

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, SS.**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503

Boston, MA 02108

(617) 727-2293

**RICHARD R. LABELLE**

Appellant

G2-06-196

v.

**CITY OF SPRINGFIELD**

Respondent

Appellant's Attorney:

Terrence M. Dunphy, Esq.  
Fallon, Sullivan, Dunphy & Mulvaney  
115 State Street, Suite 500  
Springfield, Massachusetts 01103  
413-732-0346

Respondent's Attorney:

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City of Springfield  
Law Department  
36 Court Street, Room 210  
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Commissioner:

John E. Taylor

**DECISION**

Pursuant to the provisions of G.L. c. 31, §2(b), the Appellant, Richard Labelle (hereafter "Labelle" or "Appellant") seeks review of the Personnel Administrator's decision to accept the reasons for bypassing him for promotional appointment to the position of Sergeant in the City of Springfield Police Department (hereafter the "Department"). The appeal was timely filed. A full hearing was held on December 5,

2007 at the offices of the Civil Service Commission. One audiotape was made of the hearing.

**FINDINGS OF FACT:**

Eight exhibits were entered into evidence. (Joint exhibits 1-8). Based upon the documents entered into evidence and the testimony of Appellant and Commissioner Edward Flynn, (“Commissioner” or “Flynn”) I make the following findings of fact:

1. Appellant commenced his employment with the Department in April 1997. For approximately five years, from 2001 to 2006, Appellant has worked the night shift in the Records division. (Testimony of Appellant and Flynn)
2. In April 2006, the City of Springfield sought candidates for five positions as Sergeants in the Springfield Police Department. The City received a list of ten candidates who indicated they would accept appointment. Appellant had the fourth highest score on the list (84) and was in the fourth position. (Ex. 1 and testimony of Appellant)
3. At the time of the selection process Police Commissioner Edward Flynn had been recently appointed. The Commissioner acted as the appointing authority for the Department. (Testimony of Flynn)
4. Flynn came from outside Springfield and had not previously worked there prior to his hire as Commissioner. He offered credible testimony. (Testimony of Flynn)

5. Flynn testified that he interviewed each of the applicants, reviewed their files and talked to their supervisors. He stated that he made notes of the interviews but did not retain those notes.
6. On June 14, 2006, Flynn selected five candidates with the following ranks on the list: Trent Duda (1), Thomas Zarelli (2), David Kane (3), Richard Pelchar (5), and Christopher Hitas (6). (Ex. 2)
7. In accordance with G.L. c. 31, § 27, Commissioner Flynn provided HRD with a statement of his reasons for not selecting the Appellant, writing: “Officer LaBelle is simply not suitable for promotion to Sergeant. He has been an officer since 1997, assigned to the Records division on the 12:00 am – 8:00 am shift. This position has very little interaction with other department personnel and the public. My understanding is that he was assigned to that position to minimize his interaction with other officers and members of the public. He is not practically prepared to supervise officers in the uniform squad or interact with Springfield residents. During his interview with me, Officer LaBelle did not exhibit any self awareness as for example, when he stated he “had a good temperament” and that he “didn’t fly off the handle” despite the fact that the clear consensus of supervisors is that he has significant self control issues.” (Ex. 5)
8. Flynn testified that he did not remember the names of the supervisors who stated that Appellant had self control issues.
9. In his reasons provided to HRD for not selecting Appellant, Flynn also wrote: “Further, and more serious, Officer LaBelle was involved in a car

accident on June 26, 2001 which resulted in the deaths of two children ages 11 and 3. He was charged with two counts of motor vehicle homicide, and one count of negligent operation of a motor vehicle. The case was brought before a jury and a guilty verdict was rendered for the negligent operation charge. The disposition was community service and a suspension of driver's license, which has been since completed. It is my opinion that Officer LaBelle should have been subjected to departmental discipline at that time, but was not. This case, combined with his lack of experience and training with other officers and minimal interaction with the general public make it clear to me that Officer LaBelle is wholly incapable of being a competent supervisor.”(Ex. 5)

10. On December 10, 2002, a disciplinary hearing was held concerning Appellant's involvement in an off duty motor vehicle accident where two children were killed. Appellant was acquitted of the motor vehicle charge and found guilty of operating negligently so as to endanger. The recommendation made to the full Commission by the Board of Police Commissioners included exonerating Appellant of conduct unbecoming an officer. (Exs. 7 and 8)
11. On or about June 8, 2006, Flynn submitted an Authorization of Employment Form 14 to HRD with his reasons for appointing Pelchar. Flynn wrote:  
“Officer Pelchar has been a member of the Springfield police department since 1989, first as a cadet, then as a sworn officer in 1992. He has extensive experience in all aspects of police work including 4 years in the uniform division focused in the most saturated crime areas of the city apprehending hundreds of felony and misdemeanor suspects. He was selected for special

assignment to investigate crimes of a sexual nature against children. He has 9 years of experience in the Student Support unit a specialty assignment that focused department expertise directly in the school system. He has daily contact with students and administration. His direct supervisor at the police department gave him an excellent recommendation, saying "He is an excellent investigator who works well independently and with others. He has a good work ethic and is thorough and complete in his work and accepts responsibility well. He has the respect of his peers. He has the ability and experience to make a fine supervisor." Several other supervisors also formally recommended him for promotion. During our process of requesting reviews by supervisors, not one negative observation was made regarding his performance. Officer Pelchar has received 2 department commendations and an award from the Massachusetts Criminal Justice Training Council for firearms proficiency. He is self motivated in his education and training, attending numerous seminars and workshops to improve his skills. During his interview, Officer Pelchar demonstrated an understanding of supervisory responsibilities. He also was able to identify obstacles to change within the agency and suggest strategies for overcoming resistance. He demonstrated strong communication skills which are important in supervision. Officer Pelchar does not have any convictions in the criminal justice system, does not have any investigations conducted by the Internal Investigations Unit and is an overall excellent candidate for Sergeant." (Ex. 4)

12. On or about June 8, 2006, Flynn submitted an Authorization of Employment Form 14 to HRD with his reasons for appointing Hitas. Flynn wrote: "Officer Christopher Hitas has been a member of the Springfield Police Department since 1990, first as a cadet, then as a sworn officer in 1993. He was assigned to the uniform division for 4 years where he developed a proactive philosophy with building ties to the community while performing his criminal justice duties. In 1997 he was transferred to the newly regenerated community policing unit, where his expertise was relied upon, not only among fellow officers, but with residents and community leaders. He organized meetings with landlords to address community concerns, worked collaboratively with the probation department to identify individuals who needed attention and was the liaison with community beat management teams, becoming an integral connection between residents and the police department. Supervisors in the police department wrote many positive reviews of Officer Hitas, calling him a problem solver, hard working, motivated, intelligent and will lead by example. A Lieutenant wrote "He will be able to lead and command respect of others." During our process of requesting reviews by supervisors, not one negative observation was made regarding his performance. During his interview, Officer Hitas demonstrated strong communication skills. He articulated an understanding of the importance of leadership by example, which he demonstrates on a daily basis through interaction with the community. Officer Hitas has received certificates of recognition for investigating, and from the DEA. HE does not have any investigations from the Internal Investigations

Unit, no history with the criminal justice system and is an excellent candidate far Sergeant.” (Ex. 4)

13. Flynn testified that one of his reasons for selecting two candidates with lower scores than Appellant was that they had no convictions.

14. On or about June 14, 2006, HRD approved the Commissioner’s reasons. (Ex. 4)

15. Subsequent to Appellant’s bypass, Flynn met with Appellant and explained his reasons for bypassing him. Per Appellant’s request, Flynn reassigned Appellant to patrol in order to increase his chances for future promotion.  
(Testimony of Flynn)

16. The Appellant was a good witness. He offered credible testimony and had a calm demeanor. (Testimony, demeanor of Appellant)

## **CONCLUSION:**

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 vs. 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 vs. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). Basic merit principles as defined in G.L. c.

31, §1 require that employees be selected and advanced on the basis of their relative ability, knowledge and skills, assured fair and equal treatment in all aspects of personnel administration and that they are protected from arbitrary and capricious actions. See Tallman v. City of Holyoke, G-2134 Cotter, et al v. City of Boston, et al., United States District Court of Massachusetts, Civil Action Number 99-1101, (Young, CJ).

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 Ser. V. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App. Ct. 726, 727-728 (2003). However, 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. City of Cambridge, 43 Mass. App. Ct. at 304.

In the present matter, the Appointing Authority has sustained its burden of proving that there was reasonable justification for its action of bypassing Appellant. Specifically, Appellant did not present any evidence to show that the Appointing Authority’s decision was based on any kind of political influence, bias, personal hostility or inappropriate conduct in the decision making process. Further, Commissioner Flynn’s testimony shows that his decision was made on the basis of merit, giving due consideration to the work records of the officers involved. The evidence indicated that Appellant did not have a strong work record as his night shift position in the records



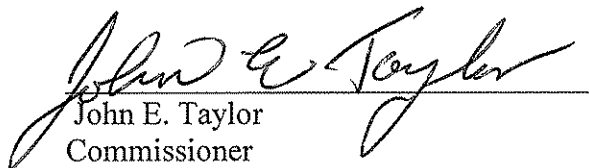
department involved very little interaction with other department personnel and the public. The Appointing Authority also emphasized that Appellant's having been the defendant in a criminal proceeding in which he was found guilty of negligent operation of a motor vehicle was a factor to be considered in a promotion decision where Appellant is seeking the right to a higher office and the right to supervise others. Although the Commission does not believe that Appellant's criminal conviction should eliminate him from consideration for promotion to Sergeant indefinitely, there was nothing unfair about the Commissioner Flynn's consideration of this topic in bypassing Appellant.

However, the Commission will not credit Flynn's assertion that a reason Appellant was bypassed was due to his superiors' view that Appellant had self control issues because Flynn was unable to supply the identity of any of these superiors, this shortcoming does not outweigh Respondent's justification for bypassing Appellant.

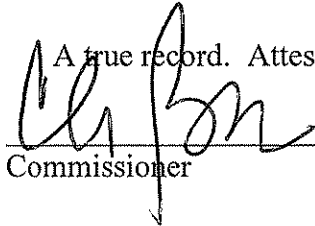
In sum, the Respondent's consideration of Appellant's work assignment and his being found in guilty of negligent operation of a motor vehicle was reasonable justification to bypass him for Sergeant.

For all of the above reasons, the appeal under Docket No. **G-2-06-196** is hereby denied.

Civil Service Commission

  
John E. Taylor  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Taylor, Henderson, Marquis, and Stein, Commissioners) on July 31, 2008.

A true record. Attest:  
  
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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), 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.

Notice to:  
Terrence M. Dunphy, Esq. (for Appellant)  
Maurice M. Cahillane, Esq. (for Appointing Authority)  
John Marra, Esq. (HRD)