

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

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

MARK O'TOOLE,  
*Appellant*

v.

CITY OF LYNN,  
*Respondent*  
*and*

CHRISTOPHER REDDY,  
*Intervenor*

G2-21-119

Appearance for Appellant:

Joseph L. Sulman, Esq.  
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Appearance for Respondent:

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Appearance for Intervenor:

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Commissioner:

Paul M. Stein<sup>1</sup>

Summary of Decision

The Commission upheld the bypass of one of two candidates for the position of Police Chief based on the positive reasons provided to support the Appointing Authority's unbiased, good faith judgment that the selected candidate's work as Captain of Patrol in overseeing community policing, praised for building community relations and trust, justified bypassing the Appellant, the Captain of Detectives, the chief criminal investigative face of the Department, who had scored one point higher on the assessment center examination.

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Daniel Taylor in the drafting of this decision.

## DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Mark O'Toole (Appellant), timely appealed to the Civil Service Commission (Commission) from the decision of the Mayor of the City of Lynn (Respondent or City), the Appointing Authority, to bypass him for promotional appointment as Chief of Police for the Lynn Police Department (LPD). A remote pre-hearing conference was held on July 27, 2021, and a remote full hearing was conducted on November 9, 2021, and November 30, 2021.<sup>2</sup> The hearing was recorded via Webex, and the parties were provided with a link to the recording of the hearing. For the reasons stated herein, the appeal is denied.

### FINDINGS OF FACT:

Fifty (50) exhibits were offered into evidence at the hearing, twenty-one (21) by the Appellant, twenty-seven (27) by the Respondent, and two (2) by the Intervenor, Christopher Reddy (Intervenor). The Commission received proposed decisions from the Appellant and the Respondent. Based on these exhibits and the testimony of the following witnesses:

#### *Called by the Respondent:*

- Regina Caggiano, Director of Civil Service, Human Resources Division
- Mark Morse, President, MMA Consulting
- Drew Russo, Personnel Director, City of Lynn
- Thomas McGee, Mayor, City of Lynn

#### *Called by the Appellant:*

- Kenneth Green, Chief of Police, Massachusetts Bay Transportation Authority
- Mark O'Toole, Captain of Detectives, Lynn Police Department, Appellant

#### *Called by the Intervenor:*

- Christopher Reddy, Chief of Police, Lynn Police Department, Intervenor

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

and taking administrative notice of all pleadings filed in the case, pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

*Background Facts*

1. The City of Lynn is a municipality in northeastern Massachusetts with approximately 100,000 residents. In the last decade, the City has become a majority-minority community, largely due to increases in the number of black, Asian, and Latinx residents. (Administrative Notice of 2020 U.S. Census Data; Testimony of McGee)
2. As of 2022, the LPD is overseen by a chief and five captains. Since the LPD was reorganized in 2002, each captain oversees one of five departments: Patrol, Detectives, Administration, Professional Standards, or Technical Services. (Testimony of the Appellant)
3. In the summer of 2020, the period precipitating the current hiring cycle, there was nationwide unrest following a series of highly publicized police shootings. Lynn residents organized a number of rallies protesting police treatment of people of color. (Testimony of McGee)
4. In June 2020, news broke that a white LPD officer had beaten a Black resident while he was being detained at the police station. The protests that followed were specifically focused on the composition of the LPD, and its treatment of Lynn residents. (Testimony of McGee)
5. Following this incident, Mayor McGee (Mayor or McGee) and then-Chief of Police Michael Mageary were asked to attend a rally and answer questions from the public. Both men attended, and the public expressed serious concerns that the LPD did not represent the community and did not keep the community safe. (Testimony of McGee)
6. Over the summer of 2020, the Mayor held several listening sessions intended to solicit public input on issues of diversity, equity, and inclusion facing the City. These sessions included

discussion of the selection of the new chief of police. (Testimony of McGee; Resp. Ex. 2)

*Background of Appellant*

7. The Appellant received a bachelor's degree in criminal justice from a Massachusetts university in 1983, and a juris doctorate from a Massachusetts law school in 1998. The Appellant also attended two executive development courses for law enforcement in 2001 and 2005. (Testimony of the Appellant; App. Ex. 1)
8. The Appellant was first hired by the LPD in 1986, and served as a patrol officer, responding to emergency calls, and engaging in crime prevention and suppression activities. (Testimony of the Appellant; App. Ex. 1)
9. The Appellant was promoted to sergeant in 1994. In this capacity, he served as a patrol supervisor, overseeing assigned patrol officers, and recognizing both commendable and deficient performances as necessary. (Testimony of the Appellant; App. Ex. 1)
10. In 1996, the Appellant was promoted to lieutenant, and began serving as the Public Information Officer for the Department of Internal Affairs. In this role, the Appellant regularly communicated with media outlets, and supervised background investigations for applicants to the LPD. (Testimony of the Appellant; App. Ex. 1)
11. In 2000, the Appellant was promoted to Captain, and assigned to serve as a relief commanding officer, supervising the LPD's patrol officers while the other commanders of patrol were not on duty.<sup>3</sup> In this role, the Appellant was responsible for scheduling the patrol officers and enforcing department policies and procedures. During this period, the Appellant also regularly met with community organizations and attended community meetings. (Testimony of the

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<sup>3</sup> The Appellant was serving in this role during the September 11 attacks and was responsible for mobilizing the entire LPD on that date. (Testimony of the Appellant)

Appellant; App. Ex. 1)

12. Following a department reorganization in 2002, the Appellant was assigned as Captain of Professional Standards, responsible for overseeing the LPD training unit, evidence control, court operations, internal affairs, background investigations, and drafting of certain policies. During this time, the Appellant was responsible for organizing a citizen police academy, which informed members of the public about the activities of police officers in the Lynn community.

(Testimony of the Appellant; App. Ex. 1)

13. In 2008, the Appellant was reassigned to his current position as Captain of Detectives. In this role, he oversees a team of approximately 30 investigators, organized into an identification unit, domestic violence unit, youth services division, drug task force, and general services unit. In this role, the Appellant drafts department policy and regularly coordinates with state and federal law enforcement.<sup>4</sup> (Testimony of the Appellant; App. Ex. 1)

14. During the COVID-19 pandemic, the Appellant was responsible for overseeing an investigation into several instances of unemployment fraud, in which the mayor and a number of other City officials were victims. As part of this investigation, the Appellant worked directly with the Mayor and Personnel Director Drew Russo. (Testimony of the Appellant; Testimony of McGee; Testimony of Russo)

#### *Background of Intervenor*

15. The Intervenor received a bachelor's degree in business administration from a Massachusetts university in 1986, and master's degree in criminal justice from another Massachusetts university in 1989. In 2005, 2015, and 2017, the Intervenor attended three seminars dedicated

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<sup>4</sup> In his testimony before the Commission, the Appellant placed great emphasis on his role in investigating drug crime, financial scams, and terror threats. (Testimony of the Appellant)

to the development of executive leadership in law enforcement. Between 1992 and 2021, the Intervenor also attended approximately 15 law enforcement-related trainings and certifications. (Testimony of the Intervenor; Int. Ex. 2)

16. The Intervenor was first hired by the LPD in 1985, where he worked as a patrol officer until 1992. During this period, the Intervenor was regularly assigned to Lynn's downtown, where he encountered drug crimes and associated offenses like theft and assault. (Testimony of the Intervenor; Int. Ex. 2)

17. The Intervenor was promoted to sergeant in 1992, and served regularly as a patrol supervisor, overseeing officers in their interactions with Lynn residents. As a sergeant, the Intervenor also oversaw the Domestic Violence/Sexual Assault Unit and was responsible for developing training curricula and working with victims' groups and the Department of Children and Families. (Testimony of the Intervenor; Int. Ex. 2)

18. Following his promotion to lieutenant in 1996, the Intervenor continued to supervise the Domestic Violence Unit, Intelligence and Crime Analysis Unit, and the Community Liaison Team. The latter was responsible for developing plans in response to community complaints, often by working collaboratively with the community and other departments. (Testimony of the Intervenor; Int. Ex. 2)

19. Upon his promotion to captain in 2009, the Intervenor initially worked as Captain of Administration, overseeing the writing of reports and keeping of records, and supervising a small staff. (Testimony of the Intervenor; Int. Ex. 2)

20. In 2010, the Intervenor was appointed Captain of Patrol, the role in which he served until his appointment as Chief of Police. In this role, the Intervenor oversaw a contingent of between 110 and 135 patrol officers. As the LPD's liaison for community events, he was also

responsible for traffic and safety during a broad range of events, including small neighborhood gatherings and large-scale protests. The Intervenor regularly met with event organizers and residents in preparation for said events. (Testimony of the Intervenor; Int. Ex. 2)

21. As the LPD liaison to the City's Emergency Management Committee,<sup>5</sup> the Intervenor was regularly involved in the City's response to the COVID-19 pandemic and was responsible for identifying the LPD's equipment and other resource needs. In this capacity, the Intervenor has also been responsible for the LPD's response to emergency events like severe snowstorms, floods, and gas leaks. (Testimony of the Intervenor; Testimony of McGee; Int. Ex. 2)

Sole Assessment Center

22. In October 2020, City Personnel Director Drew Russo and Human Resources Division (HRD) Civil Service Director Regina Caggiano executed a delegation agreement naming Russo the Delegation Administrator for a sole assessment center intended to produce an eligible list for the position of chief of police. (Testimony of Russo; Resp. Ex. 1)

23. MMA Consulting Group, Inc. was contracted to perform the assessment center. On October 6, 2020, Mark Morse, President of MMA Consulting, submitted a Vendor Form to HRD outlining the exercises planned for the assessment center, and the competencies tested by each exercise. (Testimony of Morse; Resp. Ex. 4)

24. MMA Consulting has previously conducted several assessment centers for the City, including those that led to the appointment of the fire chief, a deputy police chief, and two former chiefs of police. (Testimony of Morse; Resp. Ex. 2)

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<sup>5</sup> The Emergency Management Committee is typically composed of the City's department heads, lead by the head of the Lynn Fire Department. As the LPD liaison to the Committee, the Intervenor regularly worked with Mayor McGee in responding to emergency situations. (Testimony of the Intervenor; Testimony of McGee)

25. In the course of designing the assessment center, MMA Consulting was provided with community feedback from the Mayor's listening sessions, a recorded meeting of the Lynn Human Rights Commission, and testimony from an October 2020 meeting of the City Council. (Testimony of Morse; Resp. Ex. 2; Resp. Ex. 3)
26. On October 16, 2020, HRD issued a list of the five candidates eligible for the assessment center, a list which included the Appellant and the Intervenor. (Resp. Ex. 5)
27. The assessment center was initially scheduled for December 10, 2020. However, on December 7, 2020, after discussions with the Mayor, Public Health Director, Acting Chief of Police, MMA Consulting, and HRD, Personnel Director Russo informed the candidates that the assessment center was being postponed due to a spike in COVID-19 cases.<sup>6</sup> (Testimony of Caggiano; Testimony of Russo; Resp. Ex. 7)
28. MMA Consulting filed an amended Vendor Form with HRD on February 3, 2021. This form was substantially similar to the previous Vendor Form, with the only major change being the date of the assessment center, rescheduled to March 3, 2021. (Testimony of Caggiano; Testimony of Morse; Resp. Ex. 9; Resp. Ex. 10)
29. The assessment center included an operational planning exercise, a public meeting exercise, a situation analysis exercise, a program planning exercise, a citizen meeting exercise, and an employee meeting exercise. (Resp. Ex. 10)
30. On February 22, 2021, candidates were informed that an orientation session would be held via Zoom video conference on February 24. They were also informed that detailed instructions for the assessment center would become available beginning at 10:00 AM on March 1, and that a

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<sup>6</sup> Postponement of civil service exams and assessment centers was not uncommon at this time. (Testimony of Caggiano)



written memorandum would be due to MMA Consulting on March 2. (Resp. Ex. 11)

31. On February 23, 2021, the Mayor emailed the candidates to inform them that the top three scorers on the assessment center would be considered finalists for the position of chief of police and would be asked to participate in both a stakeholder interview and an interview with the Mayor himself. (Testimony of McGee; Resp. Ex. 12)
32. On February 24, 2021, and February 25, 2021, two of the candidates withdrew from the assessment center. (Resp. Ex. 13)
33. On February 25, 2021, Personnel Director Russo contacted HRD Director of Civil Service Regina Caggiano, who informed him that the Assessment Center could proceed with only three participants. (Resp. Ex. 14)
34. On March 1, 2021, the three remaining candidates received and acknowledged receipt of instructions for an operational planning exercise, which required them to submit a written memorandum by noon on March 2, and to present it orally on March 3, along with the other planned exercises. (Resp. Ex. 15; Resp. Ex. 16)
35. On March 5, 2021, MMA Consulting forwarded the results of the assessment center to HRD. HRD established an eligible list on April 15, 2021, which ranked the Appellant first, and the Intervenor second. (Resp. Ex. 17; Resp. Ex. 18)
36. The Intervenor received a final score of 85. The Appellant received a final score of 86. (Testimony of McGee; App. Ex. 2; Int. Ex. 1)

#### Stakeholder Interview

37. On April 16, 2021, prior to their interview with the stakeholder group, the candidates were asked to provide a resume and a signed release for an independent background check. These documents were due April 21, 2021. (Resp. Ex. 19)

38. The Appellant, who was on vacation at the time these documents were requested, and accordingly did not have access to a computer, requested an extension, which Personnel Director Russo granted, extending the deadline to April 26, 2021. (Testimony of the Appellant; Resp. Ex. 20)
39. The stakeholder group was composed of the superintendent of schools, a licensed professional from the Lynn Community Health Center, a member of the Lynn Racial Justice Coalition, the executive director of the North Shore Latino Business Association, the Lynn city solicitor, the chair of the Lynn Human Rights Commission, Chief Kenneth Green of the MBTA Transit Police Department, a Lynn city councilor, and the executive director of the local YMCA. (Testimony of Russo; Resp. Ex. 19)
40. The questions posed by the stakeholder group were drafted by Personnel Director Russo, based on feedback from the Mayor's listening sessions during the summer of 2020. Some questions were lifted directly from the community feedback, while others were drafted to reflect broader themes. Each member of the group posed one question to the candidates. (Testimony of Russo; Resp. Ex. 21)
41. There was no scoring or ranking system for the stakeholder interviews.<sup>7, 8</sup> Each member of the stakeholder group was given a sheet on which they were able to list the strengths and weaknesses of each candidate. Following the interviews, the members of the stakeholder group were not given an opportunity to discuss their impressions as a group. (Testimony of Russo;

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<sup>7</sup> Russo mistakenly believed, based on a March 2021 phone conversation with Regina Caggiano, that the City was not permitted to score the interviews. Caggiano had explained that scoring was permitted, but reranking or reordering candidates based on the interviews would constitute a bypass. (Testimony of Russo; Testimony of Caggiano)

<sup>8</sup> In his testimony before the Commission, MBTA Transit Police Chief Kenneth Green expressed disappointment in the lack of a ranking system. (Testimony of Green)

Testimony of Green; Resp. Ex. 22; Resp. Ex. 23)

42. In its feedback forms, the stakeholder group described the Appellant in a generally positive manner, as experienced, knowledgeable, and focused on safety. However, seven of the ten members also noted weaknesses, including a failure to clearly articulate priorities, and unclear commitments to innovation, mental health, and diversity.<sup>9</sup> (Resp. Ex. 23; Resp. Ex. 24)
43. The stakeholder group likewise described the Intervenor in positive terms, with consistent emphasis on his commitment to the community, transparency, and accountability. Only two of the ten members recorded weaknesses for the Intervenor, including that he was too focused on the use of technology, and that there were more complaints against him than the Appellant.<sup>10</sup> (Resp. Ex. 22; Resp. Ex. 24)

#### Mayoral Interview

44. The Mayor interviewed both the Appellant and the Intervenor. The interviews were not recorded, and no other individuals were present during the interviews. The only record of the meeting is the Mayor's personal notes, which contain an outline of the topics discussed, but not the specific questions asked nor the Mayor's impressions of the candidates. (Testimony of McGee; Resp. Ex. 25)
45. The Mayor asked both the Appellant and the Intervenor what their priorities would be as chief of police. The Appellant spoke about retaining police officers, creating a cadet program, and diversifying the LPD. The Intervenor emphasized engaging the community and building trust with people who do not feel connected to the police department. Both candidates discussed at

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<sup>9</sup> In his testimony before the Commission, the Appellant recalled and restated his answers to each of the questions he was asked. He repeatedly emphasized the importance of restarting programs that were put on hold during the COVID-19 pandemic, and of hiring more police officers. (Testimony of the Appellant)

<sup>10</sup> None of said complaints ever resulted in discipline. (Testimony of Russo; Resp. Ex. 21)

length the importance of accountability. (Testimony of McGee)

46. Both candidates were asked what their plans would be if they were not selected as the next chief of police. The Appellant said he would consider retirement,<sup>11</sup> and the Intervenor said he would continue working hard to make Lynn a better place. (Testimony of McGee; Testimony of the Appellant)

Appeal to the Commission

47. The Mayor's final hiring decision was based on the candidates' rankings on the eligible list, their resumes, feedback from the stakeholder interview and the interviews conducted by the Mayor himself. (Testimony of McGee)

48. On May 14, 2021, the City notified the Appellant that he had been bypassed. The bypass letter provided only positive reasons for the selection of the Intervenor over the Appellant:

“Career-long track record of external involvement throughout the greater Lynn community including his coordination with local organizations, service as Emergency Management Liaison especially during the COVID-19 pandemic, and extensive experience in operational planning for large-scale special events. This level of community involvement has created a bridge between officers and those they serve, giving the City's citizens an opportunity to express their needs and expectations from the Police Department.”<sup>12</sup>

(App. Ex. 3; Resp. Ex. 26)

49. On July 9, 2021, the Appellant timely appealed to the Commission, contesting his bypass.

(Stipulated Facts)

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<sup>11</sup> In his testimony before the Commission, the Appellant claimed that his answer was intended to be diplomatic, and his actual intentions were to consider a civil service appeal. (Testimony of the Appellant)

<sup>12</sup> In his testimony before the Commission, the Mayor placed particular emphasis on the Intervenor's experience engaging with the community, i.e., “creating a bridge between the officers and those they serve”. (Testimony of McGee)

## **LEGAL STANDARD**

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.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing 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. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

In order to deviate from the rank order of preferred hiring and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles. G.L. c. 31, §§ 1 and 27; PAR.08. A person who is bypassed may appeal that decision under G.L. c. 31, § 2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a “reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and was “reasonably justified”. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688 (2012), citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006). and cases cited; Beverly v. Civil Service Comm’n 78 Mass. App. Ct. 182 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

Appointing Authorities are granted reasonable discretion in selecting candidates from a certified list, especially when the position involves a police officer. Beverly v. Civil Service Comm'n., 78 Mass. App. Ct. 182, 188 (2010). Furthermore, the Appointing Authority has the discretion to take factors such as experience into consideration even though experience is computed into the score for certification rank purposes. Condez v. Town of Dartmouth, 17 MCSR 40 (2004) (commission held bypass reasonably justified because respondent has discretion to consider nature, manner, or simply length of experience even though it was previously computed into candidates' score).

### **ANALYSIS**

The City of Lynn has proven, by a preponderance of the evidence, that it had reasonable justification to appoint the Intervenor to the position of LPD Chief of Police and to bypass the Appellant, based on the positive reasons provided to support the good-faith conclusion that, despite a one-point difference in the exam scores of the two candidates, the Intervenor was the candidate best suited to serve as Chief of Police for the City of Lynn.

There is no question that at the time of this promotional cycle, both the Appellant and the Intervenor were qualified to serve as Chief of Police. Both have deep personal ties to the City, both have served in the LPD since the mid-1980s, and both have extensive experience as members of the LPD command staff. No party to this proceeding has argued that the Appellant and the Intervenor are anything but competent professionals, and nothing in this decision should be construed as saying otherwise. The primary distinction between these two individuals is not the quality of their experience or work history, but the content thereof.

The Appellant, in his filings with and testimony before the Commission, has rightly placed great emphasis on his ranking at the top of the eligible list for this promotional cycle. The

Commission has consistently held, however, that a higher exam score and resultant ranking are not necessarily determinative. See, e.g., Stabile v. Town of Andover, 28 MCSR 461 (2015) (affirming the bypass of an appellant who scored eight points higher than the successful candidate). As the difference in exam score between two candidates becomes more considerable, the more substantial the evidence justifying a bypass must be. Compare Moses v. Town of Winthrop, 21 MCSR 420 (2008) (allowing a bypass appeal involving an 11-point differential, described as an “unusually large spread”), and Sabourin v. Town of Natick, 18 MCSR 79, 82 (2005) (allowing a bypass appeal involving a seven-point differential, described as “significant”), with Radford v. Andover Police Dep’t, 17 MCSR 93 (2004) (denying a bypass appeal involving a 1-point differential) and Sullivan v. North Andover Fire Dep’t, 7 MCSR 175 (1994) (5-point difference in scores not “significant”).

A one-point differential, such as exists in this case, is certainly not dispositive, and for the purposes of identifying and remedying discrimination may be considered negligible as a matter of testing accuracy. See, e.g., Boston Police Superior Officers Federation v. City of Boston, 147 F.3d 13, 24 (1st Cir. 1998) (acknowledging uncontested evidence that candidates within a three-point “band” ought to be considered functionally equivalent); Bradley v. City of Lynn, 443 F.Supp.2d 145, 173-74 (D. Mass. 2006) and cases cited (experts consider from three to eight points on exam “statistically significant” for purposes of establishing Title VII discrimination). Accordingly, in making its promotional decision, the City was well within its rights to consider other factors like work experience and performance in post-assessment interviews (e.g., with the mayor and the stakeholder group), even where some of that work experience may have been measured by the assessment center. See Condez v. Town of Dartmouth, 17 MCSR 40 (2004).

### Allegations of Bias

The Appellant has expressed some discomfort with the post-assessment interviews conducted as part of this promotional cycle, but while interviews have an inherently subjective nature, that characteristic is insufficient to delegitimize the promotional process. See Reading v. Civil Service Comm'n., 78 Mass. App. Ct. 1106 (2010); Anthony v. Springfield, 23 MCSR 201, 207 (2010). Absent specific evidence of undue subjectivity on the part of the mayor or any of the stakeholders, I find no impropriety in either interview sufficient to merit overturning the Appellant's bypass, especially when the decision was made not simply on interview performance but was firmly and primarily grounded on a good-faith comparative assessment of the candidate's work experience.<sup>13</sup> That said, an appointing authority that makes no record of interviews used in the promotional appointment process does so at its peril. See, e.g., Dillion v. Brookline Police Dep't, 20 MCSR 273 (2007) (finding evidence of the appellant's alleged misconduct not to be credible); Sihpol v. Beverly Fire Dep't, 12 MCSR 72, 75 (1999) (finding an interview assessment invalid based on the appellant's performance as a witness). It is fortunate that the testimony before the Commission regarding the content of the interviews was both detailed and substantially consistent.

I further find that, despite the Appellant's contentions, the City conducted a reasonably thorough review of his background and experience, particularly as related to community engagement. As part of the post-assessment interview process, the Appellant provided, and the Mayor reviewed a three-and-a-half page resume which detailed the Appellant's entire work

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<sup>13</sup> The Appellant's post-hoc contention that the Mayor made insufficient eye contact during his interview is not, standing alone, evidence of impropriety.



history, as well as his professional and community associations.<sup>14</sup> Likewise, the stakeholder group asked the Appellant specific questions about how he would make the LPD more reflective of the community, how he would rebuild trust with the community, and how his experience in the LPD prepared him to become chief of police. In his interview with the Mayor, the Appellant was asked again about building trust with the community, and what his priorities would be as chief of police. The Appellant was given ample opportunity to discuss his past engagement with the community, a far cry from past cases where the Commission has found a failure to conduct a reasonably thorough review. See, e.g., Conner v. Department of Correction, 27 MCSR 556 (2014) (overturning a bypass based solely on CORI information related to dismissed drug charges); Rolle v. Department of Correction, 27 MCSR 254 (2014) (overturning a bypass that came without the appellant completing an application or being given an opportunity to dispute allegations of misconduct); Rousseau v. Department of Correction, 27 MCSR 457 (2014) (overturning a bypass decision made without the involvement of the Appointing Authority, and without any written documentation of how the decision was made).

The Appellant has also argued that the Intervenor's service on the City's Emergency Management Committee gave the Intervenor an unfair advantage, by virtue of the Mayor's professional relationship with him. However, an existing professional relationship between the appointing authority and a promotional candidate is not sufficient for a finding of bias, absent other evidence. See, e.g., Moses v. Town of Winthrop, 21 MCSR 420 (2008) (allowing an appeal based on allegations of a close personal relationship between the successful candidate and acting fire chief, an unusually large exam point spread, and false assertions about the appellant's work

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<sup>14</sup> The deadline for submission of this document was extended specifically to accommodate the Appellant.

history). The Appellant also acknowledged that he had worked with the Mayor in a professional capacity, to address personal threats to the latter's safety, as well as a series of fraudulent unemployment claims filed on behalf of City personnel.

*Bypass Reasons*

In meeting its statutory obligations, the City has offered exclusively positive reasons for the bypass of the Appellant, citing the Intervenor's experience working with the local community, serving as Emergency Management Liaison during the COVID-19 pandemic, and planning large-scale community events.

Again, there is no dispute that the Appellant has served ably as Captain of Detectives for the better part of two decades, and no question that in that capacity, he has amassed considerable experience overseeing criminal investigations and crime prevention measures. However, his recent experience interacting with the Lynn community (i.e., for approximately the last 15 years) has consequently been concerned with said investigations and preventative measures, e.g., warning businesses about financial scams. Similarly, his experience organizing large-scale events has been in large part concerned with responding to criminal activity, making simultaneous arrests, and overseeing the City's day-of response to the 9/11 terrorist attacks.

By contrast, the Intervenor, as Captain of Patrol, has for more than a decade overseen the LPD's interactions with the Lynn community outside the context of crime prevention and investigation. As the individual primarily responsible for traffic and safety during large community events, the Intervenor has had to work with residents, neighborhoods, businesses, and local organizations, including the organizers of city-wide protests and annual parades. As liaison to the Emergency Management Committee, the Intervenor has been regularly involved in the City's response to the ongoing pandemic, as well as ensuring the safety of the community

during severe snowstorms, gas leaks, and floods.

Given the rapid demographic shifts taking place in the City, and the fraught national and local environment in which this promotional cycle took place, it is entirely legitimate for the City to place special emphasis on the promotion of community relationships, and the building of community trust. Likewise, it is reasonable to conclude, based on the totality of the information before the appointing authority (i.e., the candidates' exam scores, resumes, and interviews), that the Intervenor was the candidate best suited to achieve those goals. This is particularly true given the narrow one-point difference between the candidates' exam scores. As such, I find that the Intervenor's appointment was the result of an unbiased, good-faith judgment on the part of the Mayor, a decision which reasonably prioritized the Intervenor's experience building community relations and community trust over the Appellant's experience as the City's chief criminal investigator.

### **CONCLUSION**

Accordingly, the City has shown by a preponderance of the evidence that it had reasonable justification, based on positive reasons, to bypass the Appellant for appointment as Chief of Police for the City of Lynn. For this reason, the Appellant's appeal under Docket No. G2-21-119 is hereby *denied*.

Civil Service Commission

Paul M. Stein  
Paul M. Stein  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on December 15, 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 the 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:

Joseph L. Sulman (for Appellant)

John P. Slattery, Esq. (for Respondent)

Leah M. Barrault (for Intervenor)