

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JASON PERSAMPIERI,
JONATHAN SPRAGUE,
ROBERT SCHROEDER II,
Appellants

v.

Case Nos. B1-13-236 (Persampieri)
B1-13-237 (Sprague)
B1-13-239 (Schroeder)

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellants:

Scott W. Dunlap, Esq.
89 Access Road, Suite 19
Norwood, MA 02062

Appearances for Respondent:

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

Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellants, Jason Persampieri (“Mr. Persampieri”), Jonathan Sprague (“Mr. Sprague”), and Robert Schroeder II (“Mr. Schroeder”), (collectively “Appellants”) filed timely appeals with the Civil Service Commission (“Commission”) against the state’s Human Resource Division (“HRD” or “Respondent”), contesting HRD’s decision not to grant Education and Experience (“E&E”) credit to the Appellants for their experience as Northeastern University Campus Police Officers for the

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

administration of the 2013 entry-level “Police Officer – Cities & Towns and MBTA Transit Police – Trooper, Massachusetts Department of State Police” exam.

A pre-hearing conference was held on December 3, 2013 at the offices of the Commission, at which the Appellants moved to consolidate their cases in view of the sufficient common issues therein. The Respondent had “no serious objection” to the request and the Appellants’ request was granted.² A full hearing was held on February 10, 2014 at the same location.³ The witnesses were not sequestered.⁴ The hearing was digitally recorded; the parties were provided with copies of the recording and the Commission retained a copy of the recording.⁵ The parties submitted recommended decisions on or about March 14, 2014. For the reasons stated herein, the appeals are denied.

FINDINGS OF FACT

Based on the twelve (12) exhibits entered into evidence⁶, the stipulations of the parties, the testimony of:

Called by HRD:

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

² HRD requested that the instant appeals be consolidated with two appeals from campus police officers from another campus, to which the instant Appellants objected and HRD’s request was denied. However, the hearings for all five (5) cases were conducted on the same day. *See* n. 3.

³ In order to address the consolidation of these three appeals, as well as the common issues underlying the appeals of campus police at another university that were not consolidated with the instant appeals, HRD presented its case in chief first regarding each Appellant and each Appellant was afforded the opportunity to examine HRD’s witness. Following HRD’s case, the instant Appellants presented their cases, following which the campus police from another campus presented their cases. *See* decisions issued the same date as the instant decision: Verderico v HRD, Docket No. B1-13-254, and Maurice v HRD, Docket No. B1-13-265). Although Mr. Verderico and Mr. Maurice asked that their hearings be consolidated, they requested that the Commission issue them separate decisions.

⁴ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR ss. 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

⁵ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion.

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

Called by the Appellants:

- Jason Persampieri, Appellant, Northeastern University, Campus Police Officer;
- Jonathan Sprague, Appellant, Northeastern University, Campus Police Officer;
- Robert Schroeder, II, Appellant, Northeastern University, Campus Police Officer;

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

1. The Appellants took the 2013 entry-level exam, entitled “Police Officer – Cities & Towns and MBTA Transit Police – Trooper, Massachusetts Department of State Police” exam (or “2013 exam”), and requested E&E credit for their experience as Northeastern University campus police officers. (Testimony of Appellants; Exs. 8, 12 and 14⁷; Administrative Notice (at prehearing conference, parties agreed there are no jurisdictional issues regarding these appeals⁸) The 2013 exam was for those who wished to apply for full-time positions and for those interested in part-time/reserve municipal police positions. (Testimony of Ms. Caggiano)
2. The exam announcement/job bulletin for the 2013 exam contains the following:

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

⁷ I note that Exhibit 14, which is HRD’s letter denying Mr. Schroeder’s request that HRD review its initial denial of his E&E request does not inform Mr. Schroeder of the ability to appeal HRD’s determination to the Commission.

⁸ Although there is no HRD document in the record indicating that it denied Mr. Sprague’s request for E&E credit, and in view of Mr. Sprague’s credible testimony in this regard, I understand that HRD denied Mr. Sprague’s E&E request.

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

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

3. The exam announcement/job bulletin for the 2013 exam also contained a Supplemental Questionnaire section. Number four (4) of this questionnaire states, in full:

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

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

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

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

the page including your exam results. All appeals must be filed in writing; no appeal telephone calls will be accepted. No new information can be submitted on appeal; only clarifying information relative to the experience you originally claimed can be considered during the appeal process.

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

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

(Ex. 8)(emphasis in original)

4. In addition to processing E&E credit requests, HRD processes other matters on the exams, such as veterans’ preferences, preferences for children of Police Officers/Firefighters who were killed or sustained injuries resulting in death while on duty, residency preferences, racial/ethnic preferences where applicable under a federal court consent decree and selective certification for bilingual police officers. (Ex. 8; Testimony of Ms. Caggiano)
5. Approximately 16,000 people applied to take the 2013 exam. This is the highest number of applicants for this exam that HRD has ever received. (Testimony of Ms. Caggiano)
6. Applicants for the 2013 exam were required to sign the exam application online indicating that they understood the information therein. (Testimony of Ms. Caggiano)
7. All of the applicants for the 2013 exam applied online and were provided the Supplemental Questionnaire. (Testimony of Ms. Caggiano)
8. HRD administered the 2013 exam on or about June 15, 2013. The exam was originally scheduled for April 20, 2013 but had to be postponed as a result of the Boston Marathon bombing. (Ex. 8; Testimony of Ms. Caggiano)
9. At pertinent times, there was one (1) employee at HRD assigned to make E&E determinations on the 2013 exam. Assessing applicants’ E&E credits was only part of this employee’s assignment at HRD. (Testimony of Ms. Caggiano)

10. HRD restricted E&E credits to candidates with *municipal police experience only* on the 2013 exam. HRD's reasoning for this included HRD's interest in streamlining the exam while providing a fair playing field, being able to communicate the change regarding E&E credit to all applicants since 100% of them registered online, knowing that there are numerous jobs, such as campus police, in which applicants may perform some of the duties of municipal police officers and they may or may not exercise all police powers, and based on HRD's limited resources. (Testimony of Ms. Caggiano)
11. In 2006, HRD contracted with EB Jacobs, a consulting company, which designs employment examinations and performs other human resource-related functions. EB Jacobs prepared for HRD a document entitled, "Massachusetts PD – Police Officer Task Survey Analysis – Police Officer Essential Task" ("Essential Police Tasks"), which lists more than one hundred essential tasks. (Testimony of Ms. Caggiano; Exhibit 9)
12. In addition to campus police officers, HRD also denied E&E credit to parole officers (who are armed in the field), environmental police officers, State Troopers and Sheriffs on the 2013 exam. (Testimony of Ms. Caggiano)
13. HRD's policy not to award E&E credit to non-municipal police officer applicants on the 2013 exam was consistently applied. (Testimony of Ms. Caggiano)
14. On entry-level police civil service exams, the written exam is worth 100% of each applicant's score and E&E credit can provide a 10% bonus if the applicant passes the exam. For each month of eligible full-time service/experience, qualified applicants receive 0.2 points, which is added to their total score. (Testimony of Ms. Caggiano)
15. The E&E component is scored differently on promotional police civil service exams than it is on entry-level exams. The written exam for promotions is worth 80% of the applicant's score while the E&E component is worth 20% of the score. For part-time municipal police

experience, the bonus is pro-rated. Although campus police officers do not receive E&E credit for their campus police experience on entry-level exams, they receive it on promotional exams. (Testimony of Ms. Caggiano)

16. The exam titles for the exams given between 2001 and 2011 were:

- 2001 – “Police Officer - Municipal Service and Massachusetts Bay Transit Authority” (MBTA)”,
- 2003 – “Police Officer - Municipal Service and MBTA”,
- 2005 – “Police Officer - Municipal Service, Boston Municipal Police, and MBTA”,
- 2007 – “Police Officer - Municipal Service and MBTA”,
- 2008 – “Police Officer - Municipal Service and MBTA”,
- 2009 – “Police Officer - Cities and Towns and MBTA Transit Police - Trooper, Massachusetts Dept. of State Police”, and
- 2011 - “Police Officer – Municipal Service and MBTA”.⁹

(Exs. 1 – 7)

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

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

(Ex. 1)(emphasis added)

18. Similar wording regarding credit for employment and/or experience as a police officer appeared in the 2003, 2005, 2007, 2008, 2009 and 2011 exam announcements/job bulletins. However, there were some modifications to the wording. For example, the 2007 exam did

⁹ The State Police hiring process does not involve civil service. See G.L. c. 22C.

not allow credit for experience as a member of a state-run transit police force and added that credit is not available unless candidates first passed the written exam and could not be added to a failing score. The 2008 exam also stated candidates must pass the exam to be considered for E&E credit. The 2009 exam application was online, it did not allow credit for experience as a member of a state-run transit police force and it stated that candidates must pass the exam to be considered for E&E credit. The 2011 exam stated that information for requesting E&E would be available on a specific website after April 1, 2011, it did not allow credit for experience as a member of a state-run transit police force and it stated that E&E documentation must be submitted at the exam or mailed and postmarked within seven days of the exam.¹⁰ (Exs. 2-7)

Mr. Persampieri

19. Mr. Persampieri lives in Randolph and has worked at Northeastern University since May 2006. (Testimony of Mr. Persampieri; Ex. 12)
20. Mr. Persampieri completed the MBTA Police Academy on May 2, 2003. His training at the MBTA Police Academy consisted of 800 hours¹¹ of training. He has had a significant number of trainings in addition to his training at the MBTA Police Academy, for example, on bicycle patrolling, self-defense training, and training online. (Testimony of Mr. Persampieri; Ex. 12¹²) However, Mr. Persampieri did not provide HRD with information about the added trainings in support of his request for E&E credit. (Administrative Notice; Ex. 12; Testimony of Caggiano)

¹⁰ HRD's process for recognizing veterans' preference status on the exam has also changed to reflect technical changes in related state and federal law such that it now accepts additional documentation of veteran status, not just the DD214 form relied upon exclusively before this. (Testimony of Ms. Caggiano)

¹¹ At forty hours per week, an 800 hour training session equates to twenty (20) weeks.

¹² The Commission gives no weight here to trainings occurring after the 2013 exam.

21. Police officers from some towns attended the same police academy as Mr. Persampieri. As a campus police officer, Mr. Persampieri cannot transfer to a municipal police department.¹³ If Mr. Persampieri was to be hired by a municipal police department, he would have to attend a police academy again. (Testimony of Mr. Persampieri)
22. As a campus police officer at Northeastern University during the previous year, Mr. Persampieri testified that he has performed field sobriety tests, impounded cars twice, assisted in investigations that led to the issuance of warrants, secured crime scenes and processed controlled substances. Mr. Persampieri has responded to domestic violence matters, he may have filed one or two reports regarding child abuse in the last year, he has made many arrests, the vast majority of which were misdemeanors, and he inspected controlled substances to identify them. (Testimony of Mr. Persampieri; Ex. 12)
(Administrative Notice)
23. In the past year, Mr. Persampieri has not performed certain of the Essential Police Tasks. For example, he has not communicated/negotiated with a hostage-taker; he has not been involved in a high-speed pursuit, which is against Northeastern University policy; he has not applied for an arrest or search warrants; and in the event of a murder investigation on Northeastern University grounds, the Boston Police Department would take the lead, while Northeastern University would assist in the investigation. (Testimony of Mr. Persampieri; Ex. 9)
24. Mr. Persampieri received E&E credit for his experience as a campus police officer when he requested it for the 2007 and 2011 exams. (Testimony of Mr. Persampieri; Exs. 4 and 7)

¹³ Mr. Persampieri testified that he was a police officer in the town of Paxton (a non-civil service community) in 2004 and that he had been in the Brockton Park Department Police. There is no information in the record indicating whether Mr. Persampieri requested E&E credit for such experience.

25. By letter dated April 17, 2013, the Northeastern University Chief of Police and Director of Public Safety wrote,

This is to confirm that Officer Jason Persampieri has been employed as a full-time Northeastern University Police Officer since May 2006.

Officer Persampieri is a graduate of the full-time MBTA Police Training Academy and holds a commission as a Special State Police Officer in accordance with MGL Chapter 22C, Section 63, and as a Deputy Sheriff in Suffolk County.

Officer Persampieri is assigned as a uniformed patrol officer with responsibility for **patrolling the Northeastern University campus and adjoining neighborhoods** to prevent theft, trespass, vandalism and other violation of the Massachusetts General Laws, to investigate incidents, arrest violators, testify in court and perform other duties necessary to protect the lives, safety and property of the students, staff and guests of the University.

(Ex. 12)(*see also* Testimony of Mr. Persampieri)¹⁴ I infer that this document was

submitted to HRD on behalf of Mr. Persampieri's request for E&E credit in a timely manner.

26. In a notice dated October 16, 2013, HRD informed Mr. Persampieri that he had passed the exam but that his E&E claim on the 2013 exam was denied "... because the submitted employment/experience is not in the examination title (municipal Police Officer). ..."

12) This notice also states, in part,

Chapter 31, Sec. 22 of the M.G.L. provides that you may submit in writing a request for a review of the scoring of your employment/experience to: Human Resources Division, Test Administration Unit, One Ashburton Place, Room 301, Boston MA 02108. Your request must be postmarked no later than 17 calendar days after the original issuance of this notice. No new claim(s) may be submitted at this time, and only additional clarifying information specific to a claim made prior to the statutory deadline will be reviewed.

Your written request for review must include specific information about all employment/experience to be credited. Include supporting documentation as directed in the original employment/experience instructions. Please indicate the title of the examination, your Person ID, and a daytime telephone number. All requests must be in writing. Telephone inquiries cannot be accepted.

SPECIAL NOTE REGARDING EMPLOYMENT/EXPERIENCE CLAIMS: Please be sure to log in to your account to review the application you submitted for this

¹⁴ This letter is addressed to "Massachusetts Civil Service Commission – Boston, MA", not HRD. It does not appear that the Commission received it through the mail. If the Commission had received it, the Commission would have forwarded it to HRD. HRD does not aver that it did not receive this letter.

examination, including all instructions and requirements regarding employment/experience claims, prior to submitting any appeal regarding these claims. To log in: Go to <http://agency.governmentjobs.com/massachusetts>; Click “Applicant Login” on the left, Log in to your account: Click the tab labelled “Application Status”; Click “View” in the row corresponding to your 130420PoliceOfficer&Trooper application. (sic)

(Id.)(emphasis in original)

27. In response to Mr. Persampieri’s apparent request for review of the denial of the E&E request, HRD reviewed his E&E score and informed Mr. Persampieri, via an email message dated November 21, 2013, that, “ ... Your Employment/Experience Claim was denied because the submitted employment/experience is not in the examination title (municipal Police Officer). ...”(Ex. 12)¹⁵

28. Mr. Persampieri subsequently filed a timely appeal at the Commission on October 28, 2013. (Administrative Notice)

Mr. Sprague

29. Mr. Sprague is a resident of Boston and has been a campus police officer at Northeastern University since July 2010. (Testimony of Mr. Sprague)

30. Mr. Sprague completed training at the State Police academy on June 18, 2010. In addition, he has attended a number of other trainings, regarding, for example: firearms, bike patrol and concealment of firearms. (Ex. 13; Testimony of Mr. Sprague) Mr. Sprague did not provide documents of these additional training sessions to HRD in support of his E&E request. (Administrative Notice).

31. As a Northeastern University campus police officer, Mr. Sprague made approximately a dozen arrests between September 1, 2010 and the 2013 exam; all but one of these arrests were misdemeanors. Mr. Sprague made only one arrest in 2012 in part at least because he

¹⁵ The November 21, 2013 email message does not inform Mr. Persampieri that he may appeal HRD’s review decision to the Commission.

was not working for a period of time. He has assisted in an operating under the influence case, participated in crime scene investigations, secured evidence and helped canvas witnesses. (Testimony of Mr. Sprague; Ex. 13)

32. In the past year, Mr. Sprague has not performed certain of the Essential Police Tasks. For example, he has not prepared any arrest or search warrants; assisted in the recovery of a vehicle; communicated and negotiated with a hostage taker; responded to any reports of child abuse or prepared a warrant for a judge. Since Northeastern University does not have a holding cell, its campus police officers do not operate one; instead, they transport arrestees to a Boston Police Department facility. (Testimony of Mr. Sprague)

33. Mr. Sprague is not aware of all the duties of all campus police officers. He acknowledges that some campus police officers do not carry firearms and that Northeastern University also has security officers who work in conjunction with the Northeastern Police. He testified that E&E determinations should be made on a case by case basis. Prior to being a campus police officer, he was a campus security officer and he worked as a dispatcher, which he still does on occasion. (Testimony of Mr. Sprague)

34. Mr. Sprague has a license to carry firearms (Class A Large Capacity) that was issued on July 21, 2010 and expires on June 13, 2016. He carries a firearm every day at work but he knows that some campus police officers do not. Mr. Sprague is also a certified Emergency Medical Technician. (Ex. 13; Testimony of Mr. Sprague)

35. If Mr. Sprague were to be hired by a municipal police department, he would be required to attend a police academy again. (Testimony of Mr. Sprague)

36. Mr. Sprague read the 2013 exam announcement (Ex. 8) and the Supplemental Questions on it. (Testimony of Mr. Sprague)

37. By letter dated June 17, 2013, the Northeastern University Chief of Police and Director of Public Safety wrote,

This is to confirm that Officer Jonathan Sprague has been employed as a full-time Northeastern University Police Officer since July 2010.

Officer Sprague is a graduate of the Special State Police Recruit Academy and holds a commission as a Special State Police Officer in accordance with MGL Chapter 22C, Section 63, and as a Deputy Sheriff in Suffolk County.

Officer Sprague is assigned as a uniformed patrol officer with responsibility for **patrolling the Northeastern University campus and adjoining neighborhoods** to prevent theft, trespass, vandalism and other violation of the Massachusetts General Laws, to investigate incidents, arrest violators, testify in court and perform other duties necessary to protect the lives, safety and property of the students, staff and guests of the University.

(Ex. 13)(emphasis added)¹⁶ This letter was sent with his exam. (Testimony of Mr. Sprague)

38. In a notice dated October 16, 2013, HRD informed Mr. Sprague that he had passed the exam but that his E&E claim on the 2013 exam was denied “ ... because the submitted employment/experience is not in the examination title (municipal Police Officer). ...”

(Administrative Notice (attached to Mr. Sprague’s appeal filed at the Commission)) The notice included the same references to G.L. c. 31, s. 22 and instructions to appeal the E&E score to HRD as was sent to Mr. Persampieri noted above.¹⁷ (Id.) Mr. Sprague had taken a previous exam and received E&E credit for his experience as a campus police officer.

(Testimony of Mr. Sprague)

39. Mr. Sprague subsequently filed a timely appeal at the Commission on October 29, 2013.

(Administrative Notice) .

¹⁶ This letter is similar to the letter sent for Mr. Persampieri except that the dates of hire are different and the training cited is different. As with the letter for Mr. Persampieri, the letter to Mr. Sprague is addressed to “Massachusetts Civil Service Commission – Boston, MA”. It does not appear that the Commission received it through the mail; if the Commission had received it, the Commission would have forwarded it to HRD in a timely manner). HRD does not aver that it did not receive this letter.

¹⁷ There is no document in the record of Mr. Sprague asking HRD to review its denial of his E&E request and that, upon review, HRD again denied the request. However, HRD does not aver that the Commission lacks jurisdiction regarding Mr. Sprague’s appeal based on his alleged failure to ask HRD to review its decision.

Mr. Schroeder

40. Mr. Schroeder is a resident of Swampscott. He worked at Northeastern University as an unarmed security officer beginning August, 2004. Mr. Schroeder's work as a security officer included working as a dispatcher, a function which he still performs on occasion. As of June 2006, Mr. Schroeder has been employed as a campus police officer at Northeastern University. (Testimony of Mr. Schroeder; Ex. 14)

41. Mr. Schroeder graduated from the Special State Police academy in June 2006, having completed fourteen (14) weeks of training. (Ex. 14) He has taken additional training on various subjects, such as bike patrol, defense tactics, online State Police training and legal updates. (Testimony of Mr. Schroeder) Some of his training occurred when he was a security officer (Testimony of Mr. Schroeder), which I give no weight. Mr. Schroeder did not provide information about this additional training to HRD in support of his request for E&E credit. (Administrative Notice)

42. By letter dated April 17, 2013, the Northeastern University Associate Director-Captain wrote,

This is to confirm that Officer Robert D. Schroeder II has been employed as a full-time, Police Officer at Northeastern University since June 2006. He is a graduate of the full time Special State Police Academy SSPO #17 and holds full police powers from the Massachusetts' (sic) State Police and is also a sworn Suffolk County Sherriff's Deputy as well. His duties, taken in part from the job description for a Northeastern University Police Officer, include but are not limited to the following; **patrolling all buildings and grounds belonging to the University throughout the Commonwealth** to prevent crime, thefts, trespass, vandalism and/or violations of General Laws of the Commonwealth in accordance with C. 22C s/s 63, make arrests, and respond to fire alarms and emergency medical calls in, upon or surrounding the campus.

(Ex. 13)(emphasis added)¹⁸ This letter was sent with his exam. (Testimony of Mr. Schroeder)

43. As a Northeastern University campus police officer, Mr. Schroeder has made five (5) arrests from 2010 to the 2013 exam. He has also participated in investigations and secured evidence. Mr. Schroeder responded to one domestic violence incident and placed someone in protective custody. Mr. Schroeder has testified in court before a clerk magistrate with respect to a misdemeanor. (Testimony of Mr. Schroeder; Ex.)

44. In the past year, Mr. Schroeder did not perform certain of the Essential Police Tasks. For example, he did not apply for any arrest or search warrants as a Northeastern University campus police officer. While he has conducted vehicle stops, none of these stops involved searching for contraband or conducting field sobriety tests. Mr. Schroeder has not been involved in a high-speed pursuit, which is against Northeastern University policy. Mr. Schroeder has not negotiated with a hostage taker. In addition, Mr. Schroeder has not referred anyone to social services, nor has he responded to any reports of child abuse. (Testimony of Mr. Schroeder)

45. Mr. Schroeder has a license to carry firearms (Class A Large Capacity) that was issued on July 25, 2011 and expires on July 25, 2017. (Ex. 14)

46. As a campus police officer, Mr. Schroeder would not be able to transfer to a municipal police position without attending the police academy again. (Testimony of Mr. Schroeder)

¹⁸ This letter is similar to the letter sent for Mr. Persampieri except that the dates of hire are different and the training cited is different. As with the letter for Mr. Persampieri, the letter to Mr. Sprague is addressed to “Massachusetts Civil Service Commission – Boston, MA”. It does not appear that the Commission received it through the mail; if the Commission had received it, the Commission would have forwarded it to HRD in a timely manner).

47. Mr. Schroeder does not know the responsibilities of every campus police officer. He states that if a campus police officer does 50% of municipal police work, that campus police officer should not be entitled to E&E credit. (Testimony of Mr. Schroeder)
48. Mr. Schroeder read the 2013 exam announcement (Exhibit 8) and the Supplemental Questions on it regarding E&E credit for municipal police experience. (Testimony of Mr. Schroeder)
49. In a notice dated November 21, 2013, HRD informed Mr. Schroeder that he had passed the exam and that, following a review of its initial decision denying his E&E request, his request was denied again because “the submitted employment/experience is not in the exam title (municipal Police Officer).” (Ex. 14)¹⁹
50. Mr. Schroeder has taken this exam previously and received E&E credit for his experience as a campus police officer. (Testimony of Mr. Schroeder)
51. Mr. Schroeder timely appealed HRD’s decision to this Commission on October 30, 2013. (Administrative Notice)

DISCUSSION

Applicable Law

Pursuant to G.L. c. 31, § 2(b), the Commission has the authority to “hear and decide appeals by a person aggrieved by any decision, action, or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations. . . .” Furthermore, G.L. c. 31, § 2(b) states, in pertinent part: “No decision of the administrator involving the application of standards established by law or rule to a fact situation

¹⁹ The record does not include a document from HRD to Mr. Schroeder advising him of its initial denial of his request for E&E credit.

shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record.”

It is the fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Mass. Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001), *citing* City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration. . .” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1. “A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support.” Cambridge, 43 Mass.App. at 303 (internal citations omitted). In accordance with G.L. c. 31, § 2(b), the Commission must determine, based on the evidence before it, whether the appointing authority has sustained its burden of proving there was “reasonable justification” for the action taken. Cambridge, 43 Mass.App. at 303. “‘Justified,’ in the context of review, means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’” Id. at 304, *citing* Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928).

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

employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include **credits for elements of employment or experience related to the title for which the examination is held.**” PAR .06(c) (emphasis added). G.L. c. 31, s. 23 provides in part,

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

(Id.)

Under G.L. c. 31, § 24, an applicant may then appeal to the Commission from a decision of the administrator. While the first paragraph of G.L. c. 31, § 24 does not expressly list “training and experience” appeals, such appeals are referenced in the second paragraph of the statute as follows,

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

Id.²⁰

In O’Neill v. Civil Serv. Comm’n, 10-P-384 (February 15, 2011) (Rule 1:28), the Appeals Court ruling established that “a fair reading of the entire statute ‘indicated an intent by the Legislature that training and experience scores may be appealed under § 24. . . .’” Therefore, the Commission has jurisdiction to review HRD determinations regarding E&E credit on an exam.²¹

²⁰ At the hearing, the Appellants offered evidence of their training in support of their claims that their training is the same as that required of municipal police officers and it was admitted to assess those claims, not for the purpose of assessing HRD’s denial of the Appellants’ requests for E&E based on their training and experience as campus police officers. The Appellants also adduced evidence concerning their activities to aver that they also perform the same tasks as municipal police officers, which were considered similarly.

²¹ The second paragraph of G.L. c. 31, s. 24 states, in part, that “... the commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed

Police Authority Statutes

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

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

Id. (emphasis added)

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

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

Id. (emphasis added)

by the applicant at the time designated by the administrator.” Id. At the hearing, the Appellants offered evidence of the Appellants’ training in support of their claims that their training is the same as that required of municipal police officers and it was admitted for that purpose and not for the purpose of awarding E+E credit for training. Evidence of such training predating the 2013 exam was given appropriate weight and consideration in that regard.

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

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

Id. (emphasis added)

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

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

(B) 51 per cent of the police officers have completed a basic reserve/intermittent police officer training course approved by the municipal police training committee and have had at least 5 years experience issuing citations pursuant to this chapter; and

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

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

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

(f) a memorandum of understanding has been entered into with the police chief of the municipality wherein the state university or community college is located outlining the policies and procedures for utilizing the municipality's booking and lock-up facilities, fingerprinting and breathalyzer equipment if the state university

or community college police department does not provide booking and lock-up facilities, fingerprinting or breathalyzer equipment; and

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

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

Id.

HRD's Argument

It is HRD's position that it acted within its considerable authority and in accordance with civil service laws by limiting E&E credit on the 2013 exam to applicants claiming experience within the position title of municipal police officer. HRD claims that it "clearly and consistently put individuals on notice of the precise type of experience that would qualify an applicant for E&E credits for the 2013 entry-level examination." Respondent's Proposed Decision, p. 23. HRD submits that it applied this policy uniformly, adding that in addition to campus police, parole officers (who are armed in the field) and environmental police were also precluded from receiving E&E credit based on their jobs, and that it provided sound and sufficient reasons for the need to limit E&E credit. Specifically, HRD states that obtaining information for each campus police officer in this regard has become impractical given the volume of applicants, the varied authority each officer has on each of the many campuses in Massachusetts, the size and location of each campus and HRD's limited resources. If the Commission granted the Appellants' appeal, HRD avers that it would need to contact all 16,000 applicants to determine who else would be eligible for such credit, re-score the test and address the instances in which applicants had been hired on the basis of their original scores. To the extent that the Appellants aver that they perform the same tasks as municipal police officers, the

Respondent asserts that they do not perform all of the 2006 Essential Police Tasks. To the extent that the Appellants aver that they perform more police tasks than part-time and/or intermittent/reserve municipal police officers, who receive prorated E&E credit for their experience, the Respondent states that there is a valid distinction here, which is that intermittent/reserve municipal police officers are authorized regarding all aspects of law enforcement as full-time municipal police officers, whereas all campus police officers do not necessarily have the same authorization. Moreover, the Respondent asserts that the documents adduced by the Appellants at the hearing were not provided to HRD during its consideration of the Appellants' E&E requests and may not be considered here, pursuant to G.L. c. 31, s. 24. Finally, the Respondent states that although the Appellants did not receive E&E credit for the campus police training and experience, they can inform potential employers of their campus police experience when they are being considered for employment.

The Appellants' Argument

The Appellants contend that HRD's decision to exclude all campus police officers from obtaining E&E credit was arbitrary and capricious, in violation of basic merit principles since, they aver, they perform the same functions and have the same training as municipal police officers. The Appellants point to decisions by this Commission in which E&E credit was awarded to campus police officers for the 1999 exam, for example, in Stickney and Bonney v. HRD, 14 MCSR 40 (2001)(UMass. Lowell); Robinson and 4 Others v. HRD, 14 MCSR 38 (2001)(UMass. Amherst); Rudinski and 6 Others, v. HRD, 14 MCSR 48 (2001)(UMass. Worcester); Sweatland and 15 Others v. HRD, 14 MCSR 55 (2001)(Harvard University); and Chretien and 2 Others v. HRD, 14 MCSR 50 (2001)(UMass. Dartmouth); Figueiredo v. HRD, 14 MCSR 174 (2001)(MIT). In addition, at least Mr. Persampieri and Mr. Schroeder assert that they received E&E credit for their campus police experience on earlier exams. The Appellants

also state that their experience and training is the same as at least some municipal police officers and that it exceeds that of part-time, reserve and intermittent municipal police officers who were considered for pro-rated E&E credit on the 2013 exam. Further, they aver that they adduced detailed evidence at the hearing proving that their training and activities merit E&E credit and that HRD did not ask them for this information in determining their E&E credit requests. In addition, they state that it is inconsistent for HRD to grant E&E credit for campus police experience to municipal police officers taking promotional exams while HRD denies E&E credit to campus police officers taking the entry-level exam.

Analysis

Applying the law to these appeals, HRD has established by a preponderance of the evidence that it acted reasonably when it denied the Appellants E&E credit for their experience as campus police officers on the 2013 exam. As stated above, HRD is vested with considerable statutory authority to determine the passing requirements of exams. It has modified the exam announcement/application in the time period reviewed here (beginning with the 1999 exam). The 2013 exam announcement contains the following language: “individuals may apply to receive credit for employment or experience in the position title of *municipal Police Officer.*” Ex. 8 (emphasis added). Furthermore, the Supplemental Questionnaire on the April 2013 exam announcement expressly adds that applicants may claim experience they have had “**performing work ONLY as a Full Time, Reserve, or Intermittent Police officer in a municipal police department.**” Ex. 8 (emphasis in original). As all applicants, including the Appellants, were required to register for the exam online, they all received the same notice with regard to the E&E credit requirements. There is no evidence to suggest that HRD did not apply the revised E&E policy in a uniform and consistent manner; in fact the exclusion applied also to environmental police officers and parole officers (who are armed in the field) for the same

reason it was denied to campus police officers. The information that the Appellants provided to HRD in pursuit of E&E credit does not indicate that they had experience as a municipal police officer and, consequently, their requests for E&E were denied.

At the full hearing, the Appellants adduced certain evidence of their training and experiences as campus police officers in support of their requests for E&E credit. G.L. c. 31, s. 24 bars the Commission from allowing E&E credit “ ... unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.” Id. The Appellants did not provide that evidence to HRD when they first requested E&E credit for their experience, nor when HRD reviewed its E&E credit determinations. Therefore, this evidence was not admitted as additional evidence of the Appellants’ experience but to compare the experience and training of the Appellants as campus police officers with the experience and training of municipal police officers. However, this evidence indicated that the Appellants do not perform all of the essential police officer tasks, as noted above. Thus, even if this evidence had been admitted as further evidence of the Appellants’ experience, it would not have yielded a different result.

While some campus police officers may perform a significant number of municipal police officer tasks on their respective campuses and related areas, other campus police officers may not. In fact, the Appellants also reported some of the tasks they do not perform. Each campus police department may perform the same or different tasks and campus police officers at the same campus may perform different tasks from each other. For example, one of the Appellants sometimes serves as a dispatcher, which is usually a civilian position in municipal police departments. In addition, each campus police department may adopt different statutory authorities and each campus may report the exercise of that authority in a different format. Similarly, not all campus police officers receive the same initial training. Here, for example,

two of the Appellants initially trained at the Special State Police academy while the third Appellant received his initial training at the MBTA academy. Further, at the full hearing some of the training documents entered into the record were difficult to interpret. For example, Mr. Schroeder testified that there was an error on a document relating to his online training for autism awareness and Mr. Sprague testified that a “0%” marking on one of his training documents did not indicate that he had failed the course but that it was not a required training session. In addition, public university and college campuses are required to report annually that a minimum number of campus police officers have received certain training, suggesting that not all police on their campuses will have the same training. Further, HRD does not know if each college campus police department has been authorized by the college’s board of trustees to carry firearms or if the campus police department has entered a memorandum of understanding with the local municipal police chief regarding the policies and procedures for utilizing the municipality’s booking and lock-up facilities, fingerprinting and breathalyzer equipment if the campus does not have them. Such variations in tasks, training and conditions are not susceptible of reporting via the exam announcement form or even a supplemental form, rendering a fair assessment of what tasks campus police officers perform and their training impractical, especially in view of the number and diversity of colleges and universities in the state, the many thousands of exam applicants and the long list of essential police officer tasks. Two of the Appellants acknowledged that such information would require HRD to make E&E credit determinations on a case by case basis. Arguably, under the circumstances, awarding E&E to some campus police officers and not to others may violate basic merit principles as defined in G.L. c. 31, § 1.

The Appellants’ desires to have their campus police experience credited on their exams are understandable. They honorably perform a number of municipal police officer tasks,

receive certain training and they can face serious challenges on their campuses and related properties. Moreover, the Appellants each appeared to be honest and sincere, in addition to being dedicated officers, who earnestly seek the challenge of employment as a municipal police officer. However, campus police duties, authority, training and experience can vary from campus to campus. The Commonwealth is fortunate to have more than ninety (90) traditional colleges and universities within its borders with a wide range of features.²² They range in size from small to large, some of them are public institutions, some are private, some are located in urban settings, some are in suburban locations and others are in rural settings. The Appellants in the instant case work on a large, urban and private campus. They perform a number of municipal police tasks, albeit on a college campus and related areas, acknowledging that there are some municipal police functions that they do not perform or, if they perform them, they do so on a limited basis, and that they are not aware what tasks campus police perform on other college or university campuses. This decision should not be interpreted in any way to discredit or undervalue the work that campus police perform on every campus. However, given the large number of exam registrations, the variations between the numerous campus police departments in Massachusetts regarding campus police authorities, tasks and training and the applicable laws, and HRD's limited resources, it cannot be gainsaid that HRD's E&E determinations in the instant cases were arbitrary, capricious or an abuse of its considerable authority and discretion.

Rather than drawing an arbitrary line between the various campus police departments, HRD has exercised its considerable authority and equitably drawn the line at awarding E&E credit only for municipal police officer experience on the 2013 exam and applying the policy uniformly. That at least two of the Appellants received E&E credit in previous exams is not

²² I take administrative notice that there are approximately thirty (30) public colleges or universities in Massachusetts (www.mass.edu/system/campusdirectory.asp) and approximately sixty-five (65) private colleges and universities in the Commonwealth (www.colleges.usnews.rankingsandreviews.com).

dispositive. HRD has statutory authority with regard to exams, including determinations of credit for experience and training, which authority does not preclude the revision at issue here. That HRD permits E&E credit in police promotional exams, where proven, is not inconsistent with its approach regarding E&E credit on an exam for original appointment to the position of municipal police officer because by the time a municipal police officer seeks a promotion, she or he has actually performed the functions of a municipal police officer, in addition to having experience as a campus police officer. Further, it is not inconsistent for HRD to deny the Appellants' E&E credit request while providing E&E credit to intermittent/reserve or part-time municipal police officers, even if they have less initial training, because the latter have the same legal authority as full-time municipal police officers.

The Appellants' argument that the Commission decisions in 2001 regarding the 1999 exam announcement are binding here fails. While the appellants in the 2001 cases ultimately were awarded E&E credit, this was due to the generic use of the term "police officer" on the exam announcement and that the applicants also had "full police powers," which was expressly stated as a requirement for E&E credit on the 1999 exam announcement. The 2013 exam announcement provided otherwise. In addition, the 2013 exam announcement reflected the long list of essential police tasks which did not exist at the time of the 1999 exam.

Conclusion

For the foregoing reasons, the Appellants' appeals under Docket Numbers B1-13-236, B1-13-237, and B1-13-239, filed pursuant to the provisions of G.L. c. 31, § 2(b), are hereby ***denied.***

Civil Service Commission
/s/ Cynthia A. Ittleman

Cynthia A. Ittleman, Esq.
Commissioner

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

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Scott W. Dunlap, Esq. (for the Appellants)
Andrew Levrault, Esq. (for the Respondent)
Melinda Willis, Esq. (for the Respondent)