

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**Case No:** I-09-290

**In the matter of:**

**City of Methuen's review  
and selection of Reserve  
Police Officer Candidates  
in the Fall of 2008**

**CIVIL SERVICE COMMISSION INVESTIGATION  
FINDINGS / CONCLUSIONS / ORDERS**

Pursuant to G.L. c. 31, §§ 2(a) and 72, the Civil Service Commission (hereinafter "Commission") opened an investigation on July 2, 2009 to review the process used by the City of Methuen (hereinafter "City") regarding the 2008 / 2009 review and selection of reserve police officer candidates.

The investigation was initiated after the Commission conducted pre-hearing conferences regarding four related appeals involving candidates not selected for appointment.<sup>1</sup>

The City of Methuen and the state's Human Resources Division (hereinafter "HRD"), in response to a Commission order, submitted information related to the review process in question on July 10, 2009 and July 28, 2009.<sup>2</sup>

A hearing was conducted at the offices of the Commission; One Ashburton Place; Room 503, Boston, MA on August 3, 2009 at 1:00 P.M. which was attended by:

- Peter J. McQuillan, City Solicitor, City of Methuen;
- David F. Grunebaum, Counsel, City of Methuen;
- Katherine Lavigne; Police Chief, City of Methuen;
- Colleen McCarthy, Director of Human Resources, City of Methuen;
- Richard Currier, Senior Personnel Analyst, state's Human Resources Division;
- Charles Sciacca, candidate not selected for appointment;
- Patrick Waldron, candidate not selected for appointment.

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<sup>1</sup> The four related appeals involve David M. Dumont (G1-09-20); Nicholas A. Milone (G1-09-33); Patrick Waldron (G1-09-252); and Charles W. Sciacca (G1-09-261).

<sup>2</sup> Except for the information submitted to the state's Human Resources Division by the City, information submitted to the Commission by the City which can be deemed a part of an applicant's personnel record is impounded.

Based on a careful review of the documentary evidence and the testimony and statements of the above-referenced individuals, I make the following findings of fact, conclusions and orders.

## **FINDINGS OF FACT**

1. Sometime on or shortly before July 31, 2008, Mayor William Manzi (who serves as the Appointing Authority for the City's Police Department) instructed Colleen McCarthy, the City's Director of Human Resources, to initiate the process for hiring ten (10) reserve police officer candidates. (Testimony of Colleen McCarthy) On or around the same time, Ms. McCarthy informed Police Chief Lavigne that there were several "openings" on the reserve police officer list and they jointly agreed that these ten (10) openings should be filled. (Testimony of Chief Lavigne)
2. On July 31, 2008, Ms. McCarthy requested a requisition from the state's Human Resources Division (HRD) to hire ten (10) permanent reserve police officers. (Attachment 1 to HRD's Response to Interim Order and Testimony of Colleen McCarthy)
3. Although reserve police officers are permitted to perform detail duty if desired, the primary purpose of the reserve police officer list is to serve as a roster of candidates for future permanent police officer positions in the City. (Testimony of Chief Lavigne)
4. On August 13, 2008, HRD issued Certification No. 280803 to the City, which included the names of 41 individuals who had taken and passed a civil service examination for the position of police officer. The top-ranked individual's name was on the Certification as a result of a prior Commission order (see Jones v. HRD and Methuen Police Department, CSC Case No. G-02-118 (2002)); the individuals ranked second and third were disabled veterans; the individuals ranked 4<sup>th</sup> through 16<sup>th</sup> were veterans<sup>3</sup>; and the individuals ranked 17<sup>th</sup> through 41<sup>st</sup> were on the Certification based on obtaining a civil service score that placed them in the two highest scoring "bands" (bands 10 and 9 respectively, with those in band 10 scoring higher than those in band 9). (Attachment 2 to HRD's Response to Interim Order; See also G.L. c. 31, § 26 and Personnel Administration Rules (PAR) .08)
5. At the top of each page of Certification No. 280803, there is an instruction which states in capital letters: "SELECTION MUST BE OF 10 OF THE FIRST 21 HIGHEST WHO WILL ACCEPT". (Attachment 2 to HRD's Response to Interim Order; See also G.L. c. 31, § 27 and PAR.09 ("when names have been certified to an appointing authority ... and the number of appointments or promotional appointments actually to be made is n, the appointing authority may appoint only from among the first 2n + 1 persons named in the certification willing to accept appointment ... If an appointing authority makes an appointment outside the 2n + 1 certification ... because the appointing authority has made a finding that the person within the 2n + 1 ... formula fails to meet entrance requirements, the finding must be recorded on the certification...".))
6. Twenty-five (25) individuals, four (4) more than the minimum required, signed Certification No. 280803 indicating that they were willing to accept appointment if selected. (Attachment 3 to HRD's Response to Interim Order)

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<sup>3</sup> The statute requires that disabled veterans and veterans who receive a minimum score of at least 70 on the civil service examination be placed at the top of a Certification in rank order based on their score.

7. On September 8, 2008, the City's Director of Human Resources sent a 1-page fax sheet to HRD stating, "Can you send me the next band? 4 did not return background packets. Moreau was appointed last time and 1 possibly 2 are being made reserve ff." (Attachment 3 to HRD's Response to Interim Order) As of September 8, 2008, the City had not made any decision to increase the number of candidates to be selected beyond 10. (Testimony of Ms. McCarthy)
8. Ms. McCarthy acknowledged during her testimony before the Commission that, if the city were only selecting 10 candidates, it would not be able to consider candidates from the next lower band (Band 8) unless there were less than 21 qualified candidates willing to accept appointment from the names already forwarded to the City (through Band 9). Ms. McCarthy testified that based on the information contained on the above-referenced fax sheet, she concluded that the City was now "under the number" of 21 candidates. (Testimony of Ms. McCarthy)
9. At the Commission hearing, the City was only able to identify the names of 3 candidates referenced on the fax sheet that did not return their background packets: candidates Dingle, Touma and Lincoln. (Testimony of Colleen McCarthy)
10. A review of Certification No. 280803 indicates that candidate Lincoln was not 1 of the 25 candidates who signed the Certification as willing to accept appointment if selected. Thus, at most, there were only 3 candidates from among the 25 willing to accept appointment that could be deemed unwilling to accept appointment as a result of failing to complete their background packets: Dingle, Touma and 1 other candidate that the City was unable to identify at the Commission hearing. (Attachment 3 to HRD's Response to Interim Order)
11. According to the City, candidate Moreau (who did sign the Certification), was already chosen as a reserve police officer in a previous round and her name appeared on the Certification in error. (Testimony of Colleen McCarthy; Attachment 3 to HRD's Response to Interim Order)
12. In regard to the "1 possibly 2" candidates that "are being made reserve FF" referenced on the fax sheet, neither of these candidates ever indicated, either verbally or in writing, that they were no longer willing to accept appointment as a reserve police officer. In fact, the City acknowledged that both of these candidates (Pomerleau and Jacobs) gave every indication that they would accept appointment if selected, both returning the background packets and participating in the City's interview process. (Testimony of Ms. McCarthy)<sup>4</sup>
13. The City never notified HRD, as outlined in PAR.09, that any of the candidates within the  $2n + 1$  formula failed to meet the entrance requirements.
14. For the reasons cited in Findings 9-13, no more than 4 of the 25 candidates that initially signed as willing to accept appointment could be deemed no longer willing to accept appointment as a reserve police officer if selected: Moreau, Dingle, Touma and 1 other unidentified candidate that the City claims did not return his / her background packet. Hence, as of September 8, 2008, the date the City requested the names of additional

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<sup>4</sup> According to Ms. McCarthy, only candidate Pomerleau was eventually chosen for a reserve firefighter position.

candidates in the next lower Band (Band 8), the City already had the maximum number of candidates (at least 21) from which it could choose ten (10) reserve police officers. (As referenced in Finding 7, Ms. McCarthy testified that the City had not made any decision to select more than 10 candidates for the position of reserve police officer as of September 8, 2008.)

15. On September 17, 2008, HRD issued the City an additional 36 names of candidates from the next lower band (Band 8) as requested via the above-referenced fax sheet. (Attachment 4 to HRD's Response to Interim Order)
16. 23 of the 36 additional candidates in Band 8 signed the Certification indicating a willingness to accept appointment if selected. (Attachment 5 to HRD's Response to Interim Order) Ultimately, six (6) candidates from Band 8 would be among those selected for appointment, including the following five candidates: Katie D'Agata (Chief Lavigne's niece); Luis Felix (Ms. D'Agata's fiancé); Kristopher Haggar (a police captain's nephew); Brian Henrick (a relative of a School Committee member); and Ronald Bonanno (a nephew of a City Councilor). (Testimony of Ms. McCarthy and Chief Lavigne)
17. Ms. McCarthy and Chief Lavigne designed a screening process in which the two of them and all four of the Department's Captains would conduct candidate interviews and members of the Department's detective division would conduct the required background checks. This differed only somewhat from the process used by prior Police Chiefs in that all four Captains would participate in the interview process, as opposed to only some of the Captains. (Testimony of Chief Lavigne)
18. Internal summaries were prepared regarding each candidate and were included in the information sent to the Commission in response to a Commission order.<sup>5</sup>
19. In order to remove what she believed was the potential appearance of a conflict of interest, Chief Lavigne testified that she did not sit in on the interviews of her niece and her niece's fiancé (candidates D'Agata and Felix); she did not complete a written evaluation of these two candidates; she did not recommend them for appointment; and she verbally disclosed to the Mayor her relationship with candidates D'Agata and Felix. (Testimony of Chief Lavigne)
20. However, Chief Lavigne did participate in the interviews of most of the other candidates. She did complete a written evaluation of those other candidates and she did discuss the strengths and weaknesses of those candidates with other members of the interview panel. (Testimony of Chief Lavigne)
21. Ms. McCarthy testified that sometime during the winter of 2008, she contacted Richard Currier, a senior personnel analyst in the state's Human Resources Division, and received approval to increase the number of candidates to be selected from 10 to 12. (Testimony of Ms. McCarthy) Mr. Currier testified that while such requests are common, he always advises the requesting party to put the request in writing and would have done so in this case. I fully credit the testimony of Mr. Currier. (Testimony of Mr. Currier)

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<sup>5</sup> As part of the hearing, I did not determine who prepared these internal summaries, but it appears that they were prepared by members of the detective division that prepared the background checks.

22. It is undisputed that the City never filed a written request with HRD to increase the number of candidates to be selected from 10 to 12.
23. Ms. McCarthy testified before the Commission that a reason the City wanted to expand the number of candidates to be selected from 10 to 12 was the large number of individuals that were contained in Band 8 and the extensive process that was required to review them. (Testimony of Ms. McCarthy)
24. When asked if there were a business need in the Department for the greater number of 12 reserve police officers, as opposed to the previous number of 10, Chief Lavigne stated only that she wanted to fill the reserve list as much as possible, given the extensive review process required. (Testimony of Chief Lavigne)
25. Ms. McCarthy also testified that sometime during the winter of 2008, she verbally requested a “short extension” from HRD of the time period required to return the Certification to HRD with the names of selected candidates. (Testimony of Ms McCarthy)
26. PAR.08 (2) requires that a Certification for public safety original appointments be returned to HRD by the Appointing Authority no later than 12 weeks after it was issued. PAR.08(2) requires that ... “any appointing authority requesting an extension must submit a written request setting forth sound and sufficient reasons as to why the appointment cannot be made within [this] time period...”.
27. Mr. Currier testified that had he received any such request to extend the time period for returning the Certification, he would have advised the person making the request that it must be in writing. On this issue, I again fully credit the testimony of Mr. Currier. (Testimony of Mr. Currier)
28. It is undisputed that the City did not submit any written request for an extension to HRD and that it did not return the Certification to HRD until several months after the deadline referenced in PAR.08(2).
29. Chief Lavigne testified that after the interviews were conducted, she met with Ms. McCarthy and provided her with a list of candidates that recommended for appointment. Chief Lavigne was unable to recall whether or not any decision had been made at this point regarding whether the City would be selecting 10 or 12 candidates for appointment. (Testimony of Chief Lavigne)
30. Chief Lavigne testified that, “I had given her [McCarthy]...a list of people...I’m sure I suggested...if I was allowed to pick 12...I had suggested only 10, but I did not suggest Katie or Luis.” Chief Lavigne stated that she provided these recommendations verbally to Ms. McCarthy while Ms. McCarthy took notes. (Testimony of Chief Lavigne)
31. Ms. McCarthy testified that subsequent to her meeting with Chief Lavigne, two additional individuals were added to the list of recommended candidates: Katie D’Agata (Chief Lavigne’s niece) and Luis Felix (Ms. D’Agata’s fiancé). Ms. McCarthy also testified that she “may have told [Chief Lavigne] that [D’Agata and Felix] were recommended by the Panel”. (Testimony of Ms. McCarthy)

32. When asked to describe how the names of D'Agata and Felix were added to the list, Ms. McCarthy stated "it would have been the top 12 that we all checked off"[during the interview process]. Ms. McCarthy stated that she had listed all of the recommended candidates on a piece of paper during the interview process. (Testimony of Ms. McCarthy) Subsequent to the hearing before the Commission, I forwarded an email request to the City seeking production of this piece of paper. (Email correspondence to City with copies to all parties dated August 13, 2009) On August 17, 2009, counsel for the City notified the Commission that after a diligent and thorough search, this document could not be located. (City's faxed correspondence to Commission dated August 17, 2009)
33. Ms. McCarthy testified that she had a one-on-one meeting with Mayor Manzi regarding the recommendations and the two of them went through every individual name that was recommended. Ms. McCarthy stated that she could not remember what comments or questions the Mayor had regarding the candidates. (Testimony of Ms. McCarthy)
34. It is undisputed that one of the candidates that was not selected for appointment (and who was willing to accept if appointed) was a disabled veteran. Thus, selection of any of the individuals ranked below him would constitute a "bypass" under G.L. c. 31, § 27 and PAR.02 and PAR.08.
35. Upon determining that any candidate on a certification is to be bypassed, an appointing authority shall, immediately upon making such determination, send to HRD, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person, lower in score or preference category. HRD is then responsible for reviewing the reasons submitted and informing the appointing authority of approval or disapproval of the reasons for selection of bypass. (PAR.08(3))
36. On January 13, 2009, more than four months prior to providing HRD with the names of selected candidates and bypass reasons, the City forwarded letters to certain candidates informing them that they were not being selected for appointment. (January 13, 2009 letter to Appellant Sciacca)
37. Ms. McCarthy testified that she forwarded the above-referenced letters to the unsuccessful candidates based on the advice of Richard Currier of HRD. Mr. Currier testified that he would never give such advice to any appointing authority. On the contrary, he testified that he would remind them that the bypass reasons must be reviewed by HRD prior to notifying the unsuccessful candidates. I credit Mr. Currier's testimony on this matter. (Testimony of Ms. McCarthy and Mr. Currier)
38. On May 21, 2009, nine months after receiving a Certification from HRD, and four months after notifying unsuccessful candidates that they were not being selected, the City faxed an "Authorization of Employment Form (Form 14)" to HRD listing the names of twelve (12) candidates that had been selected for appointment including: 3 individuals from the Veteran band (Ferreira, Crimmins and Prindle); 2 individuals from Band 10 (Jajuga and Norcross); 1 individual from Band 9 (Kannan); and 6 individuals from Band 8 (Bonanno, Felix, Haggar, Wlodyka, D'Agata and Henrick). (Attachment 5 to HRD's Response to Interim Order)

39. Ms. McCarthy testified that she submitted the above-referenced "Form 14" to HRD well before May 21, 2009 via first class mail. Richard Currier of HRD testified that HRD has no record of receiving a Form 14 from the City prior to the fax received on May 21, 2009. (Testimony of Ms. McCarthy and Mr. Currier)
40. As referenced above, since one of the candidates not selected was a disabled veteran, all 12 candidates selected were ranked below him. Therefore, the City, at a minimum, was required to provide HRD with the non-selections reasons of the disabled veteran and/or the selection reasons associated with all 12 candidates ranked below him.
41. As part of its May 21, 2009 submission, the City did not list the non-selection reasons related to the disabled veteran and only provided selection reasons for six (6) of the selected candidates (D'Agata (Band 8); Wlodyka (Band 8), Kannan (Band 9), Felix (Band 8), Bonanno (Band 8) and Haggar (Band 8)). (Attachment 5 to HRD's Response to Interim Order) In her testimony, Ms. McCarthy failed to explain why the City did not list the positive reasons associated with all of the selected candidates. (Testimony of Ms. McCarthy)
42. On June 18, 2009, Richard Currier of HRD forwarded an email to Ms. McCarthy asking her if she had completed the updated selection reasons and stated "I cannot approve the appointments without more information." (Attachment 6 to HRD's Response to Interim Order)
43. On August 3, 2009 at 8:55 A.M., the same day as the hearing before the Commission on this matter, Ms. McCarthy faxed a five-page letter, signed by the Mayor, to HRD listing the selection reasons associated with six of the selected candidates and the non-selection reasons associated with twelve (12) of the candidates. At the Commission hearing, the City acknowledged that the document was still not complete as it did not contain the non-selection reasons of Appellant Sciacca. (See fax dated 8/3/09 and Testimony of Ms. McCarthy)
44. For at least six (6) of the candidates recommended for appointment, including the five (5) candidates in Band 8 related to a current or former employee of the City of Methuen, there appear to be three documents prepared by the City at three different times in order to summarize the candidate in question. As referenced in the above findings, Document 1 is an internal document that appears to have been prepared by the detective(s) responsible for completing the background check. Document 2 contains the initial reasons for selection that were submitted to HRD by the City on May 21, 2009. Document 3 is a revised set of selection reasons submitted to HRD on August 3, 2009.
45. While the internal documents provides a more candid overview of some the candidates' strengths and weaknesses, the documents provided to HRD omit any negative information in a manner that leaves the reader of the second and third document with a different impression of some of the candidates.

46. For at least one of the candidates not selected for appointment, Charles Sciacca<sup>6</sup>, whose name was listed in Band 10, the internal summary depicts a stellar candidate, stating in part: “Candidate Sciacca is currently employed since 7/2001 by the Merrimack, MA. Police Department as a full-time Police Officer. He is a 1997 graduate of Pentucket Regional H.S. (no GPA), and was the co-captain of the hockey team. He has an Associates degree in Criminal Justice from Northern Essex Community College with honors (CUM LAUDE) (3.12 GPA). He is currently taken (sic) classes at Western New England College working towards his Bachelors Degree in Criminal Justice (4.0 GPA – 6 credits). He completed the Lowell Police Academy in 2000, and received their fitness award. He is familiar with several weapons and is a Firearms Instructor, MPTC. He has a license to carry for all proper purposes issued from the Merrimack P.D. He enjoys spending time with his family, exercising, swimming, woodworking, and working on cars. He has an active Mass. Operator’s license, with one speeding ticket on driver’s history in 1998.” He received all positive references and had a positive credit rating.
47. Mr. Sciacca also did well in the interview process. On a scale of 1 to 5, with 5 being the highest rating, one of the Captains on the interview Panel rated Mr. Sciacca as a 5 in two categories and a 4 in the remaining categories. That same Captain hand-wrote that Mr. Sciacca was “very mature, has time on the job, excellent candidate, knows job. He is going to answer questions different than others who have not worked on the job.” Another Captain on the interview also gave Mr. Sciacca high marks and hand-wrote on the evaluation form, “good candidate – mature”. In what appears to be the evaluation form completed by Ms. McCarthy, who also served on the interview panel, Mr. Sciacca scores exceedingly well, with three “5” ratings and all other categories rated as “4”.

## CONCLUSIONS

The Civil Service Commission is responsible for ensuring that hiring decisions are made consistent with basic merit principles.

G.L. c. 31, § 1 defines basic merit principles as:

- (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

The City of Methuen’s review and selection of twelve (12) reserve police officer candidates in 2008 and 2009 was fundamentally flawed. The City flouted the civil service law and rules repeatedly. The review and selection process and some of the hiring decisions are not consistent with basic merit principles for the following reasons:

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<sup>6</sup> At the hearing before the Commission, Mr. Sciacca granted the Commission permission to disclose the contents of the internal summary regarding his application for employment.



- **Chief Lavigne’s direct involvement in the review and selection process compromised the City’s ability to ensure open consideration of all candidates for the position of reserve police officer.**

It is undisputed that Chief Lavigne’s niece and her niece’s fiancé were among the candidates seeking to be appointed as reserve police officers in the City of Methuen as part of this particular hiring process. To ensure that all candidates were given open consideration, and to remove any appearance of impropriety, Chief Lavigne should have removed herself from this particular hiring round. Instead, she took partial steps to avoid the appearance of a conflict that only served to complicate the review and selection process. While Chief Lavigne verbally disclosed the perceived conflict of interest to the Mayor<sup>7</sup> removed herself from the interviews of her niece and her niece’s fiancé, she played an active role in other decisions that directly impacted their candidacy. First, she conducted interviews of other candidates that were competing with her niece and her niece’s fiancé and discussed with other panelists whether those candidates should be recommended. Second, she provided the names of ten (10) candidates that she recommended for appointment (that did not include her niece and the fiancé) and also participated in conversations regarding whether the City should hire twelve (12), instead of ten (10) candidates. Neither Chief Lavigne nor the City’s Director of Human Resources offered a cogent explanation regarding the sequence of how these events occurred (i.e. – did Chief Lavigne know that twelve (12) candidates were going to be selected when she recommended ten (10) candidates?). Despite Chief Lavigne’s contention that she had no role in the selection of her niece, she was intimately familiar with certain details of her niece’s candidacy during the hearing before the Commission. For example, Chief Lavigne explained how her niece was originally among the top ten candidates being recommended and how she ultimately ended up as the 11<sup>th</sup> candidate on the list returned to HRD. In sharp contrast, Chief Lavigne appeared to have limited knowledge about another candidate, Charles Sciacca, who received extremely high marks from the interview panel and was ranked two bands higher than her niece.<sup>8</sup>

- **The City’s decision to request and review additional candidates from “Band 8” was done in error.**

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<sup>7</sup> While the Civil Service Commission is not responsible for enforcing laws and rules of the State Ethics Commission, I take administrative notice that Section II of the State Ethics Commission Advisory No. 05-01 states that appointed officials who wish to disclose the appearance of a conflict of interest must “make such disclosures in writing to their appointing authority (the person or board who appointed them to their job). This disclosure must be kept available for public inspection.” (emphasis added) Based on the testimony of Chief Lavigne, she did not make a written disclosure and hence, it could not be available for inspection by the public, including the candidates competing against her niece and her niece’s fiancé for the position of reserve police officer.

<sup>8</sup> While Chief Lavigne testified that she was called out during the interview of candidate Sciacca, she was still the individual who recommended 10 of the 12 candidates for appointment and was required to review each candidate’s complete application packet prior to making this recommendation. Further, while I have similar concerns regarding the participation of Captains whose relatives were among the candidates, I make no conclusions on this issue for the following reasons. First, they were instructed to participate by Chief Lavigne. Second, it is clear that their role was more limited than Chief Lavigne, who ultimately recommended 10 of the 12 candidates. Third, I did not ask any of them to participate in the hearing on this matter. Thus, they were not able to discuss the extent of their participation, disclosures, etc. and it would be unfair for me to make any conclusions about their participation without them first having the opportunity to testify before the Commission.

As referenced in the findings, the City requested authorization from HRD to hire ten (10) reserve police officers. HRD provided the City with the names of forty-one (41) individuals from an eligible list of candidates which included one candidate whose name was on the list based on a prior Commission order; 15 candidates who passed the civil service exam and had a statutory veteran preference and 25 candidates who scored high enough on the civil service examination to rank in the top two scoring bands (Band 10 and Band 9). The City was limited to the first 21 qualified candidates willing to accept appointment. At no time during the selection process were there less than 21 individuals willing to accept appointment and the City never notified HRD that any of these individuals did not meet the minimum entrance requirements. Nevertheless, the City requested that HRD forward them the names of candidates in the next lower Band (Band 8) for consideration.

The City can not now engage in revisionism and argue that they needed additional names because they ultimately chose twelve (12) candidates. Based on Ms. McCarthy's own testimony, the request to release the names from the next lower band was made prior to the City making any decision to hire more than ten (10) candidates.

Nor can the City now engage in circular reasoning, as it did at the Commission hearing, by arguing that the reason for increasing the number of candidates to be selected from 10 to 12 was due to the large number of names contained in Band 8. As referenced above, there was no justification for requesting Band 8 and/or considering those candidates for appointment for one of the 10 vacancies in the first place. Moreover, based on the credible testimony of Richard Currier of HRD, the City, contrary to the testimony of Ms. McCarthy, never received approval from HRD to increase the number of candidates to be selected from 10 to 12.

There is strong circumstantial evidence to suggest that the decision to request and review the names of candidates in Band 8 was an attempt to ensure consideration of five (5) candidates, ultimately chosen for selection, that had family ties to Methuen officials, including the Police Chief's niece and her niece's fiancé. I need not reach a conclusion on that matter, however, as, for all of the reasons referenced above, the City's decision to request and review candidates from Band 8 was not in conformance with the civil service law or rules, regardless of whose names were included in Band 8.

- **Some of the City's hiring decisions are not supported by their own internal documents and call into question whether the most qualified candidates were selected for appointment.**

As part of this investigation, I carefully reviewed and inquired about the application of one of the candidates not selected for appointment, Charles Sciacca. While a more thorough review would typically be conducted through a full evidentiary "bypass hearing" before the Commission under G.L. c. 31, § 2(b), the City's failure to provide bypass reasons in a timely manner has prevented Mr. Sciacca and other non-selected candidates from this due process. For this reason, and as a means of gauging the fairness of the review process, I asked Chief Lavigne to review the City's internal summary of Mr. Sciacca and compare it against one of the selected candidates.

Based on Chief Lavigne's response, a review of the internal summaries and a review of the notes of the interview panel members, there is something seriously amiss. Based on a review of the City's own documents, including the notes of the interview panel members, Mr.

Sciacca is a stellar candidate who appeared to receive a strong stamp of approval from the interview panel. However, the City inexplicably did not select him and instead chose lower ranked candidates. Further, one year after Mr. Sciacca submitted his application, the City has failed to provide him, HRD or the Commission with any rationale explanation for his non-selection.

- **The City violated various other procedural requirements that have compromised the selection process.**

At almost every step in the process, the City either ignored or failed to follow the requirements of reviewing and selecting candidates for the civil service position of reserve police officer.

Contrary to the City's argument at the hearing before the Commission, these failures can not be excused as the normal challenges associated with wading through what can at times be a complicated and lengthy set of rules and procedures.

As noted in the findings, the City, in addition to other issues noted in the conclusions above, failed to submit documents to HRD in a timely manner, failed to submit requests for extensions in writing, notified candidates they weren't being selected for appointment four months before submitting bypass reasons to HRD and, when the reasons were finally submitted to HRD, they were incomplete.

## **COMMISSION ORDERS**

Pursuant to G.L. c. 31, §§ 2(a) and 72 and Chapter 310 of the Acts of 1993 and for all of the reasons cited in the conclusions above, the Commission hereby orders the following as a result of its investigation into the 2008 / 2009 review and selection process of reserve police officer candidates in the City of Methuen:

1. HRD's issuance of Band 8 reserve police officer candidates to the City of Methuen on September 17, 2008 is hereby rescinded.
2. The City may select up to ten (10) candidates for reserve police officer from the individuals willing to accept appointment whose name appeared on the August 13, 2008 Certification No. 280803 as a result of a Commission order, veteran status or because they were ranked in Band 10 or Band 9.
3. The City shall comply with all requirements of the civil service law and rules in making these selections.
4. The Commission's investigation under G.L. c. 31, § 2(a) will remain open until these selections have been made.
5. Using its authority under both Sections 2(a) and 2(b) of Chapter 31, the Commission will hear appeals from any non-selected candidate that believes that his/her non-selection was not based on basic merit principles.

Should the City of Methuen fail to comply with these orders and/or all applicable civil service law and rules in reviewing and selecting reserve police officer candidates, the Commission will reconvene a hearing to review if further action by the Commission is warranted, under either G.L. c. 31, §§ 2(a), 2(b), 72, 73 and 74, Chapter 310 of the Acts of 1993 and/or line item 1108-1011 of Section 2 of Chapter 27 of the Acts of 2009.

## CLARIFICATION

The actions of the City do not reflect on the worthiness of the candidates in Band 8. Further, the Commission respects the long and respected tradition of individuals following in the footsteps of family members in public service and public safety careers.

When reserve or permanent police officer vacancies become available in Methuen, and the names of Band 8 candidates are among those that can be considered under the civil service law, this decision shall not serve as a bar or prevent them from receiving full and fair consideration.

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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Taylor, Commissioners) on August 20, 2009. (Stein, Commissioner - not participating)

A True Copy. 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)(l), 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:

Patrick Waldron (Appellant)

[REDACTED]

Charles Sciacca (Appellant)

[REDACTED]

David M. Dumont (Appellant)

[REDACTED]

Nicholas Milone (Appellant)



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