

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

EVENS MAURICE,
Appellant

v.
HUMAN RESOURCES DIVISION,
Respondent

Case No. B1-13-265

Appearance for Appellant:

Evens Maurice
Pro Se

Appearances for Respondent:

Andrew Levrault, Esq.
Melinda Willis, Esq.
Labor Counsels
Human Resources Division
One Ashburton Place, Room 207
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), Evens Maurice (“Mr. Maurice” or “Appellant”) filed a timely appeal with the Civil Service Commission (“Commission”) on December 3, 2013 against the state’s Human Resource Division (“HRD” or “Respondent”), contesting HRD’s decision not to grant Education and Experience (“E&E”) credit to the Appellant for his experience as a Harvard University Campus Police Officer for the administration of the 2013 entry-level “Police Officer – Cities & Towns and MBTA Transit Police –Trooper, Massachusetts Department of State Police” exam (“2013 exam”).

A pre-hearing conference was held on January 14, 2014 at the offices of the Commission. A hearing was held on February 10, 2014 at the same location.² The witnesses

¹ The Commission acknowledges the assistance of Beverly J. Carey, Esq. in the drafting of this decision.

were not sequestered.³ The hearing was digitally recorded; the parties were provided with copies of the recording and the Commission retained a copy of the recording.⁴ The parties submitted written post-hearing memoranda on or about March 14, 2014. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Based on the eleven (11) exhibits entered into evidence⁵, the stipulations of the parties, the testimony of:

Called by HRD:

- Ms. Regina Caggiano, HRD, Deputy Director of the Civil Service Unit (“CSU”);

Called by the Appellant:

- Mr. Maurice, Appellant, Harvard University Police Department (“HUPD”), Officer;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, caselaw and policies, a preponderance of the credible evidence and reasonable inferences therefrom, establishes the following findings of fact:

² In addition to Mr. Maurice, there were four (4) other campus police officers who filed similar appeals at the Commission: Verderico v. HRD, B1-13-254; Persampieri v. HRD, B1-13-236; Sprague v. HRD, B1-13-237; and Schroeder, II v. HRD, B1-13-239. Decisions in all five (5) cases are being issued today. Mr. Maurice and Mr. Verderico are campus police officers at Harvard University who asked that their hearings be consolidated but that the Commission issue separate decisions in their respective cases, although they submitted a joint written post-hearing statement. Mr. Persampieri, Mr. Sprague and Mr. Schroeder are campus police officers at Northeastern University who requested that their cases be consolidated, which request was allowed. HRD requested that all five (5) cases be consolidated but that request was denied. However, for convenience and efficiency, and in order to address the common issues underlying all five (5) appeals, the hearings were conducted on the same day, with HRD presenting its case in chief first regarding each Appellant, followed by the Appellants presenting their cases consecutively thereafter.

³ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

⁴ 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.

⁵ Consistent with Massachusetts Statewide Retention Schedule 02-11, Sections B5 2(b) and/or B5 3(g), these exhibits and the entire case record will be retained either at the offices of the Commission or at the State Records Center for six (6) years after final case activity/case closure. Thereafter, the entire case file will be destroyed. A copy of this decision, however, will be retained permanently by the Commission.

1. The Appellant took and passed the 2013 entry-level police exam, entitled “Police Officer – Cities & Towns and MBTA Transit Police – Trooper, Massachusetts Department of State Police” exam (“2013 exam”), and requested E&E credit for his experience as a HUPD campus police officer.⁶ (Testimony of Mr. Maurice, Exs. 8 and 10, Administrative Notice⁷) In support of his E&E request, Mr. Maurice submitted to HRD an HUPD letter on HUPD stationary, dated April 24, 2013, that states, in full:

To whom it may concern:

Evens Maurice has been employed with the Harvard University Police Department since March 3, 2008. Please feel free to give me a call if you have any questions or need any additional information. Thanks for your time.

Kind regards,

Kerry Unflat

Assistant Director of Finance and Administration

(Ex. 10)⁸

2. The exam announcement/job bulletin for the 2013 exam contains the following:

Credit for Employment/Experience as a Police Officer: Pursuant to the provisions of M.G.L. Chapter 31, Section 22, individuals may apply to receive credit for employment or experience in the position title of *municipal Police Officer*. If you believe you are eligible for this credit, you must claim this credit by completing the applicable section of the application. All claims must be verified by supporting documentation, which must provide specific details of any employment or experience you have in the examination title as the result of service on a city or town police force, including dates of service and the number of hours worked per week. The supporting documentation must be on original letterhead with an original signature from the appointing authority where the employment or experience occurred. Please note, credit for employment or experience is applicable only to individuals who achieve a passing score on the

⁶ The 2013 exam was for those who wished to apply for full-time positions and for those interested in part-time/reserve municipal police positions. (Testimony of Ms. Caggiano)

⁷ Having taken Administrative Notice of all matters filed in this case, this includes information provided by HRD to the Commission and the parties prior to the hearing, which includes a notice dated October 15, 2013 from HRD to Mr. Maurice stating that he had passed the exam but his E&E request was denied and that Mr. Maurice could appeal this determination to HRD under G.L. c. 31, s. 22; Mr. Maurice’s Request Form dated November 1, 2013 sent to HRD to request review of its E&E determination and stating that HRD granted him E&E credit for his campus police experience for the 2011 exam; and HRD’s November 21, 2013 denial of Mr. Maurice’s request to review HRD’s initial denial of his E&E request.

⁸ Although this letter is addressed “to whom it may concern” and is not addressed to HRD, I take Administrative Notice that the Commission and the parties have received documents from HRD acknowledging receipt of the letter.

written examination, and cannot be added to a failing written examination score. Claims must be submitted during the application period; supporting documentation may be submitted at the exam site, or submitted by mail which must be postmarked within 7 calendar days of the written examination.

(Ex. 8, emphasis added to “municipal Police Officer”)⁹

3. The job bulletin for the 2013 exam also contained a Supplemental Questionnaire section.

Number four (4) of this questionnaire states, in full:

POLICE OFFICER CLAIM FOR EMPLOYMENT/EXPERIENCE CREDIT: Credit will be given only for experience in the position title for which the examination is conducted. In other words, since you are taking the examination for Police Officer, you can claim any experience you have had performing work ONLY as a Full Time, Reserve, or Intermittent Police Officer in a municipal police department. While HRD may hold military make-up exam session(s) after April 20, 2013, HRD will not grant credit for experience accumulated after April 20, 2013.

CALCULATING EMPLOYMENT/EXPERIENCE CREDIT: You will receive 0.2 points for each month of creditable employment/experience as a Police Officer. One month equals 172 work hours or 16 or more work days. Part-Time work employment/experience will be prorated on the basis of a 40-hour workweek. Your Employment/Experience Credit is weighted at 10%. If you do not qualify for Employment/Experience Credit, your overall score will be based on your examination score alone.

VERIFYING EMPLOYMENT/EXPERIENCE CLAIMS: Supporting documentation must be provided in the form of a dated letter, signed by the appointing authority or your employer (past or present), identifying the position title, type of job responsibilities, dates of experience, whether the experience was full or part-time and other pertinent information concerning your experience. If the experience was less than full-time, the verification must include the actual time worked, e.g. number of hours per week or the specific number of tours or shifts worked within a defined time period. Letters of verification must be on original, official letterhead or stationery, with an original signature. Supporting documentation may be submitted at the exam site, or submitted by mail which must be postmarked within 7 calendar days of the written examination.

EMPLOYMENT/EXPERIENCE CLAIM APPEAL: Employment/Experience Claims will only be calculated for individuals who achieve a passing score on the written exam. Employment/Experience Credit cannot be added to a failing written examination score in an attempt to achieve an overall passing score. You may not appeal the written examination score. If you believe that your Employment/Experience Credit has been calculated incorrectly, you have the

⁹ The 2013 exam was for the position of part-time/reserve municipal police as well as fulltime municipal applicants. (Testimony of Ms. Caggiano)

opportunity to appeal the Employment/Experience Credit only. When you receive your exam results, carefully read the instructions that will be noted on the page including your exam results. All appeals must be filed in writing; no appeal telephone calls will be accepted. No new information can be submitted on appeal; only clarifying information relative to the experience you originally claimed can be considered during the appeal process.

Selecting the “Yes” response below will enter your claim for this Employment/Experience Credit; please note that supporting documentation is required to verify all claims. Select the “No” response below if you do not qualify for this credit.

- Yes, I am eligible for Employment/Experience Credit, and will provide supporting documentation as instructed above.
- No, I do not wish to claim Employment/Experience Credit.

(Ex. 8)(emphasis in original)

4. While Mr. Maurice recalled being asked to indicate that he had read and understood the exam announcement, he stated that he did not focus on the E&E portion on the 2013 examination because “it seemed like the same announcement as last time.” Mr. Maurice first took the civil service exam for police officers beginning in 1996. (Testimony of Mr. Maurice)
5. In addition to processing E&E credit requests, HRD processes other matters on the exams, such as veterans’ preferences, preferences for children of Police Officers/Firefighters who were killed or sustained injuries resulting in death while on duty, residency preferences, racial/ethnic preferences where applicable under a federal court consent decree and selective certification for bilingual police officers. (Ex. 8; Testimony of Ms. Caggiano)
6. Approximately 16,000 people applied to take the 2013 Police Officer & Trooper exam. This is the highest number of applicants for this exam that HRD has ever received. (Testimony of Ms. Caggiano)
7. Applicants for the 2013 exam were required to sign the exam application online indicating that they understood the information therein. (Testimony of Ms. Caggiano)

8. All of the applicants for the 2013 exam applied online and were provided the Supplemental Questionnaire. (Testimony of Ms. Caggiano)
9. HRD administered the 2013 exam on or about June 15, 2013. The exam was originally scheduled for April 20, 2013 but had to be postponed as a result of the Boston Marathon bombing. (Ex. 8; Testimony of Ms. Caggiano)
10. At pertinent times, there was one (1) employee at HRD assigned to make E&E determinations on the 2013 exam. Assessing applicants' E&E credits was only part of this employee's assignment at HRD. (Testimony of Ms. Caggiano)
11. HRD restricted E&E credits to candidates with *municipal police experience only* on the 2013 exam. HRD's reasoning for this included HRD's interest in streamlining the exam while providing a fair playing field, being able to communicate the change regarding E&E credit to all applicants since 100% of them registered online, knowing that there are numerous jobs in which applicants may perform at least some of the duties of municipal police officers and they may or may not exercise all police powers, and based on HRD's limited resources. (Testimony of Ms. Caggiano)
12. In 2006, HRD contracted with EB Jacobs, a consulting company, which designs employment examinations and performs other human resource-related functions. EB Jacobs prepared for HRD a document entitled, "Massachusetts PD – Police Officer Task Survey Analysis – Police Officer Essential Task" ("Essential Police Tasks"), which lists more than one hundred essential tasks. (Testimony of Ms. Caggiano; Exhibit 9)
13. In addition to campus police officers, HRD also denied E&E credit to parole officers (who are armed in the field), environmental police officers, State Troopers and Sheriffs' deputies on the 2013 exam. (Testimony of Ms. Caggiano)

14. HRD's policy not to award E&E credit to non-municipal police officer applicants on the 2013 exam was consistently applied. (Testimony of Ms. Caggiano)
15. On entry-level exams, the written exam is worth 100% of each applicant's score and E&E credit can provide a 10% bonus if the applicant passes the exam. For each month of eligible full-time service/experience, qualified applicants receive 0.2 points, which is added to their total score. (Testimony of Ms. Caggiano)
16. The E&E component is scored differently on promotional exams than it is on entry-level exams. The written exam for promotions is worth 80% of the applicant's score while the E&E component is worth 20% of the score. For part-time municipal police experience, the bonus would be pro-rated. Although campus police officers do not receive E&E credit on entry-level exams, they do receive it on promotional exams. (Testimony of Ms. Caggiano)
17. The exam titles for the exams given between 2001 and 2011 were:
- 2001 – “Police Officer - Municipal Service and Massachusetts Bay Transit Authority” (“MBTA”),
 - 2003 – “Police Officer - Municipal Service and MBTA”,
 - 2005 – “Police Officer - Municipal Service, Boston Municipal Police, and MBTA”,
 - 2007 – “Police Officer - Municipal Service and MBTA”,
 - 2008 – “Police Officer - Municipal Service and MBTA”,
 - 2009 – “Police Officer - Cities and Towns and MBTA Transit Police - Trooper, Massachusetts Dept. of State Police”, and
 - 2011 - “Police Officer – Municipal Service and MBTA”.¹⁰

(Exs. 1 – 7)

18. The exam announcement for the April 28, 2001 “Police Officer – Municipal Service and MBTA” exam contained *only* the following information under “Credit for Employment/Experience as a Police Officer:”

¹⁰ The State Police hiring process does not involve civil service. *See* G.L. c. 22C.

Employment or Experience Credit: Pursuant to the provision of section 22 of Chapter 31, individuals may apply for credit for employment or experience in the position title of *Police Officer*. Information on how to apply for this credit will be mailed with your notice to appear for the examination. On the day of the examination, you will be asked to provide the details of any such employment or experience you have as a police officer as the result of service on a city or town police force, or service on a state-run transit police force, including location, dates of service, and number of hours worked per week, and submit documentation supporting these claims.

(Ex. 1(emphasis added))

19. Similar wording regarding credit for employment and/or experience as a police officer appeared in the 2003, 2005, 2007, 2008, 2009 and 2011 exam announcements/job bulletins. However, there were some modifications to the wording. For example, the 2007 exam did not allow credit for experience as a member of a state-run transit police force and added that credit is not available unless candidates first passed the written exam and could not be added to a failing score. The 2008 exam also stated candidates must pass the exam to be considered for E&E credit. The 2009 exam application was online, it did not allow credit for experience as a member of a state-run transit police force and it stated that candidates must pass the exam to be considered for E&E credit. The 2011 exam stated that information for requesting E&E would be available on a specific website after April 1, 2011, it did not allow credit for experience as a member of a state-run transit police force and it stated that E&E documentation must be submitted at the exam or mailed and postmarked within seven days of the exam.¹¹ (Exs. 2-7)
20. Mr. Maurice graduated from a police academy in 2008 and participates in additional service training, which is done through the Cambridge Police Department. On occasion, Mr. Maurice provides back up for Cambridge Police Officers. (Testimony of Mr. Maurice)

¹¹ HRD's process for recognizing veterans' preference status on the exam has also changed to reflect technical changes in related state and federal law such that it now accepts additional documentation of veteran status, not just the DD214 form relied upon exclusively before this. (Testimony of Ms. Caggiano)

21. HUPD campus police officers, including Mr. Maurice, are appointed Special State Police Officers, in accordance with G.L. c. 22C, § 63, although their authority as Special State Police Officers is restricted to property owned, used, or occupied by Harvard University. However, “HUPD officers appointed under Mass.Gen.L.Ch.22C, s. 63, have no authority to stop motorists for automobile law violations on public ways within their jurisdiction. *Commonwealth v. Mullen*, 40 Mass.App.Ct. 404, 409.” (Ex. 15¹²)
22. HUPD campus police officers, including Mr. Maurice, are also appointed deputy sheriffs of Middlesex and Suffolk counties. “Whenever HUPD officers leave the grounds of the campus, their police authority rests upon their status as sworn deputy sheriffs of Middlesex or Suffolk County or as private citizens. However, an HUPD officer may pursue and arrest someone in an extra-territorial ‘fresh pursuit’ for any offense, felony, or misdemeanor committed in the arresting officer’s presence and on property owned, used, or occupied by Harvard University. M.G.L. c. 41, s. 98A. The originating offense must have occurred on University property. As deputy sheriffs, HUPD officers are accorded restricted police powers that apply only while they are on duty. When off duty, HUPD officers have no authorization to act as deputy sheriffs in either Suffolk or Middlesex County.” (Ex. 15)
23. As a campus police officer with HUPD, Mr. Maurice has made vehicle stops in the past year. He has also impounded a vehicle and conducted pat-frisks on city streets adjacent to campus. Mr. Maurice made two (2) arrests in the past year: one was for breaking and entering and one was for assault and battery of a police officer. Mr. Maurice also participated in the investigations relating to the two (2) arrests he made. Mr. Maurice had to

¹² Exhibit 15 is a one-page excerpt of the HUPD Policies and Guidelines, March 2003. There is no indication that Mr. Maurice provided this document to HRD when he requested E&E credit.

display his weapon in the past year in connection with a search for someone in a building.

(Testimony of Mr. Maurice)

24. Mr. Maurice has not performed certain Essential Police Tasks. For example, although he made vehicle stops, he did not search any vehicles last year. He did not assist in the recovery of a stolen vehicle or conducted field sobriety tests in the last year. Mr. Maurice has not communicated with a hostage-taker. He has not been involved in a high-speed pursuit, which is against Harvard University policy. In addition, Mr. Maurice did not respond to any reports of child abuse in the last year, nor did he place anyone in protective custody. Mr. Maurice did not recall if he secured any crime scenes last year. Mr. Maurice has not applied for an arrest or search warrant in the last year. (Testimony of Mr. Maurice)
25. Mr. Maurice received E&E credit for his experience as a campus police officer when he requested it on the 2011 exam. (Testimony of Mr. Maurice; Ex. 7)¹³
26. In a notice dated on or about October 15, 2013, HRD informed Mr. Maurice that he had passed the 2013 exam but that his E&E claim on the exam was denied because his submitted employment/experience information “was not in the exam title (municipal Police Officer).” (Administrative Notice)
27. Via an HRD “Request Form” dated November 1, 2013, Mr. Maurice asked HRD to review its decision denying him E&E credit for his campus police experience. (Administrative Notice)

¹³ The letter submitted for Mr. Maurice’s 2011 exam and request for E&E credit states,

May 2, 2011

To whom it may concern:

Evens Maurice has been employed with Harvard University since March 6, 2005. He has been employed with the Harvard University Police Department as a Police Officer since March 3, 2008.

Please feel free to give me a call at (redacted) if you have any questions or require any additional information.

Thanks and have a pleasant day.

Regards,

Kerry Unflat, Finance and Administration Officer.

(Administrative Notice, provided by HRD to the Commission and the parties prior to the hearing)

28. Following a review of his E&E scoring, HRD informed Mr. Maurice on or about November 21, 2013 that his E&E claim was denied because the submitted employment/experience was “not in the examination title (municipal Police Officer).” (Administrative Notice)¹⁴

29. Mr. Maurice thereafter filed the instant timely appeal at this Commission on December 3, 2013. (Administrative Notice)

DISCUSSION

Applicable Law

Pursuant to G.L. c. 31, § 2(b), the Commission has the authority to “hear and decide appeals by a person aggrieved by any decision, action, or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations. . . .” Furthermore, G.L. c. 31, § 2(b) states, in pertinent part: “No decision of the administrator involving the application of standards established by law or rule to a fact situation shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record.”

It is 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.” Mass. Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001), citing City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997). “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. “A decision is arbitrary and capricious when it lacks any

¹⁴ The November 21, 2013 message to Mr. Maurice does not inform him that he may appeal HRD’s second denial to the Commission.

rational explanation that reasonable persons might support.” Cambridge, 43 Mass. App. at 303 (internal citations omitted). In accordance with G.L. c. 31, § 2(b), the Commission must determine, based on the evidence before it, whether the appointing authority has sustained its burden of proving there was “reasonable justification” for the action taken. Cambridge, 43 Mass. App. at 303. “‘Justified,’ in the context of review, means ‘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.’” Id. at 304, *citing* Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928).

HRD is vested with broad authority to determine the requirements for competitive civil service exams. Under G.L. c. 31, § 22, “[t]he administrator shall determine the passing requirements of examinations.” The statute also states that “[i]n any competitive examination, an applicant shall be given credit for **employment or experience in the position for which the examination is held.**” Id. (emphasis added). The Personnel Administration Rules (“PAR”) promulgated by HRD provide the following, in pertinent part: “[t]he grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include **credits for elements of employment or experience related to the title for which the examination is held.**” PAR .06(c) (emphasis added). G.L. c. 31, § 23 provides in part,

... Within six weeks after receipt of a request pursuant to section twenty-two, the administrator shall, subject to the provisions of this section, conduct such review, render a decision, and send a copy of such decision to the applicant. If the administrator finds that an error was made in the marking of the applicant’s ... training and experience ... , the administrator shall make any necessary adjustment to correct such error. ...

(Id.)

Under G.L. c. 31, § 24, an applicant may then appeal to the Commission from a decision of the administrator. While the first paragraph of G.L. c. 31, § 24 does not expressly list

“training and experience” appeals, such appeals are referenced in the second paragraph of the statute as follows,

... the commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.”

Id.

In O’Neill v. Civil Serv. Comm’n, 10-P-384 (February 15, 2011) (Rule 1:28), the Appeals Court ruling established that “a fair reading of the entire statute ‘indicated an intent by the Legislature that training and experience scores may be appealed under § 24. . . .’”

Therefore, the Commission has jurisdiction to review HRD determinations regarding E&E credit on an exam.¹⁵

Police Authority Statutes

With regard to special state police authority, G.L. 22C, § 63 provides, in part,

The colonel [of the Department of the State Police] **may**, upon such reasonable terms and conditions as may be prescribed by him, **at the request of an officer of a college, university, other educational institution or hospital** licensed pursuant to section fifty-one of chapter one hundred and eleven, **appoint employees of such college, university, other education institution or hospital as special state police officers.** Such special state police officers shall **serve for three years, subject to removal by the colonel** and they shall **have the same power to make arrests as regular police officers for any criminal offense committed in or upon lands or structures owned, used or occupied by such college, university, or other institution or hospital.** ... The colonel may promulgate such rules and regulations as may be necessary to ensure proper standards of skill

Id. (emphasis added)

Under G.L. c. 22C, § 59, the State Police colonel may also appoint others as special state police who are not municipal police officers. This statute provides, in part,

... **[U]pon petition of the commissioner of mental health or the commissioner of development services, appoint as special state police officers employees of**

¹⁵ The second paragraph of G.L. c. 31, § 24 states, in part, that “... the commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.” Id.

[those departments] . . . who shall have the same power to make arrests as the state police for any criminal offense committed in or upon lands or structures within the charge of said departments Such special state police officer shall be sworn before a justice of the peace or notary public who shall make return thereof to the department. . . . Upon receipt of said return the department [of the State Police] shall issue a license to each person designated to act as a special state police officer, and such license shall, in any court . . . , be competent evidence of the validity of the appointment of the person named therein. . . . **A special state police officer shall hold his office until his license expires or is revoked by the colonel, or until the petitioner files a notice with the department that the services of such officer are no longer required. The colonel may provide that the license and any renewal thereof shall expire on the anniversary of the birth of the person names therein not less than one nor more than two years following the date of issue. . . . They shall serve without pay, except for their regular compensation as employees of the department of mental health, the department of developmental services or the various institutions under the respective jurisdictions of said department. . . .**
Id. (emphasis added)

General Laws c. 73, § 18, authorizes Massachusetts state universities and colleges (including community colleges) to appoint campus police. It provides, in part:

The trustees shall make rules and regulations for the control, movement and parking of vehicles on the campus or other land of a state university and may provide reasonable penalties for the violation of said rules and regulations. The trustees may appoint as police officers persons in the employ of such university who in the enforcement of said rules and regulations and throughout the property of such university shall have the powers of police officers, except as to service of civil process.
Id. (emphasis added)

See also G.L. c. 22, § 15A, G.L. c. 75, § 32A and G.L. c. 90C, § 1 further regarding similar provisions relating to state college campus police. Under G.L. c. 90C, § 2, public university police chiefs are required to certify to the Massachusetts Registrar of Motor Vehicles annually, in part, that:

(b)(1)(A) 51 per cent of such police officers have completed either the basic full-time recruit academy operated or certified by the municipal police training committee or the campus police academy operated by the Massachusetts state police, or

(B) 51 per cent of the police officers have completed a basic reserve/intermittent police officer training course approved by the municipal police training

committee and have had at least 5 years experience issuing citations pursuant to this chapter; and

(ii) the remaining 49 per cent of police officers have completed a minimum of a basic reserve/intermittent police officer training course approved by the municipal police training committee;

(c) such officers have completed annual in-service training of no less than 40 hours;

(d) such officers meet the same firearms qualification standards as set from time to time by the municipal police training committee if such officers have been authorized by the board of trustees of the state university or community college to carry firearms; ...

(f) a memorandum of understanding has been entered into with the police chief of the municipality wherein the state university or community college is located outlining the policies and procedures for utilizing the municipality's booking and lock-up facilities, fingerprinting and breathalyzer equipment if the state university or community college police department does not provide booking and lock-up facilities, fingerprinting or breathalyzer equipment; and

(g) the state university or community college police department has policies and procedures in place for use of force, pursuit, arrest, search and seizure, racial profiling and motor vehicle law enforcement.

Notwithstanding the previous paragraph, nothing in this section shall limit the authority granted to the police chiefs and police officers at the state universities and community colleges under said section 22 of said chapter 15A or section 18 of chapter 73.

Id.

HRD's Argument

It is HRD's position that it acted within its authority and in accordance with civil service laws by limiting E&E credit on the 2013 exam to applicants claiming experience within the position title of municipal police officer. HRD claims that it "clearly and consistently put individuals on notice of the precise type of experience that would qualify an applicant for E&E credits for the 2013 entry-level examination." (HRD's Proposed Decision, p. 23) HRD submits that it applied this policy uniformly, adding that in addition to campus police, parole officers (who are armed in the field) and environmental police were also precluded from receiving E&E

credit based on their jobs, and that it provided sound and sufficient reasons for the need to limit E&E credit. Specifically, HRD states that obtaining information for each campus police officer in this regard has become impractical given the volume of applicants, the varied authority each officer has on each of the many campuses in Massachusetts, the size and location of each campus, and HRD's limited resources. To the extent that the Appellant avers that he performs the same tasks as municipal police officers, HRD asserts that he does not perform all of the Essential Police Tasks. To the extent that the Appellant avers that he performs more police tasks than part-time and/or intermittent/reserve municipal police officers, who receive pro-rated E&E credit for their experience, HRD states that there is a valid distinction here, which is that intermittent/reserve municipal police officers are authorized regarding all aspects of law enforcement as full-time municipal police officers, whereas all campus police officers do not necessarily have the same authorization. Further, HRD asserts although the Appellant produced at the hearing a document from the HUPD campus police policies and guidelines (Ex. 15) and a list of training courses he has taken (Ex. 17), they may not be considered here, pursuant to G.L. c. 31, § 24. In addition, if the Commission granted this appeal, HRD would need to contact all 16,000 applicants to determine who else would be eligible for such credit, re-score the test and address the instances in which applicants had been hired on the basis of their original scores. Finally, HRD states that although the Appellant did not receive E&E credit for campus police training and experience, he can inform potential employers of his campus police experience when he is being considered for employment.

The Appellant's Argument

The Appellant contends that his experience as a campus police officer with HUPD should have been credited on the 2013 examination. Mr. Maurice argues that HRD's decision to exclude all campus police officers from obtaining E&E credit was unfair, effectively stating

that HRD's action denying him credit arbitrary and capricious and in violation of basic merit principles since, he avers, he performs the same functions and has the same training as municipal police officers. In addition, Mr. Maurice was awarded E&E credit for his work as a campus police officer when he requested it on the 2011 examination. Further, he suggests that it is unfair for HRD to deny him E&E credit as a full-time campus police officer with Special State Police and deputy sheriff appointments when HRD gives E&E credit to part-time municipal officers, such as reserve municipal police officers, who may perform little if any municipal police officer tasks. He also states that HRD should have published notice of the change regarding E&E credit prior to the exam announcement so that people in his position could assess whether they wanted to exert all the effort to pay for study materials, study and pay for and take the exam in view of HRD's change to the award of E&E credit. Finally, Mr. Maurice states that it was unfair for HRD to deny his E&E request since Ms. Caggiano testified that she was not aware of campus police officer training, authorities and duties.

Analysis

Applying the law to this appeal, HRD has established by a preponderance of the evidence that it had reasonable justification to deny the Appellant E&E credit for his experience as a campus police officer on the 2013 exam. As stated above, HRD is vested with broad authority to determine the passing requirements of exams, in accordance with G.L. c. 31, § 22 and PAR .06(c). The 2013 exam announcement contains the following explicit language: "individuals may apply to receive credit for employment or experience in the position title of *municipal Police Officer.*" Ex. 8 (emphasis added). Furthermore, the Supplemental Questionnaire on the 2013 exam expressly states that applicants may claim experience they have had "**performing work ONLY as a Full Time, Reserve, or Intermittent Police officer in a municipal police department.**" Ex. 8 (emphasis in original). HRD acted within its

discretion in changing the E&E requirements for the 2013 exam. As all applicants were required to register for the exam online, they all received the same notice with regard to the E&E credit requirements. There is no evidence to suggest that HRD did not apply the new E&E policy in a uniform and consistent manner; in fact the exclusion applied also to environmental police officers and parole officers (who are armed in the field) for the same reason it was denied to campus police officers. The information that Mr. Maurice provided to HRD in pursuit of E&E credit does not indicate that he has experience as a municipal police officer and, consequently, his request for E&E credit was denied. In fact, Ms. Caggiano testified that the letter Mr. Maurice provided to HRD at or about the time of the 2013 exam failed to state that he was a campus police officer and that he works there full-time.

With regard to the Appellant's argument that E&E determinations on prior tests should compel the same result here, prior to the 2013 exam the language used on the exam announcements stated that the position title was for the generic position of "police officer." In addition, between 2001 and 2011 the E&E component of the exams stated that credit "shall be given for employment or experience in the position for which the examination is held *which involved the use of full police powers.*" Commission decisions in 2001 awarded E&E credit to campus police officers for the 1999 exam, for example, in Stickney and Bonney v. HRD, 14 MCSR 40 (2001)(UMass. Lowell); Robinson and 4 Others v. HRD, 14 MCSR 38 (2001)(UMass. Amherst); Rudinski and 6 Others, v. HRD, 14 MCSR 48 (2001)(UMass. Worcester); Sweatland and 15 Others v. HRD, 14 MCSR 55 (2001)(Harvard University); and Chretien and 2 Others v. HRD, 14 MCSR 50 (2001)(UMass. Dartmouth); Figueiredo v. HRD, 14 MCSR 174 (2001)(MIT). However, the award of E&E credit in the 2001 cases was based on the generic use of the term "police officer" on the exam as the position title and the determination that the applicants also had "full police powers," which was expressly stated as a

requirement for E&E credit on the 1999 exam. In contrast, the 2013 exam is for the position title “municipal police officer” and explicitly states that only full time, reserve, or intermittent police officers in municipal police departments may claim E&E credit. Furthermore, unlike prior cases, HRD has demonstrated here that it had reasonable justification for denying E&E credit to campus police officers. While some campus police officers may perform certain equivalent duties and may exercise the same police powers as sworn municipal police officers, albeit on their respective campuses and related areas, this is not always the case. The Appellant acknowledged in his testimony that there are some municipal police officer tasks that he does not perform. Each campus police department may adopt different statutory authorities and each campus may report its officers’ exercise of that authority in a different format. Campus police officers within the same institution may not have identical duties and responsibilities as other campus police officers, let alone the same duties of municipal police officers. Different campus police departments may have different initial and/or in-service training requirements. Further, HRD does not know, for example, if each college campus police department has entered a memorandum of understanding with the local municipal police chief regarding the policies and procedures for utilizing the municipality’s booking and lock-up facilities, fingerprinting and breathalyzer equipment if the campus does not have them. As a result, and given the large and growing number of applicants, this information is not susceptible of quantification in an exam application form or addendum and it is not feasible for HRD to conduct an analysis of the functions and training of each individual applicant, especially in view of HRD’s limited resources. Therefore, HRD acted reasonably, not arbitrarily or capriciously. Arguably, under the circumstances, awarding E&E credit to some campus police officers and not to others may violate civil service law basic merit principles. G.L. c. 31, § 1.

The Appellant's desire to have his campus police experience credited on his exam is understandable. He honorably performs a number of police duties, receives certain training and can face serious challenges on his campus and related properties. Moreover, the Appellant appeared to be honest and sincere, in addition to being a dedicated officer, who earnestly seeks the challenge of employment as a municipal police officer. However, campus police duties, authority, training and experience can vary from campus to campus. The Commonwealth is fortunate to have more than ninety (90) traditional colleges and universities within its borders with a wide range of features.¹⁶ They range in size from small to large, some of them are public institutions, some are private, some are located in urban settings, some are in suburban locations and others are in rural settings. Police on smaller campuses may have fewer cases than campus police on larger campuses but campus police on smaller campuses may experience a broader range of cases. The Appellant in the instant case works on a large, urban and private campus. He performs certain municipal police functions, albeit on a college campus and certain surrounding areas, and acknowledges that there are some municipal police functions that he does not perform or, if he performs them, he does so on a limited basis. Not all campus police officers are similarly situated.

Rather than drawing an arbitrary line between the many and diverse campus police departments, HRD has exercised its considerable authority and equitably drawn the line at awarding E&E credit only for municipal police experience on the 2013 exam and applied the policy uniformly. That HRD permits E&E credit in police promotional exams, where proven as required, is not inconsistent with its approach regarding E&E credit on an entry-level police exam because by the time a municipal police officer with campus police experience seeks a

¹⁶ I take administrative notice that there are approximately thirty (30) public colleges or universities in Massachusetts (www.mass.edu/system/campusdirectory.asp) and approximately sixty-five (65) private colleges and universities in the Commonwealth (www.colleges.usnews.rankingsandreviews.com).

promotion, she or he has actually performed the functions of a municipal police officer. This decision should not be interpreted in any way to discredit or undervalue the work that campus police perform on every campus. However, given the large number of exam registrations, the variations between the numerous campus police departments in Massachusetts regarding campus police authorities, tasks and training and the applicable laws, and HRD's limited resources, it cannot be gainsaid that HRD's E&E determinations in the instant cases were arbitrary, capricious or an abuse of its considerable authority and discretion.

Conclusion

For the foregoing reasons, the Appellant's appeal under Docket Number B1-13-265, filed pursuant to the provisions of G.L. c. 31, § 2(b), is hereby **denied**.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman, Esq.
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on April 30, 2015.

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:

Evens Maurice (Appellant)
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Melinda Willis, Esq. (for HRD)
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