

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MATTHEW LYNCH,
Appellant

v.

**TOWN OF
BRIDGEWATER,**
Respondent

Case No.: G2-12-13

DECISION

The Civil Service Commission (Commission) voted at an executive session on March 7, 2013 to acknowledge receipt of: 1) the Recommended Decision of the Administrative Law Magistrate dated December 18, 2012; 2) the Appellant's written objections to the Recommended Decision; and 3) the Respondent's Response to the Appellant's objections.


After careful review and consideration, the Commission voted 2-1 to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

We have adopted the findings and conclusions of the magistrate here primarily because they are supported by his thoughtful and well-reasoned credibility assessments. Specifically, the magistrate credited the testimony of the Police Chief and one (1) member of the interview panel and determined that neither of them were predisposed to recommending or appointing Detective MacDermott, the second ranked candidate. Finding no reason to disturb those credibility assessments, we concur with, and accept, his conclusion that the instant appeal should be dismissed.

In doing so, however, we remain troubled with specific aspects of the review process here. Specifically, when a member of the interview panel expressed concern – twice - that his prior working relationship with Detective MacDermott and his son could create a perception that he was predisposed toward MacDermott's candidacy, the Town should have looked for another individual to serve on the interview panel. Here, while the magistrate determined that this panelist's participation did not tip the scales against Mr. Lynch, the Commission's consternation, and closely divided vote, should be noted by appointing authorities who face similar situations regarding the appropriate make-up of an interview panel on a going forward basis.

By a 2-1 vote of the Civil Service Commission (Bowman, Chairman – Yes; Ittleman, Commissioner – Yes; and McDowell, Commissioner - No [Marquis, Stein – Absent]) on March 7, 2013.

A true record. Attest.



Christopher C. Bowman
Chairman

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:

Mark C. Gildea, Esq. (for Respondent)

Joseph P. Kittredge, Esq. (for Appellant)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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December 18, 2012

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Matthew Lynch v. Town of Bridgewater Police Department
DALA Docket No. CS-12-246
CSC Docket No. G1-12-13

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Mark C. Gildea, Esq.
Joseph P. Kittredge, Esq.

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

Suffolk, ss.

Matthew Lynch,
Petitioner

v.

Docket No. G2-12-13
DALA No. CS-12-246

Town of Bridgewater Police Department,
Respondent

Appearance for Petitioner:

Joseph P. Kittredge, Esquire
Rafanelli & Kittredge, P.C.
1 Keefe Road
Acton, MA 01720

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COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Appearance for Respondent:

Mark C. Gildea, Esquire
Clark, Balboni & Gildea
72 Main Street
Bridgewater, MA 02324

Administrative Magistrate:

James P. Rooney, Esq.

Summary

Appointing authority has shown sufficient justification for its decisions to bypass a police officer for promotion to the rank of sergeant although he was the top candidate in an assessment. The candidate selected was recommended by an interview panel of police supervisors from nearby communities. The evidence shows the interview process to have been unbiased. The record does not establish that the promotion procedure was geared toward promoting a friend of the police chief's.

RECOMMENDED DECISION

Police Officer Matthew Lynch timely appealed a November 16, 2011 decision by the Police Department for the Town of Bridgewater, Massachusetts, to bypass him for a promotion

to the rank of sergeant. I held a hearing on behalf of the Civil Service Commission on June 1, 2012 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington St., Boston, Massachusetts.

I accepted twenty seven documents into evidence. I made a digital recording of the hearing. The Town of Bridgewater presented the testimony of Christopher Delmonte, Chief of Police for the Town of Bridgewater, Lieutenant Thomas Schlatz of the Bridgewater Police Department, Lieutenant Gary Sullivan of the Easton Police Department, and Lieutenant Victor Flaherty of the West Bridgewater Police Department. Matthew Lynch testified on his own behalf. The witnesses, excluding the representative of the Town, Chief Delmonte, were sequestered at Officer Lynch's request. Both parties made arguments on the record. The administrative record closed on August 3, 2012, when the parties filed post-hearing briefs.

FINDINGS OF FACT

Based on the evidence and testimony and reasonable inferences drawn from them, I make the following findings of fact:

1. Matthew Lynch has served as a police officer with the Police Department of the Town of Bridgewater, Massachusetts since 1999. He holds a bachelor of science degree in criminal justice, is the only certified drug recognition expert in the Bridgewater Police Department, is an assistant team leader with the South Eastern Massachusetts Law Enforcement Counsel Special Weapons and Tactics (SEMLEC SWAT) Team, and for four years served as the local police union president. He has been a member of the National Guard since 1990 and a staff sergeant since 2005. He served for one year in Iraq, and during that year he commanded a security staff of twelve people. (Lynch testimony; Ex. 20.)

2. In October 2011, the 30 member Bridgewater Police Department had a vacant sergeant position to fill. (Delmonte testimony; Ex. 2.)

3. The Town of Bridgewater had used a written civil service examination to determine the top three police officer candidates the last time it appointed a sergeant. When Christopher Delmonte became the Police Chief of Bridgewater in September 2010, one of his tasks was to complete a process begun under the former Chief of appointing a sergeant from a promotion list that had been created in March 2008 based on the candidates' performance on such a written exam. On December 1, 2010, Chief Delmonte appointed Officer Anne M. Schuster as sergeant. She had the highest score on the civil service written examination and the second highest score in an interview for the position. (Delmonte testimony; Exs. 24 and 25.) Officer Lynch was one of the other potential candidates for appointment; he had scored among the top three on the written exam and was ranked third in an interview in which the answers were graded numerically. Detective Carl MacDermott III, who has been a friend of Chief Delmonte for 20 years, had been a candidate, but was not on the eligibility list. (Lynch testimony; Ex. 24.)

4. Chief Delmonte had another sergeant vacancy to fill, but the process for filling that position had not yet begun when he assumed his position. The list from which he had promoted Officer Schuster had expired. He decided that, rather than use a written examination to rank the candidates, he would have candidates participate in an assessment of their skills conducted by an independent assessment center. He had participated in such an assessment when he was a candidate to become the Chief. (Delmonte testimony.)

5. Chief Delmonte requested bids from independent contractors for a contract to conduct a written assessment of potential candidates for sergeant. He recommended hiring BadgeQuest,

Inc. to conduct the assessment; the Town of Bridgewater accepted his recommendation. The Bridgewater Police Department entered into a delegation agreement with the Massachusetts Human Resources Division making the assessment the “sole basis for scoring and ranking candidates on an eligible list.” (Delmonte testimony; Ex. 15.)

6. Bridgewater Police Lieutenant Thomas Schlatz, at Chief Delmonte’s request, completed a “task survey” of the tasks that a sergeant in the Bridgewater Police Department would be expected to perform. He ranked both the frequency and importance of a lengthy list of such possible tasks. (Schatz testimony.) That survey was sent to BadgeQuest, which then developed a “series of role-playing exercises simulating situations that are consistent with those likely to be encountered by a Sergeant in the Bridgewater Police Department.” (Delmonte testimony; Ex. 1.)

7. The Bridgewater Police Department posted Sole Assessment Posting #9771, which announced the sergeant vacancy and an assessment on October 12, 2011. Only officers who were currently employed with the Bridgewater Police Department were eligible to apply. This posting included information on the assessment process and the evaluation criteria that would be used. It made no mention of an interview as part of the process to decide who would be promoted. (Delmonte and Lynch testimony; Ex. 2.)

8. Seven officers responded to the posting and participated in the assessment given by BadgeQuest. The company reported the assessment scores to Chief Delmonte on October 24, 2011. The three highest scoring officers – Officer Lynch, Detective MacDermott, and Officer Christopher Shaw – were placed on a final list for consideration for the rank of sergeant. (Exs. 3, 4, and 5.) Officer Lynch scored 92; Detective MacDermott and Officer Shaw both scored 84. Detective MacDermott and Officer Shaw had served on the Bridgewater Police Department for

twenty seven and twenty three years respectively by this time. (Lynch testimony; Exs. 3, 21, and 22.)

9. Chief Delmonte had all along intended that an interview be part of the process to select a new sergeant, but he did not tell the candidates until after he received the BadgeQuest assessment results. Use of interviews in a promotion decision was consistent with the practice of the Bridgewater Police Department in at least the last three promotional appointments. (Delmonte testimony; Exs. 24 and 26.)

10. Chief Delmonte assigned Lieutenant Thomas Schlatz of the Bridgewater Police Department to oversee the interview process. He told the lieutenant to select a board to interview the top three candidates. (Delmonte and Schlatz testimony.)

11. To find interviewers, Lieutenant Schlatz decided to look for police supervisors above the rank of sergeant who worked in police departments located geographically near Bridgewater and of similar size and structure to the Bridgewater Police Department. He solicited help from at least five local police departments. (Testimony of Schlatz.)

12. Lieutenant Schlatz located three officers who were willing to act as interviewers: Lieutenant Gary Sullivan of the Easton Police Department, Lieutenant Victor Flaherty of the West Bridgewater Police Department, and Deputy Chief Scott Benton of the Whitman Police Department. (Testimony of Schlatz, Ex. 19.)

13. Lieutenant Flaherty knew both Officer Lynch and Detective MacDermott and had worked with Detective MacDermott in the past professionally. Both Officer Lynch and Lieutenant Flaherty are members of the SEMLEC SWAT Team. Detective MacDermott's son served under Lieutenant Flaherty in the West Bridgewater Police Department, before he left to

join the State Police. Lieutenant Schlatz was aware that there was some resentment at the West Bridgewater Police Department when Detective MacDermott's son left. Lieutenant Flaherty had some concerns should circumstances arise in which Detective MacDermott, whom he knew the best, did not do as well as the others in an interview. Lieutenant Flaherty spoke to Lieutenant Schlatz about his concerns; Lieutenant Schlatz kept him on the panel. Following the interviews, Lieutenant Flaherty spoke to Chief Delmonte. Lieutenant Flaherty told the Chief he had some reservations about his role; Chief Delmonte told him to be objective. (Delmonte, Schlatz, Flaherty, and Lynch testimony.)

14. Lieutenant Sullivan had previously met Detective MacDermott, when the Lieutenant attended a fitness class taught by Detective MacDermott. Lieutenant Sullivan never reported this to either Lieutenant Schlatz or Chief Delmonte because he did not believe it to be important. (Sullivan testimony.)

15. Lieutenant Schlatz gave the interviewers three questions that Chief Delmonte created, one to be asked by each interviewer. The questions were: what have you done to enhance the Bridgewater Police Department, what would you change about the Bridgewater Police Department, and what would you bring to the position [of sergeant]? The interviewers produced all other questions and decided on all other criteria for assessment. (Schlitz, Delmonte, Sullivan, and Flaherty testimony; Ex. 19.)

16. At the last minute, Deputy Chief Benton could not participate in the interview process on the day scheduled because of a sudden death in his family. Lieutenant Schlatz decided to continue with a two person panel, rather than wait for a convenient date for the Deputy Chief. (Schlitz testimony.)

17. On November 4, 2011, Chief Delmonte told Office Lynch he would be interviewed on November 8, 2011. The interviews were conducted that day in descending order based on the examination score. The interviewers were aware that they were interviewing in score order, but did not know the scores. All of the candidates were asked the same questions. The answers were not assigned a numerical score nor were the interviews recorded. Officer Lynch attempted to submit a police form he had created to the interviewers; the interviewers declined to accept the form. (Testimony of Schlatz, Sullivan, and Lynch, Exs. 5 and 18.)

18. The two interviewers had favorable impressions of the three candidates they interviewed, but they were most impressed with Detective MacDermott; they did not think the result was close. They found Detective MacDermott to be honest and thoughtful. While they found Officer Lynch to be articulate, they each thought he answered questions in the way he felt the interviewers wanted him to answer. They ranked Officer Lynch third among those they interviewed; neither panelist thought Officer Lynch was ready yet for the challenges a sergeant was likely to face. (Schatz, Flaherty, Sullivan, and Delmonte testimony, Ex. 5.)

19. The following day, Lieutenant Flaherty sent a letter to Chief Delmonte conveying the recommendation of the interviewers. He stated:

After these interviews and a lengthy discussion we unanimously selected Officer Carl MacDermott as the best candidate for the position of Sergeant. . . . [W]e found that Officer MacDermott demonstrated a high level of leadership, knowledge, experience, and honesty during our interview. Although we feel the other two candidates will someday become good supervisors it was evident during this process that Officer MacDermott is ready for this challenge today.

(Ex. 18.)

20. Chief Delmonte reviewed the assessment scores and the recommendation of the interview panel. He decided to appoint Detective MacDermott as sergeant. He made this

announcement and gave his reasons in a letter to Troy Clarkson, Town Manager of the Town of Bridgewater. In the letter, he noted that Detective MacDermott had served as a police officer for 28 years, had been a detective since 1998, had served as a field training officer and a firearms instructor, was currently the operations commander of the SEMLEC SWAT team, held a masters degree in criminal justice, was a black belt in karate, had developed and taught several self defense courses for women in the area, was officer of the year in 1985 and 1989, and was unanimously recommended by the interview panel. (Delmonte Testimony, Ex. 7.)

21. Chief Delmonte notified Officer Lynch of Detective MacDermott's appointment as sergeant and of his right to appeal. Officer Lynch filed a timely appeal. (Exs. 6 and 8.)

DISCUSSION

The decision of the Town of Bridgewater, through Chief of Police Christopher Delmonte, to bypass Officer Matthew Lynch for promotion to the rank of sergeant should be affirmed. The Town of Bridgewater has shown that its decision was based on sound reasons.

When an appointing authority chooses to bypass a candidate for employment who is highest ranked on an eligibility list, the governing stature, M.G.L. c. 31, § 2(b), places the burden on the authority of proving by a preponderance of the evidence that there exists a reasonable justification for its action. *Brackett v. Civil Service Comm'n*, 447 Mass. 233, 241, 850 N.E.2d 533, 543 (2006). An appointing authority will be presumed to have acted in good faith and with honesty, *Mayor of Revere v. Civil Service Comm'n*, 31 Mass. App. Ct. 315, 321 n.11, 577 N.E.2d 325, 329 n.11 (1991), but it must show that the bypass was "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Selectman of Wakefield v. Judge of*

First Dist. Court of E. Middlesex, 262 Mass. 477, 482, 160 N.E. 427 (1928). A bypass will not be upheld when “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” *Vitale v City of Beverly*, 24 MCSR 363, 365 (2011), quoting *Borelli v. MBTA*, 1 MCSR 6 (1988).

In this instance, when the Town of Bridgewater appointed Detective MacDermott as a sergeant, it did not bypass Officer Lynch, who scored highest on an assessment, because of any perceived inadequacies on his part. Rather, in choosing among three qualified candidates, it preferred Detective McDermott, who had been unanimously recommended for the position by the panel of experienced police supervisors who had interviewed the candidates.

Officer Lynch claims, nonetheless, that Chief Christopher Delmonte manipulated the evaluation process to ensure the promotion of his long time friend Detective MacDermott.

First, he claims that Chief Delmonte could have picked a sergeant from an existing eligibility list, which included him but not Detective MacDermott. A eligibility list for promotion to sergeant had been established in March 2008. It was valid for the following two years, or beyond, if no new eligibility list had been created. M.G.L. c. 31, § 25. Chief Delmonte picked from that list when he promoted Officer Schuster to sergeant in December 2010, thereby completing a promotion process begun before he was appointed. Although there appears to have been another sergeant vacancy at the time, Chief Delmonte was not obligated to continue to use an expired eligibility list as the basis for another promotion, and there was no evident urgency to do so, as the Chief did not seek to fill the position now at issue until the next fall. There was no

error in Chief Delmonte's decision to establish a new list and no evident favoritism behind that decision.

Next, Officer Lynch contends that the change from a written examination to an independent assessment was made in order to facilitate Detective MacDermott's promotion. He presented no credible evidence to support this claim. This was the first promotional process over which Chief Delmonte had full oversight. The Chief was not required to use a civil service written test simply because the Bridgewater Police Department had done so in the past. A skills assessment is a standard technique for evaluating candidates for promotion within a police department – and had been used as part of the process to select Chief Delmonte. There is no evidence that the assessment was set up or conducted in a manner that was weighted in Detective MacDermott's favor. Lieutenant Schlatz, at Chief Delmonte's request, completed a task survey that provided detailed information to BadgeQuest about what tasks a police sergeant in Bridgewater could be expected to perform, and from this information BadgeQuest developed the assessment it used to evaluate candidates. Officer Lynch did not argue that the manner in which Lieutenant Schlatz completed the survey was in any way geared toward favoring Detective MacDermott. In any event, this chosen method of evaluation hardly harmed Officer Lynch, who scored the highest on the assessment.

Officer Lynch argues that once he earned the top score on the assessment an interview process was conceived solely to bypass him in favor of Detective MacDermott. First, and foremost, being the top candidate on an eligibility list is not a guarantor of promotion. An appointing authority may establish an eligibility list of the top qualified candidates for an appointed position; it then has discretion to pick from among these candidates. *See M.G.L. c.*

31, § 27 and *Burns v. Sullivan*, 473 F.Supp. 626, 629 (D.Mass. 1979). Thus, although the assessment here was meant to be (and was) the sole means for creating an eligibility list, the high scorer did not automatically become a sergeant.

Interviews are one accepted method of making a choice from an eligibility list; appointing authorities have implicit authority under M.G.L. c. 31, § 25 to interview candidates on such a list. *Flynn v. Civil Service Comm'n*, 15 Mass.App.Ct. 206, 208, 444 N.E.2d 407, 409 (1983). Not infrequently, the interview process leads to the selection of a candidate other than the one at the top of the eligibility list. See e.g. *Rainville v. Massachusetts Rehabilitation Commission*, 19 MCSR 386 (2006) and *Peavey v Town of Plainville*, 11 MCSR 103 (1998).

Here, I credit Chief Delmonte's testimony that, while he did not inform anyone of his intentions until after the results of the assessment were known, he had always intended to conduct interviews to evaluate candidates. This decision was consistent with past practice of Bridgewater Police Department in the three most recent promotional appointments, including Chief Delmonte's. While it would have been preferable for Chief Delmonte to make his intentions known earlier, I accept as truthful his testimony that he did not make a last minute decision designed to aid Detective MacDermott's candidacy. Absent a showing the Detective MacDermott was given an unfair advantage by including an interview in the selection process, lack of prior notification that an interview would be conducted does not demonstrate improper action by the Bridgewater Police Department.

Office Lynch also claims that, even if the interviews themselves were acceptable, Chief Delmonte selected interviewers that he knew would favor Detective MacDermott. He points to the participation of Lieutenant Victor Flaherty as evidence of Chief Delmonte's motives. The

evidence does not support this claim. Chief Delmonte gave Lieutenant Thomas Schlatz complete autonomy over the planning and execution of the interview process. He did not direct that Lieutenant Schlatz select Lieutenant Flaherty or anyone else. Lieutenant Schlatz solicited participation from members of police departments similar in size and structure to the Bridgewater Police Department, believing that they would be best able to identify the candidate most capable of fulfilling the needs of the Department. Although the interviews were actually conducted by two individuals, Lieutenant Schlatz requested help from at least five departments to ensure that the evaluations would be as fair as possible.

While the search for outside participation by the Bridgewater Police Department was done in order to find interviewers without preconceived notions of the candidates, the cooperation between police departments in the Bridgewater area made it unlikely that a qualified interviewer would be unfamiliar with all of the candidates. This is not problematical because M.G.L. c. 31, § 25 does not require a completely detached review of the candidates by interviewers. Candidates are entitled only to a fair review of their qualifications by an interview panel that conducts interviews without “undue subjectivity” in making its evaluations. *See Anthony v. City of Springfield*, 23 MCSR 201, 207 (2010).

Regarding Lieutenant Flaherty’s participation, he had previous professional relationships with both Officer Lynch and Detective MacDermott. Lieutenant Flaherty voiced concerns to Lieutenant Schlatz and Chief Delmonte about how his objectivity would be viewed because of his prior relationship with the candidates, but both asked him to continue his participation. The evidence of factors that might have led Lieutenant Flaherty to be biased cuts both ways: he might have been biased against Detective MacDermott because of the way in which Detective

MacDermott's son left the West Bridgewater Police Department where Lieutenant Flaherty works, or he might have been biased in favor of Detective MacDermott because he had worked with the detective in the past. I credit Lieutenant Flaherty for disclosing these potential issues, and I accept Chief Delmonte's testimony that he told Lieutenant Flaherty to be objective.

Here, the testimony concerning the reasons the interview panel gave for recommending Detective MacDermott for promotion are sufficient to abate concerns regarding a biased recommendation. Both Lieutenant Flaherty and Lieutenant Sullivan highlighted the same aspects of the candidate interviews that led them individually to choose Detective MacDermott as the better candidate for the promotion. It was the opinion of each that Detective MacDermott was more straightforward and thoughtful in his answers, while Officer Lynch gave each interviewer the impression that he was trying to say what he thought the interviewers wanted to hear. In their opinions, Detective MacDermott set himself apart from the other candidates. While both interviewers recognized the strengths and ability of Officer Lynch, they concluded that Detective MacDermott was better prepared to handle the responsibilities of a sergeant now.

The presence of interview panelists with what would appear to have been far more potential for bias has not been sufficient to undermine a panel's recommendations when the record showed their recommendation was unbiased. For example, in *Anthony*, the City of Springfield set up a panel to interview applicants for Deputy Police Chief and included on that panel two Springfield police captains who had filed complaints with the Massachusetts Commission Against Discrimination regarding the provisional appointment as a Deputy Police Chief of Captain Mark Anthony, who was ultimately bypassed for a permanent appointment to the position. The Civil Service Commission concluded that the evidence showed that the two

captains acted not out of bias against Captain Anthony, but because they objected to the former police commissioner's decision to disregard seniority when making the provisional promotions. The record also included testimony in which the panelists provided sound reason for preferring two other candidates for the Deputy Police Chief position. *Anthony*, 23 MCSR at 207.

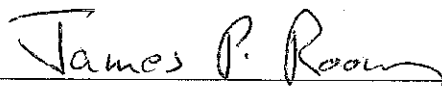
Officer Lynch also criticized the interview panel for not using a scoring system to determine the rank of those interviewed, as was the case in the interview process he had undergone for the previous sergeant opening. The use of a numerical scoring system in an interview is an approved, but not a required, method of interviewing candidates. *See Flynn*, 15 Mass. App. Ct. at 208, 444 N.E.2d at 409 and *Town of Lexington v. Civil Service Comm'n*, Docket No. 08CV4644F, Memorandum of Decision and Order, 27 Mass.L.Rptr. 106, 2010 WL 2432051 (Middlesex Super. Ct., May 27, 2010) (Judge Dennis Curran held that it was error for the Civil Service Commission to second guess a municipal interview procedure that did not use a numerical scoring system when the town had a reasonable justification for its interview process). Here, each candidate was asked to answer the same questions. Although no numerical scoring system was used, both interviewers independently drew the same conclusion from Detective MacDermott's and Officer Lynch's interviews – that the former was straightforward in his answers, while the latter was striving to tell the interviewers what they wanted to hear. Both interviewers rated Detective MacDermott's interview performance as substantially better than the interview performances of the other two candidates and rated Officer's Lynch's as third among the three candidates. There was no error.

While the interview itself was unbiased and conducted in an acceptable manner, the decision of who to promote fell solely on Chief Delmonte. The assessment and the interview

results may have guided the Chief, but ultimately he had to give his own reasons for deciding to promote Detective MacDermott. He stated his reasons in the letter announcing the appointment. In that letter, the Chief highlighted Detective MacDermott's 28 years of service, his numerous leadership and supervisory positions within the police force, numerous commendations and awards received, and his community involvement, as well as the interview panel's recommendation. These are all sufficient reasons for promotion. Some of these reasons distinguished him from Officer Lynch, including his years of service, his service as a detective, and his masters degree in criminal justice. Officer Lynch has fine credentials as well, some of which are different from Detective MacDermott's, including his recent service as a staff sergeant in Iraq and his certification in drug detection. To the extent that the credentials of both candidates arguably even out, Detective MacDermott distinguished himself from the other candidates in the interview, and, on this basis alone, the Town had a reasonable ground for bypassing Officer Lynch and promoting Detective MacDermott to sergeant.

I recommend, therefore, that the decision of the Town of Bridgewater to bypass Officer Matthew Lynch for promotion to the rank of sergeant be affirmed.

DIVISION OF ADMINISTRATIVE
LAW APPEALS


James P. Rooney, Esq.
First Administrative Magistrate

Dated: **DEC 18 2012**