

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

JASON PERRON,

Appellant

v.

CITY OF WESTFIELD,

Respondent

Docket Number:

G2-24-083

Appearance for Appellant:

Jason M. Perron, *pro se*

Appearance for Respondent:

Erik Valdes, Esq.
Assistant City Solicitor
City of Westfield
59 Court Street, Room 320
Westfield, MA 01085

Presiding Officer:

Robert L. Quinan, Jr.

DECISION

Pursuant to 801 CMR 1.01 (11) (c), the Chair of the Civil Service Commission (Commission) assigned to the Commission's General Counsel the duty of serving as the presiding officer over an evidentiary hearing into whether the Respondent City of Westfield, acting through its Police Commission, had established reasonable justification to bypass (on two separate occasions in the Spring of 2024) the Appellant, Westfield police officer Jason Perron, for promotion to the position of police sergeant.

In early April 2025, the Presiding Officer released to the parties the attached Tentative Decision, affirming the Respondent's decision to bypass the Appellant in favor of Officer James Renaudette, but allowing the Appellant's appeal regarding the second bypass related to Officer Sean Smith. The parties were advised that they had thirty days in which to provide any written objections to the Commission. A somewhat confined set of objections, described below, was received from the Appellant on May 1, 2025. More extensive objections and comments were filed by the Respondent on May 2, 2025. Each side replied to the other's objections in filings dated May 18, 2025 (submitted by the Appellant) and May 20, 2025 (submitted by the Respondent).

After careful review and consideration, the Commission hereby adopts and incorporates fully herein Presiding Officer Quinan's comprehensive findings of fact. Additionally, the Commission accepts the Tentative Decision's conclusion that relief is warranted but has slightly modified the relief recommended to ensure uniformity with other comparable decisions.

Myriad clashing objections lodged by each side highlight the contentiousness of this appeal. Familiarity with the appended Tentative Decision is presumed. For efficiency's sake, objections will be summarized in bold typeface below, followed by the Commission's response.

APPELLANT PERRON'S OBJECTIONS

1. **Compared to James Renaudette's more than 18 years as a police officer by the spring of 2024, Jason Perron had even more experience serving as a law enforcement officer.** This is true. However, for half of the seven-year period that Perron had served on the Westfield Police Department (WPD) before Renaudette joined in February of 2006, he was employed in a reserve/part-time capacity only. In any event, pure length of service when both competing candidates had around two decades' worth of experience was not and should not have been a decisive factor in the promotional process. The record shows that both are accomplished and experienced patrol officers.
2. **Additionally, Appellant objects that the Tentative Decision (TD) devalued his field training officer, unit officer-in-charge, and other leadership experience—especially his four years of experience as a patrol sergeant.** In fact, the Presiding Officer (and we) credit this valuable experience in support of the presiding officer's conclusion that the Westfield Police Commission (WPC) lacked reasonable justification for bypassing the Appellant in favor of promoting Officer Sean Smith, who had comparatively little leadership experience. By contrast, though, Renaudette had much more extensive experience than the Appellant working with other law enforcement agencies, serving as a detective for approximately ten years, making a great many more arrests, and leading complex narcotics investigations. As noted in the Tentative Decision, Renaudette was responsible for coordinating the activities of up to 50 other law enforcement officers in complex drug bust cases. We cannot conclude that it was unjustifiable for the Respondent to favor this type of leadership experience when filling a vacant sergeant position.
3. **The Appellant suspects that Mayor McCabe likely exerted a negative influence behind the scenes on his promotional prospects.** The Appellant's theory is plausible, but he adduced little-to-no concrete proof to back up his suspicions.
4. **Captain Dickinson knowingly offered the WPC a false assessment of the Appellant's performance during his internal panel interview.** The Tentative Decision credits evidence showing Captain Dickinson's bias against the Appellant. Intent is of less relevance here than the likely actual impact of misleading information on the WPC's

decision-making, as discussed below, when it came to the choice between promoting Officers Smith or Perron.

5. **Favoritism and bias worked in Renaudette's favor.** This appeal's evidentiary record does not contain a preponderance of credible evidence proving that either was a dispositive element in the April 10, 2024 selection of Renaudette to fill a sergeant position. The Presiding Officer concluded that these elements, however, were a weightier contributing factor in the decision-making leading to the May 1, 2024 selection of Smith over the Appellant. We too harbor strong concerns about certain statements or questions posed by Chair Sypek in a recorded public meeting that appear to reflect a bias in favor of Smith (who, unlike either the Appellant or Renaudette, was under the age of 40 in the spring of 2024). The minutes of the May 1 WPC meeting (at which the WPC voted to promote Smith) feature Captain Dickinson's advocacy on behalf of Smith whereas the minutes of the April 10 WPC meeting (at which the WPC voted to promote Renaudette) do not mention any remarks by Captain Dickinson. In addition, we note the Appellant's next objection and WPC Chair Sypek's ill-advised choice on May 1 to publicly disclose the Appellant's ranking in the internal assessment process.
6. **WPC Commissioner Irwin testified that he was unaware of the Appellant's more than decade-long service as a Field Training Officer.** This testimony indeed supports the presiding officer's finding that the WPC lacked reasonable justification for their collective decision to bypass the Appellant in favor of Officer Smith because it undermines the third major reason the WPC stated for the May 1 bypass (namely, that with a mere one year's worth of experience as a lead instructor in certain courses at the Western Massachusetts Police Academy, Smith had "unique knowledge and expertise in the area of training in law enforcement"). This lack of due diligence on the part of the WPC commissioner who nominated Smith for promotion¹ illustrates the merits of the WPC adopting its own scoring matrix that could accurately capture the knowledge, skills, abilities and past accomplishments that distinguish competing candidates. However, Commissioner Irwin's misstep had no discernible bearing on the WPC's April 10 bypass in favor of Renaudette.
7. **The internal WPD panel's action in assessing Renaudette to be a better candidate for promotion cannot serve as a valid bypass rationale because interview scores were not mentioned in the WPC's April 10 bypass letter.** The short answer to this objection is that Renaudette's comparatively better interview performance was not a stated basis for WPC's April 2024 bypass decision and the Tentative Decision does not rely upon this fact

¹ "[I]f a candidate's bypass reason includes the experience and qualifications of the one being selected, then the appointing authority is obligated to also investigate the [bypassed] candidate's experience and qualifications." McCarthy v. Lawrence Police Dep't, 13 MSCR 144, 148 (2000).

either in its ultimate recommendation. As stated in the appended TD, the bypass in favor of Renaudette was justified for other valid reasons.

8. **A Superior Court decision in the case of Otero v. City of Lowell, et al. holds that a marked delay in issuing a written statement of bypass reasons should result in any belated bypass letter becoming inadmissible per an “exclusionary rule” set forth in a Personnel Administration Rule (PAR).** Without necessarily endorsing Judge Douglas Wilkins’s interpretation of PAR .08(4), this Commission acknowledges that Otero is precedent for stripping of its necessary “reasonable justification” the WPC’s decision to bypass the Appellant for promotion in favor of Officer Sean Smith. In both cases, the bypass letters issued more than 30 days after the bypass decision was announced. WPD Chief Jerome Pitoniak has acknowledged in writing that the appointing authority’s required statutory statement (in this case of “positive reasons” for selecting Smith) did not issue until 40 days after the WPC announced Smith’s promotion. The Tentative Decision, however, as we adopt it today, grants the Appellant exactly the same relief that Judge Wilkins deemed appropriate in Otero. What the full Commission orders today (placement of the Appellant’s name atop all future WPD certifications for sergeant vacancies) “best implements the [relevant] statute and regulation,” “avoid[s] injury to innocent third parties,” and “is minimally intrusive on the appointing authority.” Otero, Super. Ct. dkt. no. 1681CV03429, *Memorandum of Decision and Order* at 14-15.
9. **The Appellant claims he should receive backpay and civil service seniority retroactive to April 2024.** The only seniority date recognized in the civil service law is the date of original appointment (in this case, a date more than two decades ago). Apart from this, Chapter 31 and the PARs are silent regarding seniority within the superior officer rank cohorts. The Commission has always viewed back pay as an extraordinary remedy reserved for cases of egregious or bad faith violations of civil service law. This case does not fall into that category.

RESPONDENT WPC’S OBJECTIONS

1. **The Respondent relied on the Appellant’s allegedly poor interview performance for the sole purpose of countering *his* accusations of bias and favoritism (whereas the TD treated this as a bypass justification).** It is simply not possible to accept two of the three main “positive” reasons why the WPC bypassed the Appellant in favor of Officer Smith (i.e., Smith’s “[r]anking number one on internal assessment” and “[s]uperior performance in our Police Commission interviews”) without analyzing the implicit corollary that the Appellant’s interview performances were materially worse by comparison. Objectivity is a lodestar of civil service personnel processes and, objectively speaking, the Appellant came into this promotional process ranked ahead of Officer Smith. Especially given that the internal assessment interviews were not recorded, despite repeated published warnings from this Commission that interviews intended to supplant civil service examination

results must be, the Presiding Officer was not required to give these quoted reasons dispositive weight, or accept as justification for bypass that Officer Smith purportedly possesses superior presentation (or, in Respondent's terms "self-promotion") skills.

2. **The Appellant allegedly withdrew an earlier (2023) non-bypass equity appeal he had filed with this Commission *not* because the Respondent "agreed" *quid pro quo* to undertake an investigation into allegations of workplace harassment and bias (as the TD implies) but because comments made by the Commission's Chair, at a pre-hearing conference, "influenced" him to withdraw that earlier appeal.** The Appellant objects to this Commission taking administrative notice of a complaint he filed in Superior Court "only to protect [his] judicial rights." Because the Appellant had no opportunity or occasion to address this matter at the Commission's evidentiary hearing, the Commission declines to mark the complaint as an exhibit.² This complaint was never served on the Commission and, ultimately, nothing turns on the Appellant's withdrawal of his earlier complaint or the motivation(s) therefor.
3. **The Tentative Decision misconstrued Captain Dickinson's written summary furnished to the WPC Commissioners of the Appellant's internal assessment performance.** The Presiding Officer justifiably found that a preponderance of the credible evidence in this record severely undercuts Captain Dickinson's written synopsis: "We find . . . Officer Jason Perron does not interview well so he does not answer questions accurately."³ To start, apart from reporting the Appellant's combined assessors' score and the ranking that this total score earned him among the five interviewed candidates, the quoted statement was the *only* substantive assessor feedback the WPD furnished in writing to the WPC commissioners about the Appellant's performance during his internal interview.⁴ Second, Captain Dickinson's repeated use of the present tense in the quoted

² After a hearing has concluded, but before a final decision issues, parties seeking to introduce new evidence should first move to reopen the record. See 801 CMR § 1.01(7)(k).

³ This full (lead) sentence in the "Sergeant Assessment Report" (under the heading "Discussion and Findings") *in re*: Officer Jason Perron, authored by Captain Dickinson on March 7, 2024 (Resp. Exh. F at R0036), reads as follows: "We find, upon a witness to all testimony and review of all other relevant evidence in this assessment, Officer Jason Perron does not interview well so he does not answer questions accurately." The only "other relevant evidence" pertaining to "this assessment" that the Respondent introduced in evidence were the two-page score sheets filled out by hand by the six assessors. This Commission is at a loss to understand what "testimony" is being referred to in the above-quoted sentence. Captain Dickinson testified that he did *not* speak to any other assessor before drafting his report. And, crucially, Captain Dickinson testified in the Commission hearing that he did *not* in fact look at "the scoresheets or notes" created by his fellow interviewers before preparing his "Assessment Report" for Officer Perron.

⁴ The only other two sentences in Captain Dickinson's report under the heading "Discussion and Findings" read as follows: "Officer Jason Perron states he is the most experienced, best

sentence falsely implies that the Appellant has a habit of “not answer[ing] questions accurately.” Third, and most importantly, the Presiding Officer credited sworn testimony from unbiased assessors (the only two assessors other than Captain Dickinson who testified in the Commission’s proceeding) that the Appellant did *not* perform poorly in the unrecorded interview. Of the three possible ranges of interview responses—“poor,” “adequate,” and “good”—the Appellant scored in the highest range a majority of the time. Out of a total of 48 scored responses (answers to eight questions rated by six assessors), only two were rated poor—meaning that 96% of the time the Appellant’s responses were rated “good” or “adequate.” On account of this and other serious flaws in the internal assessment process detailed in the Tentative Decision,⁵ this Commission concludes that Officer Smith’s more highly rated interview performance was not sufficient justification to bypass the Appellant, who scored higher on the objective written promotional examination.

4. **The Respondent claims that no evidence shows that biases or favoritism influenced the decision to bypass the Appellant in favor of Officer Smith.** In its *Objections*, the Respondent first advances the assertion that there was no connection between the biases exhibited by Captain Dickinson and Lieutenant David Ragazzini and the WPC’s decision twice to bypass the Appellant for promotion in the spring of 2024. Both Dickinson and Ragazzini were assessors of the sergeant candidates that spring. A review of the record shows ample evidence supporting the presiding officer’s finding regarding Lieutenant Ragazzini’s personal animus toward the Appellant, exhibited on more than one occasion. Lieutenant Ragazzini rated the Appellant’s interview performance *far* below that of each of the other four candidates he scored (indeed, 30 points below the next-lowest candidate he rated) and he included comments on the Appellant’s score sheet that support the presiding office’s findings of his bias. In an earlier pleading, the Respondent acknowledged his likely bias. As discussed in the TD, Captain Dickinson had a strong motive to undercut the Appellant’s candidacy because of his own difficulties in securing permanency in his captain rank, an issue that came to light publicly when the Appellant lobbied the WPC to fill what should have been considered a permanent (follow-on)

communicator on the street and has been a sergeant in the past. He believes he was promoted to sergeant too early in his career.” Resp. Exh. F at R0036.

⁵ Added to deficiencies testified to by WPC Commissioner Peter Velis (the assessment information furnished to the WPC commissioners was too sparse) and WPD Lieutenant Michael Kane (the interview questions were not well designed), the TD identifies no fewer than five other shortcomings in the internal assessment process (as summarized in footnote 26, *infra*). The Respondent objects to one such finding, claiming that the TD treated the four separate scoring tabulation errors that Captain Dickinson made in his assessment reports (including a major one with respect to his own score card) as evidence of bias on the Captain’s part. In fact, the Commission treats the errors as evidence of inattention to detail and reflective of the overall unreliability of the assessment reports on which the WPC partially based its May 1 bypass decision.

sergeant vacancy in the summer of 2023. Captain Dickinson played a greater role in the promotional selection process than anyone other than the WPC commissioners themselves (or possibly Chief Pitoniak). He designed and was responsible for implementing the internal assessment process. The commissioners elicited his opinion of the sergeant finalists prior to their crucial May 1 bypass vote. Finally, the Respondent's objection appears to be premised in part on a clear error of fact. In its *Objections*, the Respondent asserts that Captain Dickinson's statement to Westfield's Personnel Director, to the effect that the Appellant never should have been hired in the first place (based on unreliable jailhouse hearsay about an event that occurred more than 20 years earlier), happened "well after the bypasses occurred." A review of the record does not support this assertion. Westfield's Personnel Director recorded Captain Dickinson's damaging and inaccurate statement on or about December 11, 2023, shortly before the internal assessment process officially got underway two months later. The WPC bypass votes took place in April and May of 2024.

5. **The Respondent objects that the WPD's "climate of favoritism" identified by Westfield's Personnel Director in a Spring 2024 report did not influence the promotion selection process.** In its *Objections*, the Respondent asserts: "There is no concrete evidence besides speculation that Appellant is treated any worse or better than any other police officer in the department." Director Anne Larkham's May 2024 report to Chief Pitoniak details specific incidents of vandalism to the Appellant's station locker and property. For example, in March 2022, the Appellant discovered that someone had broken into his locker and had tied the laces of his work boots into so many tight knots that it took the Appellant over an hour to render his boots usable again, delaying the start of his work shift. Director Larkham credited statements from several interviewees that WPD officers were divided into a preferred "A team" and those less favored who were relegated to the "B team" and that the Appellant, who used to be on the "A team" recently found himself on the "B team". Director Larkham concluded: "I find that Officer Perron was subjected to harassment in the workplace. . . . It is clear that there is an atmosphere of 'pranking' throughout the department that is severe and pervasive. . . . [D]ue to his disability, [the Appellant] could have been targeted more often than others." App. Exh. 10 at A0193. Based on this and other evidence in the Tentative Decision, we see no reason to disturb the Presiding Officer's finding that the "climate of favoritism" that the city's Personnel Director determined needed to be better addressed by police department leaders likely influenced, to his detriment, the Appellant's career advancement prospects.
6. **The Tentative Decision includes no formal finding that WPC Chair Sypek's interview comments constituted proof of impermissible age discrimination.** In fact, this Commission believes that, more likely than not, implicit or unconscious bias on Chair Sypek's part factored into the May 1 bypass decision favoring Officer Smith. However, making a formal finding of unlawful age or disability-based discrimination falls under the

purview of the Massachusetts Commission Against Discrimination and this Commission notes that such charges under G.L. c. 151B are currently pending in that forum.

7. **The Tentative Decision “gives significant weight to Sergeant Renaudette’s interview while effectively ignoring Sergeant Smith’s and Officer Perron’s interviews.”** A review of the record shows that the WPC did not state that it relied upon Renaudette’s interview performance in its April promotion decision and nor does either the TD or this final Decision treat that performance as an important (much less dispositive) factor in its bypass review analysis. By contrast, Officer Smith’s alleged superior interview performances constituted the key pillar of the WPC’s May 2024 promotion decision. The presiding officer, after careful analysis, reached a well-supported conclusion that these stated bypass reasons do not amount to reasonable justification for bypassing the higher-scoring Appellant.
8. **The percentage differential between the Appellant’s higher written exam score and Smith’s exam score is less than the percentage differential between Smith’s higher interview score and the Appellant’s lower total score.** If the internal WPD interviews had been recorded, the Commission could have confirmed their objectivity and lack of bias and might, in that instance, have been willing to accord greater weight to interview performance. But as it stands, any percentage differential in scores on the interview side is not enough to carry the day for the Respondent.
9. **The Tentative Decision does not account for the Appellant’s past professional reversals.** This Respondent objection is predicated upon a fact not in evidence. The record shows that the Appellant strongly denies that he ever was asked to step down from a position. In particular, he was *not* asked to resign as a police sergeant in 2012. The record shows that the Appellant has been quite transparent regarding certain grave personal challenges he faced in that era that bled into his professional life and temporarily affected his effectiveness as a leader of other officers. The Commission accepts his statement: “I resigned [as sergeant] in the best interests of my mental health at the time and not for fear of anything else.” The Commission also accepts the presiding officer’s credibility assessment of Chief Pitoniak’s sworn testimony regarding the Appellant’s acceptable service as sergeant (at a time when the Chief, then in a lower-ranking superior officer position, directly supervised the Appellant). Chief Pitoniak described the Appellant as “a good sergeant . . . easy to work with; his men and women would come to him for advice. He was good on the street [too].”
10. **The Tentative Decision underplays Sgt. Smith’s time as academy instructor and overplays the Appellant’s service as Chair of a municipal Select Board.** The record supports the presiding officer’s findings and conclusions in this regard. Apart from overstating Sgt. Smith’s service as “*the* lead instructor at the police academy” when in fact he had only commenced service as *a* lead instructor in select courses the year before, this

Objection overlooks the fact that the Appellant had comparable training experience serving for over a decade as a Field Training Officer. While not a decisive factor in this bypass appeal, the fact that citizens of an adjoining municipality elected the Appellant to serve as one of three Select Board members (and then his peers elected him as Chair), and the Appellant's service as a *de facto* police commissioner are noteworthy as indicia of distinguished leadership qualities (and recognized as such by WPC Commissioner Velis).

For the foregoing reasons, and those stated in the Tentative Decision, the full Commission hereby adopts the appended Tentative Decision and orders:

The Appellant's name shall appear first on any current or future certification for Westfield Police Sergeant until such time as the Appellant is afforded full and fair consideration, consistent with basic merit principles, for promotion to police sergeant.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on June 12, 2025.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Either party may file a motion for reconsideration within ten days of receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), 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:

Jason Perron (Appellant)

Eric Valdes, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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Appearance for Respondent:

Erik Valdes, Esq.
Assistant City Solicitor
City of Westfield
59 Court Street, Room 320
Westfield, MA 01085

Presiding Officer:

Robert L. Quinan, Jr.

SUMMARY OF TENTATIVE DECISION

The Presiding Officer recommends that the Commission affirm one instance of the Westfield Police Commission (WPC) bypassing a candidate for promotion to the position of sergeant but overturn a second bypass decision made a month later based upon a showing that, objectively viewed, the Appellant had greater relevant experience than the second lower-ranking candidate tapped for promotion. On the first occasion, it was permissible for the WPC to select an officer of comparable tenure who possessed a specialized skillset and who performed better during candidate interviews than the Appellant. When a second vacancy arose, however, the Appellant had scored considerably higher on the promotional examination than his competitor, also topped the eligible list in terms of seniority, and had superior work-related experience. Additionally, troubling record evidence indicates that the promotional process may have been tainted by improper personal bias and favoritism. Due to significant shortcomings in the selection process, the Commission should order that the Appellant remain at the top of current and future certifications until he is afforded another opportunity to compete for future promotion to sergeant on a wholly level playing field.

TENTATIVE DECISION

On June 7, 2024, Jason M. Perron (Appellant) filed a timely appeal with the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b), contesting the decision of the Westfield Police Commission (WPC or Respondent) to bypass him for promotion to the position of Sergeant in the Westfield Police Department (the First Appeal). The First Appeal was assigned docket number G2-24-083. On June 11, 2024, the Appellant filed a second timely appeal with the Commission, contesting another decision of the Respondent to bypass him for promotion to a second Sergeant's position (the Second Appeal). The Second Appeal was assigned docket number G2-24-085. A remote pre-hearing conference on both appeals was held on July 9, 2024. With the agreement of both parties, the Commission consolidated both matters under the docket number G2-24-083.⁶ A full hearing was held over the course of three days: September 20, 2024, October 4, 2024, and October 16, 2024.⁷ Witnesses, except the Appellant and union president John Blascak, were sequestered. The hearing was digitally recorded, and both parties were provided with a copy of the recording.⁸ The parties submitted post-hearing briefs. For the reasons stated herein, I recommend that the Commission deny the bypass claim advanced in the First Appeal, allow in substance the Second Appeal, and award the Appellant commensurate traditional civil service relief.

⁶ Due to the consolidation, the Commission dismissed the Second Appeal (docket no. G2-24085) as superfluous on July 25, 2024.

⁷ The October 4 and October 11 hearings were held at the Springfield State Office Building. The final day of hearing was held virtually via Webex, with all parties appearing electronically.

⁸ A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

FINDINGS OF FACT

The Appellant submitted into evidence 31 exhibits (App. Exhs. 1-31). The Respondent submitted into evidence 15 exhibits (Resp. Exhs. 1-15). Based on these exhibits, and the testimony of the following witnesses:

Called by the Respondent:

- Richard A. Sypek, Police Commissioner, WPC
- James Irwin, Police Commissioner, WPC
- Peter Velis, Police Commissioner, WPC
- Jerome Pitoniak, Police Chief, Westfield Police Department (WPD)
- Eric Hall, Captain, WPD
- Stephan Dickinson, Captain, WPD
- Sean Smith, Sergeant, WPD
- James Renaudette, Sergeant, WPD

Called by the Appellant:

- Jason M. Perron, Appellant
- Anne Larkham, Personnel Director, City of Westfield
- Michael Kane, Lieutenant, WPD
- Seth Florek, Sergeant, WPD
- Robert Saunders, Sergeant, WPD
- Brendan Irujo, Sergeant, WPD
- John Blascak, Patrol Officer, WPD

and taking administrative notice of all matters filed in the case and pertinent law, and reasonable inferences from other credible evidence, a preponderance of the evidence establishes the following facts:

Appellant's Background

1. The Appellant joined the WPD as a part-time permanent reserve officer in March 1999, while serving as a patrolman for the U.S. Department of Defense at Westover Air Force base from October 1996 through March 2001; he then became a full-time WPD officer/patrolman in August 2002. (*App. Ex. 5*)

2. In June 2008, the Appellant was promoted to the position of patrol sergeant and served in that position until July 2012, when he resigned from his position as sergeant and resumed the position of patrolman for personal and professional reasons. While he served as a sergeant, he completed the Sergeant Training Program. For the last two years of his stint as a sergeant, the Appellant served as a senior sergeant and occasionally assumed the responsibilities of shift commander. (*App. Ex. 5; Testimony of Chief Jerome Pitoniak;*

Testimony of Appellant Jason Perron)

3. In 2007, the Appellant was diagnosed with ADHD and, around 2012, he received additional mental health diagnoses although he nonetheless passed a fitness-for-duty evaluation. (*App. Exhs. 4, 10*) The Appellant has been very public and open to coworkers and others about his diagnoses and how his mental health conditions have been treated successfully over all relevant time periods. (*Appellant testimony*)

4. The Appellant served as the Officer in Charge of the WPD's All-Terrain Vehicle OffRoad Unit from 2005 through late 2012 and was WPD's ATV Off-Road safety instructor from 2008 through 2018. He became one of WPD's first two certified field training officers in 2013 and has continued to guide, mentor, and evaluate new reserve and fulltime officers. He is a union steward and negotiator for the Westfield Patrol Officers Coalition. He is also a certified member of the WPD's marine unit and holds a Police Mountain Bike certification. (*App. Ex. 5*)

5. In 2020, the Appellant earned a bachelor's degree in criminal justice. (*App. Ex. 5*)

6. In 2022, the Appellant was elected as a member of the Selectboard for the Town of Southwick and currently serves as the Selectboard Chairperson. In that capacity, he

serves as a police and fire commissioner in this town of approximately 9,500 citizens, dealing *inter alia* with numerous personnel issues. (*App. Ex. 5; Appellant testimony*)

7. Upon the long-anticipated retirement of Sgt. Michael Chechile on July 13, 2023, the Appellant stood atop the then-current list of WPD patrol officers eligible for promotion to sergeant – where he remained until the exam administrator revoked that list and established a new eligible list in February of 2024. Notwithstanding the vacancy, the WPC elected not to elevate a patrol officer to sergeant during that time period, however, because in the late winter of 2022 another WPD sergeant had been placed on administrative leave following serious allegations of misconduct. Although that sergeant had been contesting his termination through arbitration, and theoretically could have been reinstated, he no longer was certified to serve as a police officer in Massachusetts.

(*Appellant Exhibit 10 (Larkham investigation report, Larkham affidavit, Valliere affidavit); Testimony of Anne Larkham; Testimony of the Appellant*)

8. On August 18, 2023, a Westfield police union filed a grievance over the fact that a sergeant vacancy, which pursuant to a municipal ordinance ought to have been filled, remained vacant. At a mid-September meeting of the WPC, the Appellant spoke in favor of prompt action in filling this vacancy. In response to questioning from a new WPC commissioner, the Appellant pointed out that, a year or so earlier, the WPC had provisionally appointed a then-lieutenant, Stephan Dickinson, to an open captain position notwithstanding the fact that this lieutenant, according to the state's Human Resources Division (which administers written civil service promotional exams), had failed the captain's promotional exam because he had not timely submitted required "experience and education" documents. (*App. Exh. 4; Testimony of the Appellant*)

9. In the face of further inaction by the WPC regarding the sergeant vacancy, and believing that his public discussion of Acting Captain Dickinson's tenuous situation had not endeared himself to the Chair of the WPC, in October 2023 the Appellant filed with this Commission a so-called non-bypass equity appeal. In his Commission submissions the Appellant disclosed evidence suggesting that, in his view, he had been subjected to disability discrimination and possible retaliation at the hands of WPD superior officers. The Appellant's complaints included allegations that he had been the target of harassment and pranks at the WPD for years, creating an unhealthy and hostile work environment. (*App. Exhs. 10 & 11; Testimony of the Appellant; Administrative Notice of CSC filings*)
10. When Appellant raised these harassment issues before this Commission in a late October 2023 pre-hearing conference, the Respondent, through its personnel department, agreed to undertake an investigation into the allegations of workplace harassment and bias.⁹ The results of the investigation, released in late May 2024, found that "it is clear that there is an atmosphere of 'pranking' throughout the department that is severe and pervasive" and that the Appellant "could have been targeted more often than others." The investigation also found that "there was a climate of favoritism throughout the department and that some individuals may have been treated differently than others." (*App. Ex. 10; Personnel Director Larkham report to Chief Pitoniak dated May 31, 2024*)
11. At the same time, the City's Personnel Director, Anne Larkham, also investigated, through numerous witness interviews, the Appellant's October 2023 complaints of disability discrimination, and yet in her May 2024 report concluded: "I do not find that

⁹ In response, in November 2023, the Appellant voluntarily withdrew his non-bypass equity appeal. (*Administrative Notice of CSC filing*)

Officer Perron was subjected to discrimination.” (*App. Exh. 10 at A0193*) In her October 2024 testimony before me, Director Larkham acknowledged, however, that she had only investigated such matters up through January of 2024 and drew this conclusion based on events that occurred in 2023 or earlier. (*Larkham testimony*)

12. Back in October 2023, the Appellant also had filed a complaint against the Respondent with the Massachusetts Commission Against Discrimination (MCAD) alleging that he had been discriminated against in the promotional process on the basis of his disability, specifically his mental health diagnoses. The Appellant’s MCAD complaint is slated to be the subject of an investigative conference in May of 2025. (*App. Ex. 10*)¹⁰

2023 Promotional Exam, 2024 Sergeant Vacancies, and Interview and Assessment Process

13. The Appellant, along with four other candidates for the role of sergeant, sat for HRD’s civil service sergeant promotional exam on September 23, 2023. (*HRD submission*)

14. On February 21, 2024, the results of the exam were released to the five candidates for promotion to sergeant, including the Appellant. The Appellant received the second highest score on the exam (86); then-Officer James Renaudette received the third highest score (84); and then-Officer Sean Smith received the fourth highest score (82).¹¹ (*HRD*

¹⁰ In August 2024, the Appellant filed a second complaint with MCAD against the Respondent, which has since been consolidated with his first complaint. For reasons more fully explained in the Presiding Officer’s Ruling dated September 6, 2024, this Commission denied the Respondent’s motion to dismiss this appeal due to the pendency of the MCAD case.

¹¹ The other two candidates on the eligible list HRD created in February 2024 are not relevant to Commission review of this matter since neither was involved with either bypass: one, who scored one point higher than Appellant on the 2023 exam, was promoted to sergeant in April 2024; the other, who received the lowest exam score, did not receive any promotion. (*App. Ex. 4*)

submission; Testimony of Sean Smith)

15. By mid-February 2024, the WPD was ready to begin the process of filling not one, but two, sergeant positions based on the results of a September 2023 administration of HRD's sergeant promotional exam and the subsequent, newly-released eligible list of candidates. The Appellant then stood in second place on the 2024 eligible list. Following another retirement in the spring of 2024, the WPC then decided to fill three sergeant positions. (*App. Exh. 4; Resp. Exhs. I & M; HRD submission*)

16. To influence whom to promote to sergeant following establishment of an eligible list based on exam results, WPD leadership decided to align its promotional process with its new hire process and to institute an internal interview as an added selection element, as opposed to simply promoting candidates in strict rank order from the eligible list. With guidance from a relatively new police chief (over the course of several months pre-dating issuance of the February 2024 eligible list), Captain Dickinson devised the new internal interview process so as to afford potential new sergeants' incumbent peers and their immediate new supervisors a voice in the promotional selection process. (*Testimony of Stephan Dickinson; Chief Pitoniak testimony*)

17. The WPD has no written policy or procedure with regard to the interview process. The WPD's internal assessment process for sergeant candidates now principally consists of an interview in front of a panel of up to six WPD officers. In early 2024, that panel consisted of: Captain Dickinson; Lieutenant Michael Gibbons; Lieutenant Michael Kane; Lieutenant David Ragazzini (now retired); Sergeant Juanita Mejias; and Sergeant Robert Saunders. In interviews conducted on March 7, 2024, each applicant was asked the same eight questions and were scored from 1 to 10, with 10 being the best score. Each panelist

was given a scoring form with the eight interview questions and a row of numbers 1-10 below. The panelists were asked to circle the number that best represented their impression of each applicant's answer. For each question, scores from 1 to 3 were labeled "Poor Response"; scores from 4 to 7 were labeled "Adequate Response"; and scores from 8 to 10 were labeled "Good Response." Below the scoring sheet section laying out the eight questions appeared another section labeled "Trait Observations" – under which applicants were graded on a scale from 1 to 5, with 1 being "Poor" and 5 being "Good," on the following five traits: confidence; appearance; poise; enthusiasm; and oral communication. Individual scores from the eight questions and the five trait observations were added together to yield a total score from each panelist. The maximum score for the eight questions was 80, and the maximum score for the trait observations was 25; therefore, the total maximum score any applicant could obtain from an individual panelist was 105. (*App. Ex. 5-9*)

18. Each panelist's total score was added to the others to give an overall total score representing the aggregate marks of all six panelists; the maximum total score each applicant could hope to obtain was thus 630. (*App. Ex. 5*)

19. Via email on February 14, 2024, Capt. Dickinson informed all candidates about the interview process and notified them that interviews would be held, beginning at 9:30 a.m., on March 7. The candidates were told that there would be questions, but they do not appear to have been instructed that they would be evaluated on "Trait Observations." Capt. Dickinson instructed the candidates that they should wear business casual attire but that "attire is not being considered as it is for new candidates." (*App. Ex. 5*)

20. On March 7, 2024, when the Appellant appeared for his interview, he had just

finished a

12 midnight to 8 a.m. shift. He appeared for his interview wearing jeans, a polo shirt, and dress shoes. (*App. Ex. 5; Appellant testimony*)

21. The interview scores for the Appellant, Renaudette, and Smith were as follows:

Table 1 - Renaudette Scores.

Renaudette	
Panelists	Score
Gibbons	102
Kane	101
Ragazzini	95
Dickinson	93
Mejias	86
Saunders	80
Total	557

Table 2 - Smith Scores.

Smith	
Panelists	Score
Gibbons	100
Dickinson	100
Ragazzini	98
Mejias	98
Kane	90
Saunders	84
Total	570

Table 3 - Perron Scores.

Perron	
Panelists	Score
Kane	87
Gibbons	85
Dickinson	76
Saunders	70
Ragazzini	60
Mejias	58
Total	436

(App. Ex. 5-7)

22. The combined total scores of the three applicants in question tallied up as follows:

Table 4 – Total Scores

Totals	
Officers	Score
Smith	570
Renaudette	551
Perron	436

(App. Ex. 5-7)

23. While some of the panelists noted on their scoring sheets that they felt that the Appellant did not answer the questions that were asked, or that his answers were vague, other panelists' comments appear to contradict that impression. (App. Ex. 5)

24. Shortly after March 7, 2024, Capt. Dickinson prepared a "Sergeant Assessment Report" for each candidate that included the candidates' final scores and a "Discussion and Findings" section, which consisted of a very brief description of the candidate and the panelists' evaluation of his fitness for promotion to sergeant.¹² (App. Ex. 5-7)

25. In the Appellant's Sergeant Assessment Report, Dickinson wrote: "Officer Jason Perron does not interview well so he does not answer questions accurately." (App. Ex. 5)

2024 Appointments to Sergeant Position

26. The appointing authority for police positions and promotions in the City of

¹² Capt. Dickinson made three arithmetic errors when calculating the total scores for the relevant applicants: (1) Sgt. Saunders' score for candidate Smith was incorrectly reported as 80 when it should have been 84; (2) Lt. Ragazzini's score for the Appellant was incorrectly reported as 53 when it should have been 60; and (3) Capt. Dickinson's score for the Appellant was incorrectly reported as 92 when it should have been 76. These errors resulted in one applicant's score being incorrectly lowered and Appellant's score being incorrectly inflated. These errors were reflected in the Sergeant Assessment Reports.

Westfield is the Westfield Police Commission (WPC), now comprised of the following three

mayorally-appointed commissioners: James Irwin; Richard Sypek; and Peter Velis (the “Commissioners”). As the longest-serving, Attorney Sypek chairs the WPC. (*See recorded testimonies of James Irwin, Richard Sypek, and Peter Velis.*)

27. When evaluating which candidates to appoint to the open sergeant positions, the Commissioners did the following: reviewed the civil service exam rankings; reviewed the Sergeant Assessment Reports; interviewed all the applicants during open public meetings¹³; reviewed application materials submitted by the applicants which could include a resume and a personal statement; solicited an opinion at an open public meeting from Chief Jerome Pitoniak as to the qualifications of the applicants; and participated (beforehand) in informal discussions with various patrol officers and supervisors. (*See recordings of Irwin, Sypek, and Velis testimony; App. Ex. 4, 5-7, 18, 19*)

28. During the Commissioners’ interview of the Appellant, who then was approximately 50 years of age, Chair Sypek asked the Appellant about his ultimate plans for retirement, including whether “if you weren’t promoted, would [age] 55 be a target end date for you?” Commissioner Sypek also asked the Appellant if the sergeant position would be the highest level of promotion he would be looking for. Commissioner Sypek further asked the Appellant if he would “have a problem sitting at the desk all day . . . at your age, with where you’ve been[.]” (*App. Exhs. 4 & 19*)

29. Chair Sypek did not pose similar questions to any other candidate interviewed in

¹³ Because of scheduling issues, the applicants for sergeant were interviewed by the Commission on different days: the Appellant was interviewed on March 15, 2024, and the remaining candidates were interviewed on March 18, 2024. (*App. Exh. 4.*)

March of 2024, including the fourth-ranked candidate ultimately selected in May of 2024, who appears to be under the age of 40. (*App. Exhs. 4 & 18*)

First Bypass in Favor of James Renaudette

30. On April 10, 2024, the Westfield Police Commission met to consider, in pertinent part, which candidates to promote to two vacant sergeant positions. The Commissioners unanimously voted to nominate Renaudette, who was ranked third on the civil service eligible list, to fill one of those open positions,¹⁴ effective April 13, 2024, thus bypassing the Appellant who was ranked second. (*App. Ex. 4*)

31. James Renaudette began his career in law enforcement in June 2003 as a reserve officer with the WPD. Before that he served with distinction for four years in the Marine Corps. In 2005, he became a provisional WPD police officer and attended the Holyoke (Western Massachusetts) Police Academy. In February 2006, he became a WPD patrol officer. In August 2014, he became a detective in the WPD and served in that position until his promotion to sergeant. From February 2021 until becoming a sergeant, Renaudette was also a federally-sworn Task Force Officer (TFO) for the U.S. Drug Enforcement Administration (DEA). As part of this task force, he participated in over 600 narcotics investigations, including undercover purchases of drugs and weapons, and over 300 arrests for narcotics; wrote over 100 successful warrants for drug-related property and over 125 search warrants for narcotics; and participated in 10 federal wiretap investigations. (*Testimony of James Renaudette; Resp. Ex. J*)

¹⁴ The other vacant sergeant position was filled by the candidate who scored first on the promotional exam (ahead of the Appellant).

32. Chief Pitoniak views Renaudette as the most experienced WPD officer in the area of narcotics interdiction. While serving as a TFO for the DEA, Renaudette was at times responsible for coordinating the activities of up to 50 law enforcement officers on large-scale planned drug busts. His success as intermittent lead operational planner rested on excellent communication and delegation skills and being very well organized.

(Testimony of Pitoniak and Renaudette)

33. Renaudette has associate, bachelor's, and master's degrees in criminal justice and has also participated in numerous specialized training classes. A member of the WPD's Special Response Team and ATV unit, for a time, he also ran a unit within the Detective Bureau. He has received five medals¹⁵ and at least two letters of recognition in his career. *(Renaudette testimony; Resp. Ex. J)*

34. Renaudette had the third highest score on the promotional exam (two points below the Appellant) and the second highest interview scores in the WPD's internal assessment process. *(HRD submission; Resp. Ex. K)*

35. Explaining his vote as WPC Commissioner to bypass the Appellant in favor of promoting Renaudette, Commissioner Velis, who is a retired Superior Court judge, testified that he had spoken to a Springfield Police Department command officer who worked closely with Renaudette on the DEA Task Force, and other Hampden County-area DEA officers, who all spoke very highly of Renaudette's skills and who led Commissioner Velis to conclude that Renaudette was a "stellar" narcotics detective. Commissioner Velis also praised Renaudette's intelligence and humility. WPC

¹⁵ One of the two medals for valor Renaudette received represented the second-highest form of honor the Commonwealth bestows upon police officers.

Commissioner James Irwin testified that he “loved” Renaudette’s resume and had received reports that Renaudette (and Sean Smith) were excelling in their new roles as WPD sergeants. Chair Sypek expressed concern that the WPD would lose Renaudette to another agency if he were not offered a promotion. (*Testimonies of Irwin, Sypek and Velis*)

36. The WPC issued a bypass letter, dated April 10, 2024, to the Civil Service unit of the Commonwealth’s Human Resource Division (HRD), which included the following (verbatim) justifications for bypassing Appellant in favor of Renaudette:

- He is an accomplished patrol officer and detective;
- Notably, since February 2021, he has been sworn as a Federal Task Force Officer with the DEA assigned to the Springfield, MA office;
- Officer Renaudette, unlike the other candidates, has the unique knowledge and expertise in the area of Narcotics in law enforcement and has participated in over 600 narcotics investigations. His expertise is used to work undercover to purchase drugs including Heroin, Fentanyl, Cocaine and LSD as well as illegal firearms and ammunition.
- Officer Renaudette has written over 100 successful warrants for narcotics violations, and participated in 300 arrests for narcotic violations, excelling over the other candidates.

(*App. Ex. 1*)

37. The WPC sent, and Appellant received, a copy of the bypass letter on or about April 26,

2024. (*App. Ex. 1*)

38. The Appellant filed an appeal with this Commission on or about May 19, 2024, regarding the Renaudette bypass. (*App. Ex. 3*)

Second Bypass in Favor of Sean Smith

39. On May 1, 2024, the Westfield Police Commission met to consider, in pertinent part, which candidate to promote to another, newly vacant sergeant position. The Commissioners did not conduct interviews then because the candidates for the position were the same as in April and had just been interviewed in March. While Commissioner Velis recommended that the Appellant be nominated for promotion instead of Smith, Commissioner Irwin did not second the nomination of Appellant and instead nominated Smith, which nomination Chair Sypek seconded. The Commissioners then voted unanimously to appoint the fourth-ranked Smith to fill the final remaining open sergeant position, effective May 4, 2024, thus bypassing the Appellant, who was ranked second. (*App. Ex. 4*)

40. In the May 1 meeting, WPC Chair Sypek, who had asked the Appellant during his interview if he would be retiring at age 55, stated that “it is the Commission’s job to look at the future of the department” and to “find candidates that are the future of the department.” Chair Sypek went on to state that he was “looking for someone that’s looking for this promotion so that they can get to the next promotion, and the next promotion.” The “tipping point” for Chair Sypek was “looking for the overall future of the department when making this appointment.” (*App. Ex. 4*)

41. Sean Smith served as a patrol officer with the Longmeadow Police Department from March 2010 through September 2012, after which time he joined the WPD.¹⁶ He

¹⁶ Now-sergeant Smith testified to having also served three years (2006-2009) as a police cadet with the University of Massachusetts-Amherst police department, functioning in his last year in a manner little distinguishable from that of a sworn police officer. Prior to graduating from a police academy, he also spent two summers (2007-2008) as a special police officer (reportedly with full policing powers minus a gun) on Nantucket. (*Smith testimony*)

was a member of the WPD's Special Response (SWAT) Team for about seven years, a Field Training officer for two or three years, a member of the Mobile Field Force for two years, and tasked with Apex Virtual Reality training duties for three years. He also has been an instructor at the Holyoke (Western Massachusetts) Police Academy since June 2019 and a lead instructor there since 2023. (*Smith testimony; Resp. Exh. N*)

42. Smith has a bachelor's degree in criminal justice and also holds Defensive Tactics Instructor, Patrol Procedures Instructor, Taser Instructor, and Duty to Intervene Instructor certifications. He has also received ARIDE training. (*Resp. Exh. N*)

43. Smith had the highest interview scores in the WPD's internal assessment process. (*Smith testimony; Resp. Ex. O*)

44. At the May 1 WPC open meeting at which the three WPC commissioners deliberated and voted on their choice to fill the third sergeant vacancy of 2024, Commissioner Velis, as noted above, originally spoke in favor of promoting the Appellant. When he testified before me on September 20, 2024, Commissioner Velis stated that "to this day" he believes that *the Appellant* was more qualified than Officer Smith to be promoted to sergeant in May 2024. He explained that he found the Appellant to be exceptionally candid and courageous, both about challenges he has overcome in his career as well as personal life and in delivering a very articulate, cogent, and honest assessment of the inner workings of the WPD. Commissioner Velis lauded the Appellant's intelligence, humility, empathy, openness and ability to be self-deprecating. After pointing out that the Appellant was the most senior of the five WPD candidates in contention for promotion in 2024, and the only candidate previously to have performed (at considerable length) as a sergeant, Commissioner Velis also credited

the Appellant's extensive administrative experience as the chair of a nearby town's Select Board—and service there as a *de facto* police commissioner. Commissioner Velis added, however, that because the other two WPC commissioners perceived Smith to be the superior candidate, he concurred that Smith is an excellent police officer, and he did not want anyone to question Smith's authority to serve as a sergeant, he chose to make the May 1 vote in

Smith's favor unanimous. (*Velis testimony*)

45. Accordingly, WPC Chair Sypek issued a bypass letter, dated May 1, 2024, to HRD's Civil Service Unit, which included the following verbatim justifications for bypassing Appellant in favor of Smith:

- He [Smith] is an accomplished patrol officer;
- Ranking number one on internal assessment by commanding officers;
- Officer Smith, unlike the other candidates, has the unique knowledge and expertise in the area of training in law enforcement and is currently an instructor at the Police Academy; [and he exhibited]
- Superior performance in our Police Commission interviews.

(*App. Ex. 1*)

46. The WPC sent, and Appellant received, a copy of the bypass letter on or about June 10,

2024. (*App. Ex. 1*)

47. The Appellant filed a second bypass appeal with this Commission on or about June 11,

2024. (*App. Ex. 2*)

48. At the hearings I presided over in the fall of 2024, several witnesses testified credibly that the Appellant's willingness and propensity to speak out when he perceives an injustice likely undercut his standing with certain highly-placed individuals who could

have influenced the promotion-selection outcomes. Some pointed to the fact that, within the past two years, the Appellant had spearheaded grievances over alleged wage-law violations.¹⁷ The Appellant himself testified that he is the lead plaintiff in a class action lawsuit against the City of Westfield over Wage Act violation claims. I find it more likely than not that at least one WPC commissioner's view of the Appellant's candidacy could have been shaped in a negative fashion by the Appellant's outspokenness. (*App. Exh. 11; testimonies of Sgts. Irujo, Florek, Saunders and union president Blascak; Appellant testimony*)

APPLICABLE CIVIL SERVICE LAW

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). See also *Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law). The civil service system is designed to guard against political considerations, favoritism, and bias in governmental hiring and promotion.

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

¹⁷ Documentation shows that two of the Appellant’s grievances were successful in securing warranted relief. (*App. Exh. 11*)

applicable civil service eligible list. See G.L. c. 31, §§ 6-11, 16-27; Personnel Administration Rules, PAR.09. 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, negative, or both – consistent with basic merit principles. See G.L. c. 31, § 27; PAR.08(4). This is commonly referred to as a bypass. “In addition to bypassing a candidate for appropriate negative reasons, an appointing authority may bypass a candidate for positive reasons, as when one police candidate obtains specialty training and assumes specialty responsibilities that another candidate has not.” *Carnes v. Norwell*, 34 MCSR 91 (2021).

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 Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003). Reasonable justification means that the appointing authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. *Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex*, 262 Mass. 477, 482 (1928). See also *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 214 (1971). “The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions.” *Beverly*, 78 Mass. App. Ct. at 187 (citing *Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 824-26 (2006)). The Commission owes “substantial deference” to the

appointing authority's exercise of judgment in determining whether there was reasonable justification shown. *Beverly*, 78 Mass. App. Ct. at 188.

ANALYSIS

Particularly as it relates to the second bypass, this is a close case given the credentials, skills, and attributes of the two candidates who competed for promotion circa May 1, 2024. The Appellant has raised concerns regarding several elements of the promotional process and both bypasses, each of which I will address below in turn before analyzing (head-to-head) the WPC's justifications for picking candidates who scored objectively lower on the promotional exam.

Adoption of the Interview Process

Police departments and other public safety agencies are properly entitled to, and often do, conduct interviews of potential candidates as part of the hiring process, especially in promotional appointments of superior officers. In an appropriate case, a properly documented poor interview may justify bypassing a higher-scoring candidate for an overall more qualified one. See, e.g., *Dorney v. Wakefield Police Dep't*, 29 MCSR 405 (2016); *Cardona v. City of Holyoke*, 28 MCSR 365 (2015). Some degree of subjectivity is inherent (and permissible) in any interview procedure, but care must be taken to preserve a "level playing field" and "protect candidates from arbitrary action and undue subjectivity on the part of the interviewers," which is the linchpin to the basic merit principle of civil service law. See, e.g., *Malloch v. Town of Hanover*, 472 Mass. 783, 796-800 (2015); *Flynn v. Civil Service Comm'n*, 15 Mass. App. Ct. 206, 208, rev. den., 388 Mass. 1105 (1983); *Pilling v. City of Taunton*, 32 MCSR 69 (2109); *Conley v. New Bedford Police Dep't*, 29 MCSR 477 (2016); *Phillips v. City of Methuen*, 28 MCSR 345 (2015); *Morris v. Braintree Police Dep't*, 27 MCSR 656 (2014). While it is not the Commission's role to rate the candidates' interview performance, I do need to determine whether the preponderance of

the evidence supports the Respondent's conclusion that the Appellant had a markedly poor interview, which the Respondent used in part as the basis for bypassing him for promotion.

The WPD took certain measures to ensure an interview process designed to be reasonably fair and not overly subjective or arbitrary, including, in particular, the inclusion of six commanding officers of mixed rank (working different shifts) on the panel; the use of a semi-structured format in which candidates were asked a pre-determined set of questions; and the use of a scoring system that provided for independent assessment of each candidate's answers, while giving equal weight to all of the evaluations. Given that a similar interview panel procedure is employed by the WPD for hiring new officers (and in other civil service jurisdictions at the promotional level), and that testimony was offered that the implementation of the interview panel process had been discussed for some time, I am not persuaded that the mere "11th hour" adoption of such a procedure for promotions was illegitimate, unfair, or designed to favor particular applicants for these open sergeant positions. In particular, the record evidence does not support a conclusion that this process was implemented to capitalize on the Appellant's disabilities or put him at a competitive disadvantage.

That said, it would have been preferable for the Respondent to have provided more, and fully accurate, information to the candidates about the bases for the panelists' evaluation, including the "Trait Observation" of appearance, as it does appear, as Appellant alleges, that all of the candidates were given incorrect guidance that their attire would not be part of the evaluation when the scoring sheets clearly show that some panelists took it into consideration as part of their assessment of the candidates' performance. However, in this case, the removal of the appearance element of the assessment changes the candidates' scores slightly but not their rankings: the Appellant was still ranked last by all of the panelists even when appearance

(including attire) is not taken into account, so I do not find that the Appellant was materially prejudiced by the timing of his interview or by the misinformation provided by Capt. Dickinson that attire would not be considered as part of the evaluation.¹⁸ Ideally, the Respondent would ensure going forward that the hiring and promotional process is governed by a written policy and procedure that includes detailed information about the interview, the reporting of results to the Commissioners, and the bases upon which candidates will be assessed.

As has been noted repeatedly in Commission decisions over the last several years, appointing authorities should *always* audio or video record interviews for hiring and promotions. The Commission has previously stressed the importance of reliable records for purposes of bypass appeals. Failing to record interviews may undermine the Commission's ability to validate an appointing authority's decision to bypass a candidate. See *Moses v. Town of Winthrop*, 21 MCSR 420, 426 (2008) (finding that appointing authorities that fail to record interviews for promotional appointments "may do so at [their] peril"); *Hurst v. City of Brockton*, 34, MCSR 41, 43 (2021) (encouraging fire departments to maintain stronger records of interviews "to avoid the risk that, upon review, the Commission may find the process overly subjective and insufficient to establish a basis for bypass"). The Commission expects and encourages the Respondent – as well as all other appointing authorities in the state – to follow through on this obligation to record all interviews of original and promotional candidates.¹⁹

¹⁸ It is also worth noting, however, that the Appellant did not actually follow the limited guidance provided as to what to wear for the interview; he appeared in jeans and a polo shirt, which is not normally considered business casual attire, so it cannot be said that the scores he received for appearance were entirely unjustified.

¹⁹ Indeed, the Chair of the Civil Service Commission issued a verbal order at the pre-hearing conference *requiring* the WPD to record all such interviews on a going-forward basis.

Animus/Personal Bias

I have carefully considered the Appellant's contention that certain participants in this promotion process, particularly Lieutenant Ragazzini and Captain Dickinson, harbored a personal animus or bias against him. There is indeed some history between the Appellant and these colleagues, and I find that these historical conflicts and the individuals' different, occasionally clashing, personalities may have contributed to a personal bias against Appellant that clouded his superior officers' evaluations of him in an unfair way.²⁰

The Appellant notes that he received especially low scores on his interview from Lieutenant Ragazzini; Ragazzini's score of 60 was Appellant's second lowest score and the lowest score given by Ragazzini to any of the sergeant candidates by a significant margin.²¹ Given this discrepancy, the absence of an interview recording, and evidence that Appellant and Lt. Ragazzini had an ongoing interpersonal conflict, I find it quite conceivable that the scores Ragazzini gave the Appellant reflect a personal bias against the Appellant.²² But it is important to note that, even if Lt. Ragazzini's scores are removed from all of the candidates' totals, Appellant still achieved the lowest score by a substantial margin.²³

The Appellant also claims that Captain Dickinson was biased against him due to their history and the Appellant's assertion, made publicly (albeit in response to a WPC

²⁰ There does not appear in this record to have been any bias on the part of Lt. Ragazzini (now retired) or Capt. Dickinson against the Appellant on the basis of any protected characteristic(s).

²¹ Lt. Ragazzini's score of 60 for the Appellant was 30 points lower than the next lowest score given by this same panelist.

²² Indeed, the *Respondent's* proposed decision (at pg. 21) states that "there is a plausible argument for some kind of personal bias in the Lieutenant's [Ragazzini's] score."

²³ Appellant's lowest score came from Sergeant Mejias, though there was no evidence introduced that Mejias had a personal bias against the Appellant. Similarly, if Mejias's scores are removed from the final totals, the Appellant's scores are still the lowest.

commissioner's direct question), that Dickinson's promotion to Captain was not valid because Dickinson had not passed the promotional exam. Dickinson gave the Appellant the third highest score he received, although it was still the lowest score that Dickinson gave to any of the candidates. As with Ragazzini, even if Dickinson's scores are removed, the Appellant still has the lowest interview score.

However, Capt. Dickinson had more influence over the promotional process than any other panelist, through his tabulation of the results and creation of the Sergeant Assessment Report for the Commissioners' review. Dickinson's negative evaluation of the Appellant's interview performance contained in the Sergeant Assessment Report (*i.e.*, that the Appellant does not answer questions and therefore does not interview well) is not well-supported by the actual interview feedback: while two other panelists noted that Appellant did not answer all questions asked, one of those was Lt. Ragazzini, whose potential personal bias is discussed above, whereas the other three panelists' scoring sheets did not include any notation that the Appellant was nonresponsive and, indeed, indicated the opposite.²⁴ Dickinson's testimony that he relied on the panelists' scoresheets without reviewing their detailed comments undermines the credibility of the assessment he included in the report. Furthermore, Sergeant Saunders testified convincingly that the Appellant did *not* perform poorly in terms of eliding answers during the interview, which contradicts Dickinson's assessment.²⁵

²⁴ Ultimately, I credit and give weight only to the testimonies of panelists Lt. Kane and Sgt. Saunders, who each stated that the Appellant did answer all questions adequately and specifically.

²⁵ Sgt. Saunders did, however, give Appellant the lowest score of the three relevant candidates, which shows that while the Appellant may not have performed poorly, Saunders did not believe that he performed as well as his competitors. Saunders testified that he thought Appellant had an off-day on March 7 and was capable of performing much better in an interview setting. I note that the Appellant had clocked in for his overnight shift some ten hours before being reached for his promotional interview and had last taken his ADHD medication closer to 12 hours before.

I am particularly troubled by the fact that Capt. Dickinson advised Westfield's Personnel Director during a harassment investigation interview last year that, if the Appellant were to go through an original appointment background check today, he would not be hired by the WPD—based on, as Capt. Dickinson himself admits, nothing more than unreliable hearsay. Although I did not receive detailed testimony about an alleged incident in the 1990's that apparently caused Capt. Dickinson to form this opinion, I do credit the Appellant's report that a WPD background investigator did in fact look into what amounted to exaggerated allegations and the Appellant nonetheless was indeed hired by the WPD in 1999.

All told, I find that the assessment of the Appellant was tainted by some personal bias on the parts of Lt. Ragazzini and Capt. Dickinson. Lt. Ragazzini's scores for the Appellant were considerably below his scores for the other candidates, and there is a history of animosity between the two. The lack of concrete evidence to support Capt. Dickinson's negative assessment of the Appellant's interview skills, combined with his admission that he did not thoroughly review all of the materials before drafting the Sergeant Assessment Report and the history between him and the Appellant, show that his judgment likely was clouded by personal bias.

Department Culture

Appellant also argues that the harassment he faced in the workplace and the overall departmental culture of favoritism had an undue influence on the promotion process. Testimony from several officers and witnesses, including Commissioner Velis, Chief Pitoniak, Capt. Hall, Sgt. Florek, Sgt. Saunders, and even Capt. Dickinson, corroborated the Appellant's assertions that a culture of favoritism exists within the WPD. Furthermore, the City Personnel

(Testimony of Saunders and Perron)

Director's recent investigation into Appellant's claims of harassment originally raised before this Commission in October 2023 also found that there was a "climate of favoritism" and "some individuals may have been treated differently than others." Therefore, I find that other candidates who were seen more favorably by the panelists, by the officers informally consulted by the Commissioners, and by the Commissioners themselves, may have benefited from an advantage over Appellant in the assessment process.

Moreover, the "joking around" and "pranking" culture within the WPD, which the Appellant raised in a hearing before this Commission and in filings with the MCAD, and which was corroborated by the Respondent's own investigation, could be described as "severe and pervasive." The City's May 2024 investigative report states that the Appellant was the target of harassment and unwelcome conduct, and while he was not the only individual so subjected, he could have been targeted more than others. Capt. Dickinson also agreed in his testimony that the WPD fostered an environment of goofing around, practical jokes, and joking and that it was possible that things could have gone too far with the Appellant. The evidence also shows that some of the teasing to which Appellant was subjected by his patrol officer peers may have been related to his disabilities, which is highly concerning. This again suggests that the bypasses may have been influenced by personal factors unrelated to the Appellant's professional qualifications.

I have more to say below about the second bypass of Appellant in favor of Sean Smith. On this limited point of undue favoritism, though, the Appellant has argued that Smith's connections gave him an advantage over the Appellant, particularly in the rapport he had with recruits and his position as an instructor at the police academy. Even if Smith's promotional

prospects had been influenced by such factors, I cannot conclude that this type of experience-based advantage calls into doubt the objectivity of the entire evaluation.²⁶

Given my findings about personal bias and the departmental culture, and how those appear to have impacted the Appellant's candidacy for promotion to sergeant, the Respondent should thoroughly examine the WPD's evaluation and promotion processes to ensure that all candidates, regardless of their personal history with their colleagues, are assessed fairly, that the assessments are made with transparency and supported by the evaluations from any interviewers, and that any personal biases do not influence such critical decisions. In particular, I suggest that the WPC commissioners themselves adopt a formal scoring matrix when voting on contestable promotions. A matrix that calls for numerical scoring of discrete elements such as prior work history and specialized experience; recommendations, awards, and commendations; internal assessments; examination scores; interview performance; and perhaps other key merit-focused factors likely would yield more reliable and defensible results in future bypass situations.

The Respondent should also continue to evaluate and assess the culture within the WPD and ensure that any harassment or targeted unwanted behavior is eradicated as much as feasible. I echo the direction given to the WPD by the City's personnel director in her May 2024 investigation report: "It is my recommendation that the Westfield Police Department foster a culture that values diversity and inclusion, believing that all employees deserve to be respected regardless of their age, race, religion, national origin, sex, sexual orientation, gender identity, disability, etc. A culture that tolerates harassment will have more of it. Leadership will need to demonstrate that harassing behavior is prohibited by policy; that swift, effective, and appropriate

²⁶ That said, the Chair of the WPC did publicly point out, during the promotion selection process, that Smith had a family lineage with the WPD, which history, I conclude, might have led him to develop a more favorable impression of Smith than the other candidates. (*Sypek testimony*)

responses are taken; and that all employees feel safe in reporting harassment.... While regular training of staff is important and should be required, more important is the responsibility of the Department's leadership to commit to creating that culture of acceptance and professional courtesy.”

Age Discrimination

The Appellant also contends that questions asked by Chair Sypek during his interview of the Appellant on March 15, 2024, and aspects of his testimony before me indicate that the Chair of the WPC was improperly biased against Appellant because of the latter's age when he voted to bypass the Appellant for promotion. Such pointed age-related questions and comments as were captured in the recording of the WPC's March 15 meeting do call into serious question whether the WPC's Chair adhered to basic merit principles, which state law defines in relevant part as the “advancing of employees on the basis of their relative ability, knowledge and skills . . . and assuring fair treatment of all . . . employees in all aspects of personnel administration without regard to . . . age, . . . disability,” and other protected characteristics. G.L. c. 31, § 1 (e). Upon consideration of Chair Sypek's later testimony during the September evidentiary hearing I oversaw, it remains unclear to me whether his original remarks were intended to signal a negative view of the Appellant due to his age or were simply a reflection of his genuine preference for a candidate with a longer prospective career span, who would remain with the WPD for a decade or more and grow into future roles, and not a candidate who would be satisfied finishing out his career at the sergeant level. During his September testimony, Chair Sypek insisted that neither age nor disability played a role in his decision and that he would be comfortable with a 60-year-old lieutenant or a 64-year-old captain “so long as they have ambition.”

While Chair Sypek's comments during the Appellant's interview were not especially tactful, and could be indicative of impermissible discrimination, I do not entirely discredit the Chair's testimony that his choice was made with the long-term interests of the WPD in mind. While it is not permissible to bypass someone for promotion simply because the person is of a certain age, it is acceptable for the WPC Commissioners to consider the future of the WPD and the need to groom candidates for higher-level leadership in making a decision on promotions. At all events, WPC Commissioners should be much more careful in the future to avoid asking candidates for employment or promotions any questions directly about, or that could be reasonably interpreted as relating to, someone's membership in a protected class.

Disability Discrimination

The Appellant did not furnish direct evidence that any medical-psychological condition materially influenced either bypass decision. I credit Personnel Director Larkham's conclusion that her thorough investigation (even though it may have concluded in or around January of 2024) did not turn up actionable evidence of discrimination. In September 2024, Sgt. Seth Florek, who appeared to me to be among the Appellant's closest allies in the WPD workforce, testified that he could not recall witnessing anyone ever teasing or criticizing the Appellant specifically on account of his disabilities; moreover, he does not believe that the Appellant was bypassed due to any disability. (*Florek testimony*) Chief Pitoniak concurred, pointing out that many of the Appellant's peers, himself included, suffer from a form of attention deficit hyperactivity disorder but, like the Appellant, are able to manage the condition very successfully. (*Pitoniak testimony*) Accordingly, I do not find sufficient evidence in this record to conclude that discrimination on the basis of disability played any significant part in the 2024 promotional bypass decisions.

Procedural Issue

Finally, the Appellant claims that, because his receipt of the bypass letters was not timely, the bypasses were not valid. It is clear that the Respondent did not provide the bypass letters to the Appellant at the same time as those letters were provided to HRD; the first bypass letter was not sent to the Appellant until 15 days later and the second bypass letter not until 41 days later. The Respondent should be aware that it is a best practice for bypass letters to be promptly issued and simultaneously sent to both HRD as well as the impacted civil servant. However, I do not find that there was any material prejudice to Appellant as a result of the delayed receipt by him of the bypass letters. Appellant was still able to file appeals of those bypasses within the timeframe set forth in the law, which he did, and he does not allege that his late receipt of the letters impacted his ability to present his case in any way.²⁷ While the Respondent did commit a misstep in not providing the bypass letters to the Appellant in a timelier fashion, I find that error to be harmless.

April 2024 Bypass in favor of James Renaudette

The reasons the Respondent WPC gave in their April 10, 2024 bypass letter were valid and defensible. Renaudette had a similar amount of time on the job as the Appellant, but he has also spent many years as a detective and had developed significant expertise in the area of drug and narcotic enforcement and mutually beneficial relationships with other law enforcement agencies as a result. Illegal drug trafficking is an area of growing concern in Westfield, and it is

²⁷ Furthermore, the Respondent is not now relying on any reasons for bypass that it did not already state in its bypass letter. There is no issue here of potential *post hoc* rationalizations or a failure of the Respondent to create a contemporaneous record of its true reasons for bypass. Indeed, unlike what happened in the case of *Otero v. City of Lowell, et al.* (Middlesex Superior Court civil action no. 1681CV03429), as cited by the Appellant, the Respondent memorialized its bypass reasons the *same day* that the WPD's bypass votes occurred in a letter to HRD.

reasonable to believe that Renaudette's knowledge and experience in this area, bolstered by a master's degree in criminal justice, would be particularly valuable to the Respondent.

Renaudette's experience writing successful warrants was important to the Respondent and differentiated him from the other candidates, and I do not find that importance to have been overstated or misplaced. While WPD patrol officers and sergeants do not currently write warrants on a regular basis, this was identified by witnesses as an area that the Respondent would like to improve, and Renaudette's experience would be invaluable in helping to train officers under his command, both in writing warrants but also in addressing questions in the field related to investigations. The fact remains that Renaudette has specialized training that the Respondent deems important for the sergeant position, and the Appellant does not. See *Carnes v. Norwell, supra* ("an appointing authority may bypass a candidate for positive reasons, as when one police candidate obtains specialty training and assumes specialty responsibilities that another candidate has not.").

According to the WPD panelists, Renaudette also performed better in the March 7 interview. While there is some subjectivity to this determination, the fact that all six of the panelists ranked Renaudette as performing either best or second best out of the three relevant candidates tends to show that those assessments were based on reasonable and defensible impressions of his interview. See *O'Toole v. City of Lynn*, 35 MCSR 417 (2022) ("interviews have an inherently subjective nature; that characteristic is insufficient to delegitimize the promotional process."). While, as discussed above, I do find that there was some inappropriate personal bias on the part of two of the assessment participants that may have influenced their evaluations of the Appellant, even if one were to remove from the final scores those submitted by Capt. Dickinson and Lt. Ragazzini (for potential bias reasons) and the scores issued by Sgt.

Mejias (simply because she scored the Appellant much lower than the other candidates), the remaining three internal assessors (about whom no personal bias has been claimed) scored Renaudette a total of 283 points and the Appellant only a total of 242 points. Performance during an interview scored by a large panel of assessors, where identical questions are posed to every candidate and a common scoring matrix is in use should be accorded considerable weight by any reviewer. In this case, the Appellant's relatively much poorer performance may not have been the primary reason for the bypass of him in favor of Renaudette, but it was something substantial that legitimately differentiated the candidates.

Based in part on my own observations, I credit consistent testimony from the three WPC commissioners and the WPD Chief bolstering their conclusion that Renaudette is an especially accomplished, hard-working,²⁸ and competent police officer. While Renaudette and the Appellant had many similar qualifications that made them both eligible for promotion, the fact that the objective assessors scored the Appellant more than 40 points lower than Renaudette, together with the results of the WPC commissioners' due diligence, and coupled with all the other reasons cited by the Respondent for the positive bypass, cumulatively suffice to support the determination that, notwithstanding the troubling concerns about possible bias, favoritism, and harassment, the Respondent had reasonable justification to bypass the Appellant in order to promote Renaudette.

²⁸ In addition to the WPC commissioners' sworn statements I quote in the Findings above, I credit as an honest assessment Chief Pitoniak's testimony that, in his estimation, Renaudette's work ethic in the decade or so prior to the bypass vote must be rated overall more highly than the Appellant's. Chief Pitoniak added, however, that he perceives the Appellant as having turned a corner in recent months such that he is now once again (as he did when he was an effective sergeant) contributing on all four cylinders. (*Pitoniak testimony*)

May 2024 Bypass in favor of Sean Smith

By contrast, the justifications offered by the WPC in their May 1, 2024 letter announcing that they were reaching down the eligible list to elevate a candidate who scored measurably less well than the Appellant do not stack up under close scrutiny. First, however, I must give the Appellant's final competitor, Sean Smith, his due as he does, like the Appellant, possess fine credentials. Smith clearly possesses some specialized knowledge and expertise in the area of training in law enforcement; his experience as a police academy instructor was highlighted by the Commissioners as being an especially important justification for the bypass. Smith also had served as a SWAT team member, and his positive rapport with recruits also was cited (albeit not in the bypass letter) as a reason for his promotion.

But the Appellant's *actual*, and largely effective, service as a sergeant *for over four years* detracts significantly from the Respondent's attempt to state a positive case for its second bypass decision. The Appellant had far more experience than Smith in performing the essential functions of a police sergeant—among them, for example, overseeing the booking and processing of many more arrestees. As both Sgt. Florek and Sgt. Saunders testified, the Appellant's many years of service as a field training officer puts him at least in the same ballpark as Sgt. Smith in terms of training expertise. Apart from commencing service the year before as a lead instructor at the Western Mass. Police Academy, Smith never held any leadership position (even as officer-in-charge of a specialized unit) before being promoted. Smith never served in the military, in contrast to the Appellant's years of service as a team leader. The Appellant served many years as officer in charge of specialized departmental

units.²⁹ It would be unreasonable, too, not to give weight to the Appellant's service as Chair of a municipal select board and *de facto* police commissioner. Finally, the Appellant's superior performance on the competitive promotional examination, besting his last rival by four points,³⁰ should have been accorded considerable weight.

Several other factors prevent me from concluding that the WPC had reasonable justification for bypassing the Appellant for promotion last May. First, the heavy cloud of favoritism and possible age-based discrimination render it more likely than not that the Appellant was not competing on an even playing field when it came to the third promotional appointment made on May 1, 2024.

Second, the very short written assessments of the competing candidates that Capt. Dickinson submitted to the three WPC commissioners just prior to their vote materially prejudiced the Appellant. In short, the record evidence does not sustain Capt. Dickinson's statement (*Resp. Exh. F*) that "Officer Jason Perron does not interview well so he does not answer questions accurately."

Moreover, I strongly agree with Judge Velis's opinion that the WPD's internal assessment process could be much improved.³¹ One of the March 7 assessors, Lt. Kane,

²⁹ While, like the Appellant, Smith was indisputably an accomplished patrol officer, his tenure at the WPD as of May 2024 was markedly shorter than the Appellant's (albeit, at almost 15 years, not inconsiderable).

³⁰ The Appellant also scored better than Smith on the state-administered promotional examination both took some four years ago.

³¹ Added to what I outline above, I will briefly recapitulate here findings indicating that the internal assessment process was not entirely fair to the Appellant. Most significant is the false statement given to the WPC commissioners that the Appellant did not answer the questions posed to him on March 7. Additionally, I point to the overly cursory summary of interview performances shared with the WPC commissioners; the incomplete guidance given to the interviewees; the arithmetic errors in tallying the candidates' overall scores; the probable bias of a couple of assessors; and the fact that the March 7 interviews were not recorded.

testified that the interview questions designed to distinguish an outstanding from merely a good promotional prospect could be significantly sharpened. The assessment reports shared with the WPC commissioners should convey much more than simply the relative rankings of the competing candidates and a mere three sentences about each candidate's interview performance. A second commanding officer should review all of the interview paperwork to ensure that the written assessments shared with the WPC commissioners fairly and accurately reflect the feedback of all internal assessors.

Finally, because the WPD's internal interviews were not recorded, I am unable to defer as readily to the internal assessors who rated Smith's communication skills higher than the Appellant's. Over the course of three days, I witnessed an Appellant, acting *pro se*, who quite skillfully examined or cross-examined over a dozen witnesses.

Of the 15 witnesses who testified during the evidentiary hearings last fall, I found the testimony offered by Commissioner Velis to be the most impartial and persuasive. Objectively viewed, Commissioner Velis continues, to this day, to adjudge the Appellant the most qualified of the candidates under consideration last May. Based on my own observations over the course of three days, this retired judge's laudatory assessment of the Appellant's talents and qualities rings true to me.

Chief Pitoniak's testimony echoed some of the very positive things that Judge Velis had to say about the Appellant's character and admirable personal attributes. Of note, Chief Pitoniak testified in effect that the Appellant is naturally cut out to be a sergeant. While lamenting that the Appellant seemed to have lost some of his energy and commitment after electing to take a voluntary demotion back in 2012 and, yes, it took him awhile to get back into full gear, the

Chief made a point of testifying that, in recent months, the Appellant has been making the kinds of important contributions to the Department of which he has proven historically capable.

For these reasons, I recommend that the Civil Service Commission afford the Appellant the “traditional” form of civil service relief awarded in bypass cases; namely, an extension of his uppermost perch on the current list of candidates eligible to be promoted to sergeant within the WPD.³² *See, e.g., Bergeron v. Town of Falmouth*, 29 MCSR 546, 548 (2016). In short, the combination of (1) the troubling evidence of favoritism and bias in this record, (2) evident shortcomings in the assessment process, and (3) objective indicia that the Appellant could be viewed (and indeed *was* viewed by one commissioner) as better credentialed than the second officer who bypassed him for promotion, leads me to recommend that the Commission order that the Appellant’s name remain atop both the current and any future certification for WPD sergeant until such time as he has received fair consideration for the next sergeant vacancy in the WPD. Upon the next vacancy for sergeant, the Appellant should not be bypassed absent reasonable justification. Should similar problems taint the next sergeant selection process, which ought to be quite unlikely if the WPC commissioners take this decision to heart, the Appellant should be permitted to pursue another bypass appeal before this Commission.

CONCLUSION

In sum, the process by which the WPC Commissioners arrived at the decision to bypass the Appellant a second time was seriously flawed. Some of the reasons cited therefor –

³² In his proposed decision, the Appellant asks for relief in the form of not only a retroactive appointment to the position of WPD sergeant but also: “(1) Back pay at the rank of sergeant starting April 13, 2024 [the effective date of Sgt. Renaudette’s promotion]; (2) Front pay until a position of sergeant is vacated or created; [and] (3) Seniority dated back to April 13th, 2024.” The findings I have made would not sustain this type of more extraordinary relief.

particularly the interview performances and candidate appearances – appear to be tainted by bias. Key criteria appear to have been undervalued. That said, no one should doubt that both Renaudette and Smith were well-qualified candidates. The evidence presented in this record would be supportive of their advancement based upon their qualifications, interview performance, and unique expertise. Nevertheless, for the reasons articulated above, the WPD’s May 1, 2024 decision to bypass Jason M. Perron for promotion to the position of Sergeant should not be affirmed. Instead, I recommend that the consolidated appeal filed under Docket No. G2-24-083 be *allowed* to the limited extent that the relief outlined above should be granted.³³

Civil Service Commission

/s/ Robert L. Quinan, Jr.
Robert L. Quinan, Jr.
General Counsel and Presiding Officer

April 3, 2025

Copies to:

Jason M. Perron (Appellant)
Erik Valdes, Esq. (for Respondent)

³³ Based on all the record evidence, I have formed a quite favorable impression of the Appellant and I sincerely respect his talents and accomplishments. Even before another sergeant vacancy arises in the WPD, I hope that WPD leadership will find ways to fully tap the Appellant’s considerable skills, knowledge, and abilities – perhaps through new specialized assignments.