

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108
(617) 979-1900

DANIEL NEENAN,
Appellant

v.

G1-20-072

CITY OF QUINCY,
Respondent

Appearance for the Appellant:

John J. Greene, Esq.
15 Foster Street
Quincy, MA 02169

Appearance for the Respondent:

Janet S. Petkun, Esq.
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Commissioner:

Christopher Bowman

SUMMARY OF DECISION

The City of Quincy failed to take the necessary steps to ensure a fair and impartial review process where the Mayor's son was one of the candidates under consideration for appointment as a police officer. To ensure that the Appellant, who was not selected for appointment despite being ranked above the Mayor's son, receives the type of fair, impartial consideration required by the civil service law and rules, the Commission is ordering that the Appellant's name be placed at the top of the next certification issued to the City for permanent, full-time police officer and that the City provide him with an appropriate de novo review.

DECISION

On March 19, 2020, the Appellant, Daniel Neenan (Mr. Neenan or the Appellant), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Quincy (City) to bypass him for appointment to the position of permanent, full-time police officer. I held a remote pre-hearing conference on July 22, 2020 and a remote full hearing over two (2) days on August 11, 2020 and October 16, 2020.¹ The full hearing was audio and video recorded via Webex and the Commission subsequently had a transcript of the proceeding prepared.

FINDINGS OF FACT

Seven (7) exhibits were entered into evidence by the City, without objection. The first five (5) City exhibits were entered into evidence at the hearing of this matter. I left the record open for additional exhibits, to include two (2) additional City exhibits, which were marked as Respondents Exhibits 6 and 7. The Appellant did not submit any exhibits at the hearing. Based on the exhibits and the testimony of the following witnesses:

Called by the City:

- Sergeant Michael Duran, Quincy Police Department
- Patricia McGowan, City of Quincy's Human Resources Director

Called by the Appellant:

- Daniel Neenan, Appellant
- JC, Owner of Boston restaurant where the Appellant was previously employed

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR ss 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

and taking administrative notice of all matters filed in the case; pertinent statutes, regulations, policies, stipulations and reasonable inferences from credible evidence; a preponderance of the evidence establishes the following:

1. Located just south of Boston, the City of Quincy has a population of approximately 100,000. (Administrative Notice: US Census Data)
2. Daniel Neenan is a longtime resident of Quincy. He graduated from Quincy High School in 2006. He earned his bachelor's degree from Curry College in 2010, majoring in criminal justice and minoring in politics and history. He was a member of the Criminal Justice Honor Society as a student at Curry College. He is employed as a sales associate at a local technology company. (Testimony of Neenan; Resp. Ex. 1)

City's Civil Service Hiring Process

3. On or about March 23, 2019, Mr. Neenan took the civil service examination for police officer and received a score of 86. (Stipulated Fact)
4. On or about September 1, 2019, the state's Human Resources Division (HRD) established a list of eligible candidates for Quincy police officer. (Stipulated Fact; Resp. Ex. 4)
5. On October 16, 2019, at the request of the City, HRD sent Certification No. 06692 to the City to file eighteen (18) police officer vacancies. Consistent with the statutory 2N+1 formula, HRD advised the City that selection must be made from 18 of the first 37 on the certification. (Stipulated Fact; Resp. Ex. 4)
6. Mayor Thomas P. Koch is the Appointing Authority for the Quincy Police Department. (Testimony of Ms. McGowan)
7. Quincy Police Chief Paul Keenan is Mayor Koch's brother-in-law. (Testimony of Ms. McGowan)

8. Daniel Neenan was tied for 31st on Certification No. 06692 among those willing to accept appointment. (Testimony of Ms. McGowan; Resp. Ex. 4)
9. The Mayor's son was also on Certification No. 06692, tied for 32nd among those candidates willing to accept appointment. (Testimony of Ms. McGowan; Resp. Ex. 4).
10. The Mayor's son is Quincy Police Chief Paul Keenan's nephew. (Testimony of Ms. McGowan).
11. Mr. Neenan signed the certification and subsequently submitted his application to the Quincy Police Department on or about November 5, 2019. (Testimony of Mr. Neenan; Resp. Ex. 1).
12. In January 2020, Police Chief Paul Keenan made a recommendation to Mayor Koch and the City's Human Resource Director, Patricia McGowan, that the City should increase the number of new officers to be hired to twenty-five (25).² (Testimony of Ms. McGowan).
13. The City did not submit any request in writing to HRD for certification of the additional seven (7) positions.³ (Testimony of Ms. McGowan).
14. Ultimately, on April 1, 2020, the City's Mayor submitted a "Form 14: Notification of Employment to HRD", listing, in rank order from Certification No. 06692, the names of

² Patricia McGowan, the Human Resource Director for the City, testified that Chief Keenan called her on the telephone in January 2020 and verbally requested that the City hire more officers – an increase from 18 to 25. Ms. McGowan testified that Chief Keenan told her that there were more retirements than usual, so more officers were necessary to fill the gap. The City did not produce any evidence to show that there were more retirements than usual'. (Testimony of Ms. McGowan).

³ Following the hearing, Ms. McGowan filed an Affidavit with the Commission, wherein she stated that she "contacted Mr. Barron at HRD by telephone and notified him of our need to increase our hire number to 25." She further stated in the Affidavit that she searched her emails and correspondence but did not find written confirmation from [HRD] approving the city's enlarging the number of hires from 18 to 25. Based on her memory, she stated in the Affidavit that, "I made my verbal request in or about the first week of January 2020, and I received only a verbal response from [HRD]." She said she thought their verbal exchange was adequate. (Affidavit of Ms. McGowan).

twenty-one (21) candidates to be appointed. The Mayor's son is the 19th name on the Form 14. (HRD Correspondence to Commission dated June 9, 2021)⁴

15. Had the City hired only eighteen (18) candidates, as they originally requested, the Mayor's son would not have been appointed. (Testimony of Ms. McGowan; Resp. Ex. 4).

16. The relevant excerpt of my exchange with the City's Human Resources Director (witness) at the hearing before the Commission regarding this issue is as follows:

“COMMISSIONER:

... Now I've got to ask some tough questions. Back to this issue of going [from] 18 to 25.

Would you agree with me that if the number was 18 that the mayor's son would not have been appointed?

WITNESS:

Let me just count my numbers. Correct.

COMMISSIONER:

Okay. So there's certainly a benefit to the mayor's son from going from 18 to 25, right?

WITNESS:

Yes.

COMMISSIONER:

Okay. Who made that decision to go from 18 to 25?

⁴ In email correspondence to the Commission, the City indicated that two additional candidates were offered employment but were on active military duty. To ensure clarity, the names of these two active military candidates are not listed on the Form 14 and, thus, would not alter the undisputed fact that the Mayor's son would not have been appointed in this hiring cycle but for the Mayor's decision to increase the number of vacancies to be filled after receiving the certification.

WITNESS:

I believe it was based upon chief Keenan being -- being made aware of people that were going to retire and wanting to get the numbers up to the budgeted numbers that they should be. To not be behind with open positions, but to be ready for those people to fall into those slots.

COMMISSIONER:

Okay. But regardless of the reasons, it was a recommendation made by Chief Keenan, right?

WITNESS:

I believe so.

COMMISSIONER:

And that was made to the mayor; is that correct?

WITNESS:

I believe so.

COMMISSIONER:

And the mayor approved it; is that correct?

WITNESS:

I believe so.”

(Transcript; Day 1)

17. Of those candidates appointed, four (4) were ranked below the Appellant, including the Mayor’s son. (Stipulated Fact; Resp. Ex. 4; Testimony of Ms. McGowan).
18. By letter dated March 12, 2020, the City’s Director of Human Resources, Patricia McGowan, notified Mr. Neenan that the City was bypassing him for appointment. (Stipulated Fact; Resp. Ex. 5; Testimony of Ms. McGowan).

19. In the March 12, 2020 bypass letter, Ms. McGowan indicates that Mr. Neenan was not selected for the following reasons: (1) “[Y]ou were dishonest in your responses on your Application regarding termination of employment; (2) You were bypassed by the Massachusetts State Police in 2019 for being untruthful; and (3) You did not disclose the termination or 2019 bypass despite being notified on the application and verbally that ‘knowingly withholding information or making false statements on my application will be the basis for rejection of my application...’” (Resp. Ex. 5; Testimony of Ms. McGowan).
20. Attached to the March 2020 bypass letter was a list of reasons candidates appearing below Mr. Neenan’s name on the certification were selected. On the list of the four (4) candidates selected below Mr. Neenan’s name was the Mayor’s son. Ms. McGowan indicated that the reason the Mayor’s son was chosen for the position was because he was a “lifelong Quincy resident” and he has a “Bachelor’s Degree in Political Science.” (Resp. Ex. 5).

City’s Review of the Appellant

21. On or about January 10, 2020, Mr. Neenan completed and submitted an eight (8) page personal declaration supplement, which was attached to his original thirty (37) page application. (Resp. Ex. 1; Testimony of Mr. Neenan).
22. Sergeant Michael Duran, a 17-year veteran of the Quincy Police Department, was assigned to conduct Mr. Neenan’s background investigation. (Testimony of Sgt. Duran).
23. Sergeant Duran was also tasked with undertaking the investigation into the Mayor’s son. (Testimony of Sgt. Duran).
24. Sergeant Duran has been with the force since 2003, spending the bulk of his career in the drug control unit, from 2009-2017. He was promoted to Sergeant in 2017. In addition to his experience with criminal investigations, he has also taken an eight (8) hour course on

background investigations prior to investigating the police and fire candidates for the City.
(Testimony of Sgt. Duran).

25. As part of any recruit background investigation, Sergeant Duran is tasked with reviewing the entirety of a candidate's lengthy application, contacting references, collecting documents, and making inquiries into candidates' backgrounds to corroborate the information provided in the application package. Lastly, each candidate is granted an interview with Sergeant Duran and other members of the hiring committee, to include the Human Resource Director for the City. Once the investigation is complete, Sergeant Duran will produce a report, summarizing his findings, which he will present to a Round Table. (Testimony of Sgt. Duran; Resp. Ex. 2).
26. The Quincy Police Department's application and personal declaration supplement contain numerous warnings regarding the need for complete responses and truthfulness, as well as the importance of not omitting anything. Page four (4) of the application has the following in capital letters: "NOTE: PROVIDING ANY FALSE INFORMATION OR OMISSIONS ON THESE FORMS OR DURING ANY PHASE OF THE HIRING PROCESS WILL BE GROUNDS FOR IMMEDIATE DISQUALIFICATION." (Testimony of Mr. Neenan, Ms. McGowan, and Sgt. Duran; Resp. Ex. 1).
27. On page 22 of the application was the following: "Have you ever applied for any police officer or dispatch position in any state or territory of the United States of America, or the Federal Government? YES__ NO__. If YES, please explain." Mr. Neenan put an "x" on the "YES" line and wrote "Mass State Police 2017 – Quincy Police 2017." (Resp. Ex. 1)
28. Page 28 of the application related to employment history and contained the following instruction: "If you answer "YES" to any of the below questions, give full details including

the name and address of each employer, approximate dates, and the circumstances in each case.” The first question asked, “Have you ever been discharged/terminated/fired or disciplined by any employer? Yes[] No[]. If YES, please explain:” Mr. Neenan put an “x” in the “No” box. (Resp. Ex. 1).

29. On January 10, 2020, Mr. Neenan was interviewed by Sergeant Duran and Patricia McGowan⁵. Prior to beginning the interview, Sergeant Duran explained the importance of honesty. Mr. Neenan also completed the eight (8) page personal declaration supplement prior to the interview. (Testimony of Mr. Neenan, Sgt. Duran and Ms. McGowan; Resp. Ex. 1).
30. In section C (1) of the personal declaration supplement, Mr. Neenan acknowledged being disciplined by an employer and explained a situation that occurred at a tire store where he was previously employed. Mr. Neenan did not include the tire store on his original application at page 28, which he submitted two (2) months prior. (Testimony of Mr. Neenan and Sgt. Duran; Resp. Ex. 1).
31. On January 13, 2020, Sergeant Duran continued with his investigation by visiting the Massachusetts State Police (MSP) Headquarters in Framingham to review Mr. Neenan’s file from his 2017 MSP application with the State Police. (Testimony of Sgt. Duran; Resp. Ex. 2).
32. At the MSP Headquarters, Sergeant Duran learned that Mr. Neenan had applied to the MSP a second time - on August 16, 2019 - and had not been selected for appointment. (Testimony of Sgt. Duran; Resp. Ex. 2).

⁵ Also participating in the interview was the Police Chief’s son (and Mayor’s nephew), who is a Quincy police officer.

33. While at the MSP Headquarters, Sergeant Duran reviewed documents by State Police investigators stating that Mr. Neenan had been terminated from a job at a restaurant in Boston, in 2010. (Testimony of Sgt. Duran; Resp. Ex. 2).
34. Sergeant Duran spoke with a State Trooper who conducted the background investigation. Although Sergeant Duran took notes, the State Police would not allow him to make copies of any documents in Neenan's personnel folder. (Testimony of Sgt. Duran; Resp. Ex. 2).
35. Mr. Neenan applied to the MSP in 2017 and did not list the Boston restaurant as a former employer (the MSP was looking back ten years and that job was within the ten years) in the section asking for prior employers. On that same MSP 2017 application, however, Mr. Neenan *did* list that restaurant as a job that he was *terminated* from in a section asking about terminations. (Testimony of Sgt. Duran; Resp. Ex. 2 and 3).
36. In his more recent application to the MSP in 2019, he listed the restaurant as a former employer, but did not state that he had been terminated. He wrote that he left for "another job opportunity." (Testimony of Sgt. Duran; Resp. Ex. 2 and 3).
37. Because of the information learned from the State Police, Sergeant Duran contacted Mr. Neenan by telephone on January 13, 2020. During that conversation, Sergeant Duran asked Mr. Neenan for a copy of the 2017 MSP non-selection letter. During that conversation, Mr. Neenan told Sergeant Duran of the subsequent 2019 application and the non-selection by the MSP, although Sergeant Duran already knew about this because of his conversation with the State Trooper. (Testimony of Sgt. Duran).
38. During that same January 13, 2020 telephone conversation, Sergeant Duran asked Mr. Neenan about his employment at the Boston restaurant. Mr. Neenan explained that he had

worked as a bouncer one (1) night a week at the establishment. He told the Sergeant that he believed there was some miscommunication between his direct manager and upper management regarding a time when he requested New Year's Eve off. He claimed he was told that he had to be let go because he did not work on New Year's Eve. He said he was not trying to hide it from the MSP but that he did not consider it a "real job." (Testimony of Sgt. Duran; Resp. Ex. 2).

39. On January 15, 2020, Sergeant Duran and Mr. Neenan met again to discuss what Duran believed to be inconsistencies between the Appellant's application, supplement and interview. They met in person, at which time Mr. Neenan was asked why he did not state in his Quincy application that he was terminated from the Boston restaurant. Mr. Neenan said he did not provide that information about the termination because he had worked at the restaurant ten (10) years ago, and he thought the question about termination on the application only dated back to employment as far back as seven (7) years. He explained that since another question on the application asked him to list his prior employment only dating back seven (7) years, that he concluded that the termination/discharge question must only date back seven (7) years, as well. (Testimony of Sgt. Duran)

40. The question about termination, however, does not give any specific time frame. The question asks if the candidate has *ever* been terminated or discharged. (Resp. Ex. 2).

41. Ms. McGowan took notes throughout the City's processing of Mr. Neenan. She wrote the following in her notes:

"2019- not disclosed

during interview

MSP bypass

Timing – application

would have been in process”

(Testimony Ms. McGowan; Resp. Ex. 7).

42. Mr. Neenan never received a written letter of termination stating that he was terminated from the Boston restaurant. (Testimony of Mr. Neenan).

43. Mr. Neenan did not reference the 2019 MSP application in his 2019 Quincy application because he had not been notified of his non-selection and therefore did not view the application process as completed. (Testimony of Mr. Neenan).

44. Sgt. Duran did not contact anyone from the Boston restaurant regarding the reasons for Mr. Neenan’s separation from employment ten (10) years ago. (Testimony of Sgt. Duran; Resp. Ex. 2).

45. JC is the long-time owner of the Boston restaurant where the Appellant was employed as a bouncer. He voluntarily testified before the Commission. (Testimony of JC)

46. JC recalls that the Appellant’s separation from employment was the result of a miscommunication regarding a scheduling issue related to New Year’s Eve. He recalls that the Appellant was a good employee who is eligible for re-hire. Despite a search for employment records, JC was unable to locate any documents showing whether the Appellant was ever listed as having been terminated. (Testimony of JC)

Round Table Meetings

47. According to Ms. McGowan, Mayor Koch “verbally recused himself” from the hiring round that his son was under consideration for. Ms. McGowan could not recall the date Mayor Koch recused himself. The Mayor did not put his recusal in writing. Ms. McGowan recalls

being notified of the recusal by the Mayor's Chief of Staff, during a phone conversation with Ms. McGowan. (Testimony of Ms. McGowan, Exhibits 4 and 6).

48. Ms. McGowan was also notified that Police Chief Keenan recused himself from the hiring process. (Testimony of Ms. McGowan).
49. The City hired an outside advisor, Attorney Daniel Bennett, to "stand in for" the Mayor as the Appointing Authority for the City, since the Mayor's son was on the certification. (Testimony of Ms. McGowan).
50. Attorney Bennett is the current CEO of an investigations company in Boston. He served for four years as the state's Secretary of Public Safety and Security. Prior to holding this Cabinet position in state government, he worked as First Assistant in the Worcester County District Attorney's Office. (Administrative Notice: [Daniel Bennett - LinkedIn](#))
51. Sergeant Duran was unsure of what Mr. Bennett's official role was in the hiring process. He recalled that Mr. Bennett was an outside person called in, but he was not sure why. He figured he was an "overseer" or "another ear", but he was never informed of what Mr. Bennett's role was in the hiring process. (Testimony of Sgt. Duran).
52. Round Table meetings were conducted in January and February 2020 to discuss each candidate in depth. (Testimony of Ms. McGovern; Testimony of Sgt. Duran)
53. Attorney Bennett did not attend the January 2020 roundtable. (Post-hearing correspondence from the City)
54. The purpose of the Round Table meetings is for the Appointing Authority to review the background investigations of each candidate to determine the candidate's suitability for appointment to the position of police officer with the City of Quincy and to remove those

candidates deemed to be unsuitable. The meetings took place in a conference room in City Hall. (Testimony of Ms. McGovern; Testimony of Sgt. Duran).

55. The Round Table discussion relative to Mr. Neenan's candidacy was held on February 5, 2020. Participants of that discussions included Attorney Bennett and the following officials who report directly to the Mayor: the Mayor's Chief of Staff; the Mayor's Director of Operations; and the Mayor's Human Resources Director. Other participants at the February roundtable were: Sergeant Duran and one other police sergeant; and other officers on the investigation team, including Officer Keenan, the Mayor's nephew. (Testimony of Sgt. Duran; Testimony of Ms. McGowan).

56. At the Round Table, Sergeant Duran presented the positive attributes of Mr. Neenan relative to his candidacy that he discovered in the course of his investigation. He noted that Mr. Neenan has been a long-time resident of Quincy, has a strong work history, has earned a bachelor's degree from Curry College in Criminal Justice and was a member of the Criminal Justice National Honor Society, and that his supervisors, coworkers, neighbors, personal references and past dating partner all had positive feedback about him. (Testimony of Sgt. Duran; Resp. Ex. 2).

57. The negative findings listed in Sergeant Duran's report, which were ultimately included in the bypass letter, were relative to inconsistencies on his Massachusetts State Police (MSP) applications and his Quincy Police application, and failure to report a termination. (Testimony of Sgt. Duran; Resp. Ex. 2).

58. The Round Table committee determined that Mr. Neenan was not appropriate for appointment. (Testimony of Ms. McGowan; Resp. Ex. 5 and 6).

59. Attorney Bennett wrote a letter to Mayor Koch dated February 20, 2020. In his letter, he indicates that he met with members of the Department staff who conducted background checks and interviews along with “your Human Resource Director, Director of Operations and Chief of Staff. We discussed each candidate during a meeting which lasted just short of two hours. I went back and reviewed each of the files a second time mindful of the input from the city officials with whom I met.” (Resp. Ex. 6).

60. In his letter to the Mayor, Attorney Bennett concluded that, “Mr. Neenan did not disclose a May (sic) 2019 bypass of his candidacy for appointment to the State Police and did not disclose a prior termination of employment. He was not forthcoming and truthful in his application; I regard that to be fatal to a candidacy for appointment to a public safety position ... Mr. Neenan should be bypassed.”⁶ (Resp. Ex. 6).

61. Mr. Neenan appealed the City’s decision to bypass him on March 19, 2020. (Stipulated Fact).

Applicable Civil Service Law and Rules

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, §1. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), rev.den., 423 Mass. 1106 (1996).

⁶ One other person was bypassed from the Certification List 06692 in that hiring round. That candidate failed to meet the residency requirement for appointment in Quincy. (Resp. Ex. 6).

Original and promotional appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . 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’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary that the

Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*,” then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

Analysis

Here, we are presented with the dilemma of trying to balance what, standing alone, may be valid reasons for bypassing the Appellant for appointment as a police officer, against a compromised review process. This is not new ground for the Commission.

In Investigation Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield, I-11-208 (2011), the Commission found that the involvement of a Deputy Fire Chief whose son was a candidate for appointment tainted the appointment process. The Commission let the appointment stand but ordered that candidates bypassed for appointment be reconsidered in a subsequent hiring cycle where interviews would be conducted by an outside review panel.

In Investigation Re: 2011 Review and Selection of Intermittent Police Officers in the Town of Oxford, I-11-280 (2011), the Commission found that the involvement of a Selectman whose niece was a candidate for appointment tainted the appointment process. The Commission halted the then-ongoing appointment process, prohibited two (2) selectmen from participating in the hiring process and ordered the use of an outside review panel to evaluate the candidates.

In Investigation Re: 2009 Review and Selection of Reserve Police Officer in the City of Methuen, I-09-290 (2009), the Commission found that the Police Chief's involvement in a hiring process in which her niece was a candidate tainted the appointment process. The Commission effectively rescinded the appointment of the Police Chief's niece and ordered a new review process.

In Minoie v. Town of Braintree, 27 MCSR 216 (2014) & 27 MCSR 615 (2014), the Commission found that the Police Chief's involvement in a hiring process in which his son was a candidate tainted the appointment process. The Commission, ruling that the reasons for bypass were valid despite the compromised review process, let the bypass stand but initiated an investigation in which the Town was ordered to revamp its hiring practicing to prevent such occurrences in the future.

Finally, in a case similar to the instant appeal, Lima v. City of Somerville, 30 MCSR 103 (2017), the Commission overturned the bypass of a candidate due to a compromised review process, even though, as here, the reasons for bypass, standing alone, may have been valid reasons for bypassing the candidate for appointment. In Lima, after the name of the Personnel Director's nephew was not among those recommended to fill 15 reserve firefighter slots, the Personnel Director and the Mayor had a discussion about going further down the Certification. Notwithstanding many other factors suggesting that the scales were tipped in favor of the

Personnel Director's nephew, the City argued that it had reasonable justification to bypass Lima based on what they ultimately called their "grave concerns" about various negative issues.

Ultimately, the Commission, in choosing to overturn Lima's bypass, concluded in relevant part:

The lack of a level playing field here makes it difficult, at best, to determine whether the City would have viewed Mr. Lima's background and answers in a different lens if he, like other lower-ranked candidates, had strong familial connections to City employees. For example, would the interview panel have given more weight to the fact that Mr. Lima had filed a claim for workers compensation before drawing negative conclusions about his time and attendance if his father was a District Fire Chief for the City? Would they have given more weight to the fact that he was, at least for some period of time, out of work, when evaluating his credit history if his father was a building inspector for the City? Finally, would they have accepted what, at least to me, appeared to be his sincere statement that he has never disobeyed an order during his long career in public safety before concluding that they had "grave concerns" about his ability to follow the chain of command if his brother was a firefighter for the City?

Here, despite assertions by the City that appropriate steps were taken to ensure a fair and impartial review process where the Mayor's son was among the candidates under consideration, the record raises serious questions as to whether that occurred here.

First, in October 2019, the City requested a certification from HRD to fill 18 police officer vacancies in the City's Police Department. After receiving that certification, and after learning that the Mayor's son was ranked 32nd among those willing to accept appointment, the City's Mayor and Police Chief met shortly thereafter and decided to increase the number of vacancies to be filled to 25, increasing the probability that the Mayor's son (and Police Chief's nephew) would be appointed as a police officer. In fact, as confirmed by the City's Personnel Director, the Mayor's son, who was the 19th candidate ultimately appointed, would not have been selected but for this consequential decision by the City's Mayor and Police Chief.

As part of this proceeding, the City was given ample opportunity to provide evidence documenting how and why this decision was made at the time. In response, the City informed

the Commission that the decision was not documented, either internally, or with HRD. Rather, the City's Human Resources Director was *verbally* informed by the Police Chief of this decision and the request was then made *verbally* to HRD. In regard to why this decision was made, the City submitted an affidavit from the City's Human Resources Director, citing the Police Chief's projection that more vacancies were imminent due to possible retirements. This would have been more persuasive if the initial request to fill 18 vacancies had not been made only weeks earlier.

Second, the City argues that the Mayor's decision to have the state's former Secretary of Public Safety and Security "stand in for him", ensured a fair and impartial review process. That argument is undercut by several factors. While Secretary Bennett was undoubtedly an appropriate and competent choice for this assignment, several missteps by the City undermined the process in this regard. As referenced in the findings, Secretary Bennett did not participate in one of two roundtables to review police officer candidates. In regard to the roundtable that he did attend, the sergeant in charge of conducting background investigations, who participated in the roundtable, was unaware of Secretary Bennett's role in the process and certainly did not understand that Secretary Bennett was "standing in" for the Mayor. Most troubling, it is clear that these roundtables, including the one attended by Secretary Bennett, were attended and led by the Mayor's direct reports, including his Chief of Staff as well as the Mayor's nephew.

Against this backdrop, the City argues that it had valid reasons to bypass Mr. Neenan based on his responses in his application regarding his separation from employment at a Boston restaurant and for failing to disclose that he was being considered for appointment for a second time by the State Police in 2019. As in Lima, the lack of a level playing field here makes it difficult, at best, to determine whether the City would have viewed Mr. Neenan's background

and answers in a different light if the Mayor's son, a lower ranked candidate, were not competing for the same position. For example, would the Round Table members have given more weight to Mr. Neenan's explanation that he mistakenly thought that the question on the application about termination from an employer had a seven (7) year look back window, like the question about prior employment did? Would they have asked investigators to contact the owner of the restaurant and hear directly from him that the Appellant's separation from employment was associated with a communication problem – and that he would personally re-hire the Appellant at his restaurant? Would the Roundtable have accepted Mr. Neenan's explanation that he did not list the 2019 application to the State Police on his Quincy application because he was still in the process of applying to the MSP and had not received a decision from them, so he did not include it on the current Quincy application?

Years of prior Commission and judicial decisions show that appointing authorities are given significant discretion, and deference, when it comes to making the types of subjective judgment calls raised here. That deference, however, has its limits, particularly when the appointment process has been compromised, at least by the appearance that the scales may have been tipped to ensure the consideration of one candidate and by the fact that the Mayor's most senior staff, who report directly to him, had such a prominent role in an appointment process involving the Mayor's son.

Conclusion

For all of the above reasons, the Appellant's bypass appeal is *allowed*. To ensure that the Appellant receives fair, impartial consideration for appointment, the Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, and consistent with its core mission, hereby orders the following:

1. HRD shall place the Appellant's name at top of any current or future certification for Quincy Police Officer.
2. The City shall take all steps necessary to ensure that the Appellant receives a fair, impartial, de novo review for appointment as a Quincy Police Officer.
3. If the Appellant is appointed as a Quincy Police Officer, he shall receive the same civil service seniority date as those appointed from Certification No. 06692. This retroactive date is meant for civil service purposes only and is not meant to provide the Appellant with any additional benefits or compensation, including creditable service toward retirement.
4. Once the Appellant has been provided with the above-reference relief (i.e. – appointed or bypassed with notification of appeal rights), the City shall notify the Commission that such relief has been granted. Upon determining that the relief has been granted, the Commission shall notify HRD that the Appellant's name shall no longer appear at the top of certifications issued to the City of Quincy for police officer vacancies.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Ittleman, Stein, Tivnan, and Camuso on February 24, 2022.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:
John J. Greene, Esq. (for Appellant)
Janet S. Petkun, Esq. (for Respondent)