-and-file officers, as well as superior officers, which appears to be based on divided loyalties, distrust, personalities and a sense of entitlement among personnel." (Exhibit 85)

Selection Process for Permanent Police Chief

43. Following Chief Ferraro's retirement in June 2012, the City contacted the state's Human Resources Division (HRD) to determine when the next written Police Chief's exam would be administered. HRD indicated that the next written exam would be administered in May 2013 with a lag time of approximately sixty (60) to ninety (90) days for the scores to be processed and a list to be generated. (Testimony of Mr. Bissonnette)

44. Instead of relying on a written examination, Mr. Bissonnette entered into an agreement with HRD, whereby HRD's and the City's responsibilities related to selecting a Police Chief were delegated to an "assessment center." (Testimony of Mr. Bissonnette and Exhibit 38).

45. The City contracted with the Edward J. Collins, Jr. Center for Public Management and UMASS Boston to provide the assessment center services, which were ultimately provided by Public Safety Consultants, LLC. (Exhibit 39, Testimony of Mr. Sampson).⁹

⁹ The Collins Center accepted a payment of \$20,000 from the City. Public Safety Consultants, LLC received \$8,000 from the Collins Center.

46. HRD worked directly with Public Safety Consultants to review and approve the assessment center process developed for the City. (Testimony of Mr. Sampson).
47. As part of the assessment center process, the City completed an “essential task survey analysis” rating the importance of various tasks performed by the City’s Police Chief. (Exhibit 41).
48. The assessment center was held on January 23, 2013. (Exhibit 39). There were five (5) Captains eligible to participate and all five (5) participated in the assessment center process. (Exhibits 7, 40). The assessment center consisted of four (4) scenario exercises: budget, appearance before City Council, press conference and employee interview. (Testimony of Mr. Sampson). The candidates were evaluated by a team of four (4) assessors, all of who were former Police Chiefs. The top three (3) scoring candidates were: Mr. Jebb earning a final score of eighty-seven (87), Mr. Charette earning a final score of eighty-four (84) and Captain Steven Muise earning a final score of eighty-three (83).¹⁰ (Testimony of Mr. Sampson, Exhibit 7). All of the top three (3) candidates indicated that they were willing to accept appointment as permanent Police Chief. (Exhibit 7).
49. After the pool of candidates had been narrowed to three (3) by virtue of the assessment center results, Mayor Bissonnette then requested that the City’s Human Resources Department assemble background information on the remaining three (3) candidates, which included personnel files and financial information to be considered in the hiring process. (Testimony of Mr. Bissonnette).

¹⁰ These scores include the additional merit preference status points that are awarded to certain candidates pursuant to Civil Service law.

50. Following the assembly of the background information, Mayor Bissonnette then convened an interview committee to conduct interviews of the three (3) remaining candidates in April 2013. The interview committee consisted of: City Solicitor Karen Betournay, Assistant City Solicitor Shawn Willis, Human Resources Director Scott Szczebak, and Mayor Bissonnette's former Chief of Staff Christopher Nolan. (Testimony of Mr. Bissonnette).
51. Ms. Betournay and Mr. Szczebak indicated that prior to the interviews, both had worked closely with Mr. Jebb. (Testimony of Ms. Betournay and Mr. Szczebak)¹¹
52. Ms. Betournay has a professional friendship with Mr. Jebb and occasionally goes to lunch with him. She does not have a good working relationship with Mr. Charette. (Testimony of Ms. Betournay)
53. Mayor Bissonnette had limited interactions with the members of the interview committee about the interview process; he communicated to them that he expected them to be fair and honest and evaluate each candidate separately, but he did not communicate any of his opinions about the candidates. (Testimony of Mr. Bissonnette) Ten (10) questions were developed to be asked of each candidate. (Exhibit 15).
54. The interviews were held on April 12, 2013 in Mayor Bissonnette's office. Mayor Bissonnette was present for the interviews. (Testimony of Mr. Bissonnette). The members of the interview committee took notes and completed scoring sheets.

¹¹ I arrived early at Chicopee City Hall for the second day of hearing which was scheduled to begin at 9:00 A.M. As I was searching for someone to unlock the hearing room, I came upon Mr. Jebb and Mr. Szczebak engaged in conversation. I mistakenly drew the impression that Mr. Szczebak was serving as Mr. Jebb's counsel, as opposed to being a witness.

(Exhibits 16-30). Mayor Bissonnette took notes, but did not complete a scoring sheet. He subsequently destroyed his notes. (Testimony of Mr. Bissonnette).

55. The members of the interview committee submitted their scoring sheets to Mayor Bissonnette. The results of the scoring sheets were that Ms. Betournay, Mr. Willis and Mr. Szczebak scored Mr. Jebb higher than Mr. Charette, while Mr. Nolan had the two candidates tied. (Exhibits 16-20, 24-27 and testimony of Mr. Bissonnette).
56. Thus, at this point in the selection process in April 2013, Mr. Jebb had received the highest civil service examination grade via the Assessment Center and had been ranked highest by the interview panel appointed by Mr. Bissonnette. Mr. Charette had received the second highest civil service examination grade by the Assessment Center and had been ranked second by the interview panel.
57. Mr. Bissonnette, as he was about to make his final decision, was still troubled by what he believed was Mr. Jebb's involvement in the release of his criminal information during his first run for Mayor over seven (7) years ago. According to Mayor Bissonnette, the perceived disclosure "spoke directly to the integrity of the Police Chief" and was information that should be weighed in making his final determination. (Testimony of Mr. Bissonnette)
58. A few months prior, in February 2013, the City Solicitor, at Mr. Jebb's request, asked Mr. Bissonnette why he "hated" Mr. Jebb. Mr. Bissonnette told the City Solicitor that he didn't hate Mr. Jebb, but that he didn't trust him and referenced the alleged release of his criminal information in 2005. (Testimony of Ms. Betournay) Upon learning of this information, Mr. Jebb made multiple unsuccessful attempts to meet with Mr. Bissonnette on this issue. (Testimony of Mr. Jebb)

59. Prior to making his final decision regarding the permanent Police Chief appointment, Mr. Bissonnette contacted the former campaign manager of his opponent in the 2005 mayoral election. (Testimony of Mr. Bissonnette)
60. According to Mr. Bissonnette, his opponent's former campaign manager told him (Bissonnette) that Mr. Jebb was present when the information was allegedly provided to his opponent's campaign in 2005. (Testimony of Mr. Bissonnette)¹²
61. At some point after the phone call with this opponent's former campaign manager, Mr. Bissonnette told Mr. Sczebak that he had decided to appoint Mr. Charette as the permanent Police Chief and bypass Mr. Jebb. He asked Mr. Sczebak to draft the "bypass letter" but did not provide Mr. Sczebak with any reasons for the bypass. (Testimony of Mr. Sczebak) As referenced above, Mr. Sczebak, the City's HR Director, had served on the interview panel and ranked Mr. Jebb as the top candidate.
62. Unsure of what to write in the bypass letter, Mr. Sczebak referred to prior bypass letters that focused on positive reasons of the selected candidate. When shown the bypass letter at the full hearing, Mr. Sczebak stated that the first half of the letter appears to be what he wrote, but the remainder of the letter was not written by him. (Testimony of Mr. Sczebak)
63. On June 10, 2013, Mr. Bissonnette publicly announced the appointment of Mr. Charette as the permanent Police Chief. Mr. Jebb had not been informed that he was being bypassed as of that date. (Testimony of Mr. Jebb)

¹² I credit Mr. Jebb's testimony that he did not play any role, directly or indirectly, with the release of said information and that he actually took steps to prevent the release of confidential information maintained by the Chelsea Police Department in this regard.

64. On July 3, 2013, Mr. Jebb filed an appeal with the Civil Service Commission. As of that date, Mr. Jebb had still not received a letter from the Mayor stating the reasons for bypass. (Stipulated Fact)
65. On July 24, 2013, a pre-hearing conference was held at the Springfield State Building. For the first time, Mr. Jebb and his counsel were presented with a copy of a bypass letter signed by Mr. Bissonnette, dated July 22, 2013. (Stipulated Facts)
66. Paragraph 2 of the two and one half (2 ½)-page bypass letter stated in relevant part that: “ ... Mr. Charette had the most superior record of practical leadership ability and organizational skill of all of the finalists for the position of Chief of Police as exhibited by the following.” The next four (4) paragraphs reference events in which Mr. Charette played a role including: a) a gunman opening fire on a public street and subsequent hostage situation; b) the handling of a chemical spill on the South Hadley / Chicopee border in 2006; c) the handling of a “riot” at the Sherman Memorial Swimming Pool several years ago; and d) the disbursement of 300 unruly students from a party at Elms College. (Exhibit 3)
67. The bypass letter goes on to reference Mr. Charette’s 700 shifts as a commanding officer, his 1900 bookings; his “almost perfect attendance record”; his ability to relate to all ranks within the Department; his role as a supervisor in community policing programs; reforms made during his tenure as the provisional Police Chief; his military record; and a specific answer he gave during the interview process. (Exhibit 3)
68. Finally, the bypass letter cites Mr. Charette’s community involvement and the fact that “Mr. Charette’s residence in Chicopee complies with the requirements of our municipal charter and shows a stronger bond with the community.” (Exhibit 3)

69. Article VIII, Section 49 of the City's Charter states: "No person shall be eligible to any of the offices of the city government except Superintendent of Schools, City Solicitor and City Engineer unless he is a citizen and has been a resident of the city at least two years." (Exhibit 8)

Applicable Legal Standard of Review

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. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 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.

Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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).

G.L. c. 31, § 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 a 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 Comm’n, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

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, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

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. 824-826 (2006). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police

officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305, and cases cited.

Analysis

Two longtime members of the Chicopee Police Department, both with distinguished records of achievement, were seeking promotional appointment as permanent Police Chief. Notwithstanding the animosity that has arisen between them, I found both Mr. Charette and Mr. Jebb to be decent men who share a devout commitment to their families, the Chicopee Police Department and the citizens the Department is charged with serving.

Mayor Bissonnette, who was the Appointing Authority at the time, was required to engage in a decision-making process that was fair and impartial and free of favoritism and personal or political bias. Ultimately, he failed to do so.

The City engaged the services of a respected consulting firm to conduct a comprehensive assessment center in lieu of the traditional paper-and-pencil multiple choice examination. By any objective measure, that process was thorough, objective and directly related to the knowledge, skills and abilities of the candidates. Mr. Jebb received the highest score as part of this assessment center and Mr. Charette received the second highest score.

Consistent with the statutory “ $2n + 1$ ” formula, Mayor Bissonnette was then limited to selecting from the three highest ranked candidates willing to accept the promotional appointment. He then appointed a four (4) member interview panel whose members were selected because they had a familiarity with the City and its needs. According to Mayor

Bissonnette, his only directive to them regarding the interviews was that they be fair and honest. After conducting the interviews, three (3) of the four (4) panelists ranked Mr. Jebb as the best candidate and Mr. Charette as the second best candidate, with one panelist ranking the two candidates as tied.

Mr. Bissonnette also reviewed an extensive background investigation of both candidates and found nothing that would disqualify either candidate.

Then, without notice to either candidate (or anyone else), Mr. Bissonnette took the extraordinary step of contacting the former campaign manager of his opponent from the 2005 mayoral campaign. For several years, Mr. Bissonnette had believed that Mr. Jebb, who was president of the police supervisors' union at the time, had a role in disseminating information regarding his prior criminal record. Mr. Bissonnette candidly acknowledged that the answer to that question would ultimately play a role in his decision-making process, stating that it "spoke directly to the integrity of the Police Chief."

Shortly after being told (according to Mr. Bissonnette) by his 2005 opponent's former campaign manager that Mr. Jebb was allegedly present when the information was provided to his opponent's campaign, Mr. Bissonnette decided to bypass Mr. Jebb for appointment, despite the fact that this own review panel had recommended Mr. Jebb, who had also scored highest on the assessment center.

As part of his testimony, Mr. Bissonnette dismissed any suggestion that his actions tainted the process or showed any bias against Mr. Jebb. This defies logic. For several *years*, Mr. Bissonnette harbored the belief that Mr. Jebb had sought to harm his political career by releasing embarrassing information related to his criminal record. More than

seven years after the alleged incident occurred, it was at the forefront of Mr. Bissonnette's mind as he was deciding whether or not to promote Mr. Jebb. He then accepted what he (allegedly) was told by the former campaign manager and weighed that information when deciding whether or not to bypass Mr. Jebb. In short, this is one of the more egregious and overt examples of political and personal bias I have seen during my tenure on the Commission.

Mr. Bissonnette then tasked the City's Human Resources Director with drafting a bypass letter – without stating any reasons for the bypass. The HR Director penned a letter relying on prior bypass letters and focused on what may be considered positive attributes of Mr. Charette.

Prior to providing Mr. Jebb with the reasons for bypass, Mr. Bissonnette publicly announced Mr. Charette's promotion as permanent Police Chief. Only after Mr. Jebb filed an appeal with the Commission and after a pre-hearing conference was scheduled, did the City provide Mr. Jebb with the reasons for bypass – on the day of the pre-hearing conference.

I have concluded that the reasons, most of which were not included in the letter first drafted by the City's HR Director, were crafted to justify a result-driven decision that would pass muster with the Commission, as opposed to an honest, objective rationale for bypassing Mr. Jebb. Even if that were not the case, the majority of positive reasons cited for Mr. Charette's selection at least equally apply to Mr. Jebb.

For example, the bypass letter cites Mr. Charette's military career as a positive reason justifying the bypass. While Mr. Charette served honorably in the United States Air Force for six (6) years, Mr. Jebb's service in the Air Force and Air Force Reserves totaled

over twenty (20) years. The letter also cites Mr. Charette's "almost perfect attendance record". Although Mr. Charette's attendance record is commendable, he was once asked to write a letter explaining his sick time usage. Further, Mr. Jebb has an exemplary attendance record.

Mr. Bissonnette's letter also cites a particular response to one of the interview questions. Mr. Bissonnette's *own* interview panel, after listening to the answers to all of the questions, ranked Mr. Jebb as the top candidate. Further, given that Mr. Bissonnette did not formally participate in the interview process by completing a score sheet (and then destroying his notes), I do not consider this a justifiable reason for bypass.

The bypass letter also references Mr. Charette's vast experience in the Department, including his hundreds of hours of "command experience" and his involvement in over 1900 bookings. Under ordinary circumstances, those could be deemed sound and sufficient factors when making a promotional appointment. Here, they appeared more geared toward justifying a decision that was tainted by personal and political bias. That is particularly true when considering the broad experience of Mr. Jebb. Over his twenty-six (26) year career with the Police Department (as opposed to twenty-one (21) years of Mr. Charette), Mr. Jebb served in the patrol division for five (5) years and then served in a number of other capacities, including serving as the Commanding Officer of Special Investigations (which included the Narcotics Division), Bureau of Services (which included the Homicide Division), Special Response Team and Detective Bureau. From 2009 to 2013, he was also in charge of internal affairs investigations.

The bypass letter also references Mr. Charette's community involvement and a

statement that his residency in Chicopee “complies with the requirement of our municipal charter” with the implication that Mr. Jebb’s Wilbraham residency does not. The charter language, which requires any person holding an office in Chicopee to be a “a citizen” and to have “been a resident of the city at least two years” is ambiguous and leaves it open to interpretation as to whether Mr. Jebb, who grew up in the City and lived there until 1985, complies with the requirement. Importantly, however, there is no evidence that the City ever notified HRD or the firm that conducted the assessment center that Mr. Jebb was not eligible for consideration as a result of his residency in Wilbraham. Nor is there any evidence that the City has ever deemed Mr. Jebb, the City’s current Deputy Police Chief, to be non-compliant with the City’s residency requirement. I have reasonably inferred that the last-minute reference to the City’s residency requirement is another ex post facto attempt to legitimize the unjustified bypass of Mr. Jebb. Further, Mr. Jebb has also demonstrated his commitment to the community through his involvement with various civic activities.

Finally, the bypass letter references the role that Mr. Charette played in various emergency or crisis situations in Chicopee, including a dramatic and dangerous hostage situation. I was dismayed by the attempt of Mr. Jebb (and former Chief Ferraro) to minimize the role that Mr. Charette played that day, at one point suggesting that Chief Ferraro (who was unarmed) and Mr. Jebb (who was at police headquarters) were the on-scene commanders. They were not; Mr. Charette was – and he deserves the City’s unconditional gratitude for his brave leadership on that harrowing day. Mr. Jebb, however, also has a record of bravery, including his role in searching for the killer of a Holyoke police officer.

As part of the hearing, the City, via Mr. Bissonnette's testimony, sought to introduce new reasons to justify the bypass of Mr. Jebb, including allegations that Mr. Jebb was part of an "old guard" that resulted in favor (or disfavor) as part of the internal affairs investigations. First, "no reasons that are known or reasonably discoverable by the appointing authority ... shall later be admissible as reasons for selection or bypass in any proceeding before the ... Civil Service Commission." PAR.08.4. Second, those overreaching allegations, even if they were to be considered, were proven to be baseless as part of the independent investigator's report.

After reviewing the entirety of the voluminous documents submitted here and listening (and re-listening) to all of the testimony, I have concluded that Mayor Bissonnette's decision to bypass Mr. Jebb was the result of personal and political bias. He ignored the results of the assessment center and the recommendations of his own interview panel when he bypassed Mr. Jebb for promotional appointment to Police Chief. He did so based on his mistaken belief that Mr. Jebb played a role, over seven years ago, in divulging information related to his past criminal record during his first run for Mayor. Under these circumstances, intervention by the Commission is warranted.

Appropriate Relief

Chapter 310 of the Acts of 1993 states: "If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights." The Commission's

authority in this regard is broad. (See Mulhern v. Civ. Serv. Comm’n, 57 Mass. App. Ct. 920, 921, (2003); See also Natick v. Civ. Serv. Comm’n & Sabourin, Middlesex Sup. Ct. 05-01964-E, citing Dedham v. Dedham Police Ass’n, 46 Mass. App. Ct. (1999).

In those bypass appeals where relief is warranted, the relief typically granted by the Commission is limited to placing the bypassed candidate’s name at the top of the next certification until he / she is appointed or bypassed. This relief, coupled with a retroactive civil service seniority date, restores and protects the rights of the bypassed candidate without displacing the person appointed (or promoted). This balanced relief is operable and practical when additional vacancies are anticipated in the near future (i.e. – original appointment for police officer.) It is not practical, however, and does little or nothing to restore and protect the rights of the bypassed candidate in situations such as this where the next vacancy may not occur for several years. Applied here, the traditional “310 Relief” would allow Mr. Bissonnette’s decision to bypass Mr. Jebb to stand until such time as Mr. Charette no longer occupies the office, which may be many years from now.

In Natick, faced with a similar situation, the Commission vacated the promotional appointment of the permanent Fire Chief and ordered the process redone using the same certification.

In Smyth v. Quincy, 24 MCSR 497 (2011), which presented another similar situation, the Commission vacated the promotional appointment of the Fire Chief, deemed the selected candidate as provisional, ordered the process redone using the same certification, and ordered a new review process that included interviews and recommendations by an outside review panel. That appeal, however, was distinguishable

in two (2) respects. First, it was the interview process, overseen by the City's Mayor, that was deemed as insufficient in that appeal – and the interviewer (the Mayor) had recommended the candidate ranked *second*, resulting in a bypass. Here, neither party has questioned the judgment of the interview panel, which recommended the candidate ranked *first* (Mr. Jebb).

Second, the Appointing Authority had not changed between the time the appeal was filed and the time the Commission ordered relief in Quincy. Here, since the decision to bypass Mr. Jebb was made, Mayor Bissonnette lost his bid for re-election.

In short, vacating the appointment of Mr. Charette and ordering a new selection *may* very well result in the appointment of Mr. Jebb, who is ranked first on the Certification, as permanent Police Chief and the permanent displacement of Mr. Charette, who would have no right to file a bypass appeal as the second ranked candidate. The Commission's role, however, is not to dictate the final outcome of who is ultimately promoted.

Here, for all the reasons cited in the findings and analysis, I have concluded that Mr. Jebb was prejudiced through no fault of his own and that intervention by the Commission is warranted to restore and protect his rights.

Conclusion

Mr. Jebb's bypass appeal is hereby *allowed*.

Effective July 1, 2014:

- Mr. Charette's promotion as permanent Police Chief shall be vacated.
- Until such time as a permanent Police Chief is appointed, Mr. Charette shall serve as the Temporary Police Chief.

- The state's Human Resources Division (HRD), or the City in its delegated capacity, shall revive the Certification initially used to make this promotion in June 2013.
- The City's Appointing Authority, newly-elected Mayor Richard Kos, shall make a promotional appointment in compliance with all applicable civil service law and rules that is consistent with basic merit principles.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; McDowell and Stein, Commissioners [Ittleman – not participating]) on March 20, 2014.

A True copy. Attest:

Commissioner

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.

Notice to:

Gordon D. Quinn, Esq. (for Appointing Authority)
Thomas A. Kenefick, III, Esq. (for Appellant)

Courtesy Copy to:

Chicopee Police Chief Thomas G. Charette
Chicopee Mayor Richard Kos
Former Chicopee Mayor Michael Bissonnette