

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
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THOMAS V. RALPH,
Appellant

B2-17-072 (Dracut Police Chief Exam)
B2-17-073 (Oxford Police Chief Exam)
B2-17-238 (Webster Police Lieutenant Exam)
B2-18-220 (Webster Police Chief Exam)

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Sergeant Thomas V. Ralph, Pro Se

Appearance for Respondent, HRD:

Michael Downey, Esq.
Labor Counsel, Human Resource Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTIONS TO DISMISS

The Appellant, Thomas V. Ralph, currently a Police Sergeant with the Webster Police Department (WPD), appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§24, from the denial by the Massachusetts Human Resources Division (HRD) of his request for two additional training and experience points (for 25 years of service pursuant to G.L.c.31,§59) when scoring four civil service promotional examinations, specifically, the February 2017 examination for Dracut Police Chief (CSC No. B2-17-72); the February/March 2017 examination for Oxford Police Chief (CSC No.B2-17-073); the September 2017 examination for Webster Police Lieutenant (CSC No.B2-17-238); and the September 2018

examination for Webster Police Chief (CSC No. B2-18-220). All four appeals present the same issues of law.¹ They were consolidated for decision on Motions to Dismiss filed by HRD in each appeal, which the Appellant opposed. Some appeals may now be moot, but, the issue is clearly a continuing one that warrants a decision on the merits. For the reasons set forth below, the Commission concludes that the Appellant's claim to a Section 59 statutory preference is not well-founded and, as properly calculated, the Appellant's total years of service do not qualify for the Section 59 preference. Accordingly, HRD's Motions to Dismiss are allowed.

FINDINGS OF FACT:

Giving appropriate weight to the evidence and argument of counsel submitted and inferences reasonably drawn from the evidence, I find the following material facts to be undisputed:

1. The Appellant, Thomas V. Ralph, is a tenured police officer with the Webster Police Department (WPD), who currently holds the rank of permanent Police Sergeant. He began employment with the WPD in 1995 as a permanent intermittent police officer and became a regular, full-time police officer in 1996. He was promoted to Sergeant in 1999.

2. Sgt. Ralph's employment history prior to service with the WPD includes, in relevant part:

- March 1988 through June 1996 - Part-time Auxiliary Police Officer (16-20 hours/week) employed by the Town of Dedham Auxiliary Police Department
- July 1990 through July 1996 - Part-time Auxiliary (8 hours/week) and Special Police Officer (unspecified hours) employed by the Medfield Police Department
- May 1989 through February 1992 - Part-time Police Officer (16 or more hours/week) employed by the Suffolk University Police Department
- March 1992 through March 1993 - Full-time Campus Police Officer employed by the University of Massachusetts (Lowell)
- September 1994 through March 1996 - Full-time Police Officer (40 hours or more hours/week) employed by the Suffolk University Police Department

¹ The Appellant raised one additional issue in the Webster Lieutenant Appeal (B2-17-238)l, claiming that HRD also erroneously denied "E&E" credit for his time as "Acting Lieutenant" with the Dedham Auxiliary Police Department.

3. Sgt. Ralph has taken and passed these four civil service promotional examinations:

- March 10 & 11, 2017 – Dracut Police Chief Assessment Center
- February 28 & March 1, 2017 – Oxford Police Chief Assessment Center
- September 13, 2017 – Webster Police Lieutenant Promotional Examination
- September 21, 2018 – Webster Police Chief Assessment Center

4. For each examination, Sgt. Ralph duly completed an HRD Employment Verification Form listing his work experience, and claiming the experience credits he thought should be added to his test score, pursuant to civil service law and rules. Among these credits, Sgt. Ralph claimed a “25-Year Promotional Preference”, based on his contention that he had accrued the 25 years of service that would entitle him to that preference, pursuant to Mass. G.L.c.31,§59.

5. G.L.c.31, §59, ¶5, added by St.1978,c.393,§11, provides, in relevant part:

“ . . . Notwithstanding the provisions of any law or rule to the contrary, a member of a regular police force or fire force who has served as such for twenty-five years and who passes an examination for promotional appointment in such force shall have preference equal to that provided to veterans” (*emphasis added*)

6. The HRD Employment Verification Form states, in relevant part:

Applicants who are claiming the 25-Year Promotional Preference: This form will serve as the primary source of verification and computation of an applicant’s eligibility for this preference, and the [exam date] will be the computation cut-off date. Time worked as a Permanent Reserve/Intermittent Police Officer or as a Temporary Police Officer after certification may be applied toward one’s eligibility for this preference.”

7. Sgt. Ralph’s claim to the statutory 25-Year Promotional Preference acknowledged that his service with the WPD, dating from his employment on December 12, 1995 as a Permanent Intermittent Police Officer on December 12, 1995, alone, fell short of the twenty-five year mark. He asserted, however, that the following additional employment put him over that threshold: (1) nine years (1988-1996) of part-time service with the Dedham Auxiliary Police Department; plus (2) six years (1990-1996) of part-time employment as an Auxiliary and Special Police Officer with the Medfield Police Department; plus (3) thirteen months (1992-1993) of full time employment as a Campus Police Officer with the University of Massachusetts Lowell Campus.

8. Sgt. Ralph supported his claim with documentation that included:

- Verification by the Town Administrator of employment with the WPD.
- A letter signed from an Administrative Assistant in the Human Resources Department, University of Lowell [sic], attesting to thirteen months' employment as a "full time Campus Police Officer" at UMass Lowell.
- A letter from the Chief of Police of the Town of Medfield attesting to appointment "as an Auxiliary Police Officer and a Special Police Officer".
- A letter dated February 1, 2017 from the Director of the Dedham Auxiliary Police Department attesting to six years as a "member of the Dedham Auxiliary Police . . . assisting the Regular Police Officers with traffic and crowd control at town events . . . traffic duties at church gatherings . . . weekend patrol duties of town buildings and property, when requested by the Regular Police" and attending "regular weekly meetings of the unit".

9. HRD denied Sgt. Ralph's claims for a Section 59 preference on the grounds that his employment at UMass Lowell, Dedham and Medfield, did not qualify as creditable years of service within the meaning of Section 59. These appeals duly ensued.

10. In response to HRD's Motions to Dismiss, Sgt. Ralph submitted additional documentation which included:

- A February 5, 2004 letter from the Chief of Police of the Town of Dedham attesting that Sgt. Ralph "served as a member of the Dedham Auxiliary Police Department" from November 1988 to June 1996.
- An excerpt from the proposed FY 2017 Budget for the Dedham Police Department, which indicates that, among the "significant changes requested for FY17" was "to add two new Auxiliary Officers, Current Auxiliary has four officers." The budget requests also contains a chart that indicates the number of FTE's (Full Time Equivalent Employees) would remain at 63, with a reduction of one FTE "Patrol Officer", no changes in the other sworn officer ranks, and an increase of one FTE "Civilian" employee.
- A 1992 Dedham Auxiliary Police ID Card, signed by the Dedham Police Chief.
- A September 28, 2012 letter from the Director of the Dedham Auxiliary Police Department attesting that he was "appointed as a Patrolman of the Dedham Auxiliary in November 1988 . . . a Sergeant in August 1992, and Acting Lieutenant in January 1994 . . . [and] in July 1995 . . . returned to his rank of Sergeant."
- A 10/11/2015 Notice from HRD stating, among other things, that, in connection with the May 2005 promotional examination for WPD Police Chief, he had been awarded

E&E credit for 150 hours of service in the Dedham Auxiliary Police Department and 300 hours as a Special Police Officer at Medfield Police Department, which, in the aggregate, was pro-rated to 2 months of full-time equivalent service in “Category 8”.

- A November 2, 2012 letter from HRD on appeal of his E&E score, stating that his claim submitted for “Police Lieutenant time in Dedham” had been miscalculated and was corrected “resulting in two months of credit being added to your score.”

11. The Town of Dedham and the Town of Medfield are “civil service communities” whose appointments to positions as sworn full-time, permanent, intermittent, reserve, temporary and provisional officers in those town’s Police Departments are made pursuant to civil service law. (*Administrative Notice [https://www.mass.gov/service-details/civil-service-police-departments]*)

12. The positions of Auxiliary Police Officer and Special Police Officer are not classified as civil service job titles classified within the Massachusetts MuniClass Manual promulgated by HRD or other classification plans approved by HRD for the Towns of Dedham and Medfield. (*Administrative Notice [MuniClass Manual, pp.117 through 125]*)

ANALYSIS

HRD is vested with broad discretionary authority to prescribe the rules for enhancement of the overall test scores of candidates who take and pass a civil service examination to account for a candidate’s particular level of education, experience and training (so-called “E&E” credit), including the type and weight given as credit for such training and experience. G.L.c.31,§3, §5 & §22. See, e.g., Nicholas v. Human Resources Div., 29 MCSR 358 (2016); Magino v. Human Resources Div., 27 MCSR 34 (2012). Pursuant to this authority, HRD has prescribed:

“[T]he administrator [HRD] shall add two points to the general average mark obtained by any veteran. . . . A veteran who has also obtained twenty-five years of service shall not receive an additional two points” Personal Administration Rules, PAR.14(2).

The two point preference established by PAR.14(2) is incorporated by reference into G.L.c.31,§59,¶5, but entitlement to the preference is a matter of law. The statute must be construed to effect the legislature’s intent, as disclosed by its ordinary and plain meaning and

with substantial deference to HRD (and this Commission) to resolve ambiguities. E.g., ENGIE Gas & LNG LLC v. Dep't of Public Utilities, 475 Mass. 191,197-98 (2016); Goldberg v. Board of Health, 444 Mass. 627, 632-35 (2005); Commercial Wharf East Condo. Ass'n, v. Dep't of Environmental Protection, 93 Mass.App.Ct. 425, 433, rev. den. 480 Mass. 1104 (2018)

HRD denied Sgt. Ralph the two-point 25-Year Promotional Preference based on the language in Section 59 that allows “a member of a regular police force . . . who has served as such for twenty-five years” to claim the preference, which HRD interprets to mean that the legislature intended the preference to apply only to “regular” police officers who “served as such” for twenty five years, i.e. who served as a regular police officer for at least twenty-five years. Sgt. Ralph reads the statute to mean that service as any “member” of a “regular police force” is covered and HRD cannot limit credit to “members” employed as “regular police officers”.

No Massachusetts appellate decisions have construed the statutory 25-Year Promotional Preference. The Commission has decided that Section 59 creditable service must be with a police or fire force in the Commonwealth. Although service outside Massachusetts could qualify for certain discretionary E&E credits established by HRD (G.L.c.31, §22), the legislative intent of the Section 59 statutory preference was meant to reward public safety officers for longevity in public service to citizens within Commonwealth. See Golner v. Human Resources Div., 28 MCSR 388 (2015); Cataldo v. Human Resources Div., 23 MCSR 617 (2010).

The Commission also has decided that creditable service in a “regular police force” is not limited to the “regular police force” in which the promotional candidate then “served as such”.²

² The language in Section 59 - “a member of a regular police or fire force who has served as such for twenty-five years . . .” – could have been construed to limit the preference to candidates who accrued their 25 years as a regular police officer entirely for “such force” with which they then served and sought promotion, but the Commission’s decisions eschewed that literal and narrow reading because it would be inconsistent with the perceived, logical legislative intent to reward the character and extraordinary experience of police officers who chose to embark on a full-time career of police service within the Commonwealth and dedicated themselves to such public service for twenty-five years, and was not necessarily focused on longevity with any particular Massachusetts community.

Thus, prior service with another regular police force, time served in any civil service position (i.e., reserve, intermittent or temporary police officer appointments to a regular police force), as well time served in an equivalent non-civil service position in the regular police force of a municipality that had opted out of the civil service system may also be included. See DeFrancesco v. Human Resources Div., 21 MCSR 662 (2008), *aff'd sub nom*, DeFrancesco v. Civil Service Comm'n, C.A. 2009-00392 (Middlesex Sup. 2009); Neville v. Town of Wilmington, 18 MCSR 188 (2005); Lopes v. Human Resources Division, 13 MCSR 49 (2000).³

Finally, the Commission concluded that a police force staffed by “special state police officers” appointed by the Colonel of the Massachusetts State Police (e.g., police forces of most private colleges, universities and hospitals) are not “regular police forces” within the meaning of Section 59. See DeFrancesco v. Human Resources Div., 21 MCSR 662 (2008), *aff'd sub nom*, DeFrancesco v. Civil Service Comm'n, C.A. 2009-00392 (Middlesex Sup. 2009)⁴

The questions of statutory interpretation now posed to the Commission are: (1) does service as a Massachusetts “Auxiliary” Police Officer or (2) “Special” Police Officer, count as service with a municipality’s “regular police force” within the meaning of Section 59; and (3) does Sgt. Ralph’s employment as a UMass campus police officer in 1993-1994 count as service with a “regular police force” within the meaning of Section 59?

³ The Commission ruled in Neville v. Town of Wilmington, 18 MCSR 188 (2005), that a regular police officer could count time toward the Section 59 preference for prior full-time appointments as a temporary and permanent intermittent officer. The procedures for appointing reserve and intermittent police officers, many of whom work part time, are civil service appointments made pursuant to G.L.c.31,§58, a statute that consistently distinguishes the “reserve or intermittent force” from the “regular force”. Thus, this Commissioner questions whether service as a reserve or intermittent officer is truly equivalent service to time as a regular, full-time officer for purposes of the Section 59 preference but it is not necessary to this Decision to revisit Neville here.

⁴ As noted, exclusion of service as “special state police officer” or as a police or fire officer outside of Massachusetts for purposes of statutory construction of Section 59 does not preclude HRD from allowing “E&E” credits for such service under its broad discretionary authority under G.L.c.31, §5 & §22 over civil service examination design and scoring. See, e.g., Verderico v. Human Resources Div., 28 MCSR 229 (2015) (discussing the distinction between Section 59 and HRD’s Section 22 authority over examinations)

General Considerations

HRD's premise – the 25-Year Promotional Preference applies to “regular” officers who have accrued 25 years of service as “regular” officers – comports more logically to the legislative intent in enacting G.L.c.31, §59 than does Sgt. Ralph's alternative interpretation – time served by anyone considered a “member” of a “regular police force” counts toward the 25 years of service.

First, the 25-Year Promotional Preference must be read in context with all of Section 59, as well as in harmony with Civil Service Law as a whole. The preference is triggered only when a current full-time “member” serving as a “regular” officer in a civil service police force seeks a full-time promotion pursuant to Section 59 to a superior officer's position in that force. Section 59 presumes that only “full-time members of the regular force in the next lower title” will take such a promotional examination. G.L.c.31,§59,¶2 through ¶5⁵ Thus, the legislature's chosen phrase “served as such” logically means to refer back to a candidate's time spent “as” a full-time, sworn member of a “regular police force” in which the member served and would serve if promoted pursuant to Section 59.

Second, Sgt. Ralph's construction would read the statutory language “served as such” to mean served as “members”, not just the regular, full-time members of force. This interpretation would mean including not just auxiliary and “special” officers at issue here, but also other department “members” such as police cadets, civilian dispatchers and clerical staff, an illogical result that the legislature obviously cannot have intended when it enacted Section 59. See generally, Commonwealth v. Wade, 475 Mass. 54, 60 (2016), *citing Sullivan v. Brookline*, 435 Mass. 353, 360, 758 N.E.2d 110 (2001).

⁵ In the unlikely event that less than 4 regular officers in the next lower title sign up, the department may offer the exam to “regular” members in any lower title, and, if there are still less than four interested officers, may elect to open the exam to “reserve, intermittent or call force” officers, who must produce payroll records that prove their part-time service is equivalent to the required full time experience (1 to 3 years) needed to be eligible for promotion. G.L.c.31,§59, ¶3

Third, Sgt. Ralph's approach creates another anomaly, namely, during calendar years 1988 to 1996, inclusive, he purportedly accrued more than eight years of creditable time toward the 25-Year Promotional Preference for his work for the Dedham Auxiliary Police (16-20 hours per week) and the Medfield Auxiliary Police (8 hours per week), plus six years of creditable time for his unspecified number of hours as a Medfield Special Police Officer during this same period, plus thirteen months of credible time for his full-time employment during a portion of that period as a UMass Lowell Campus Police Officer.⁶ The legislature cannot have intended to enable a scheme that permitted simultaneous accrual of over 15 years of credible 25-Year Promotional Preference service within a period of just eight chronological calendar years. Moreover, such double and triple counting of overlapping experience is problematic as a factual matter, especially without any documented support for the unusually large number of overlapping hours purportedly worked at various points during the period in question.

In sum, construing the phrase "served as such" as relating back to the service of the candidate as a sworn full-time member of a regular police force gives the practicable and logical meaning to the phrase that the legislature intended, providing a preference to those seasoned regular career officers who seek advancement to a higher rank in the civil service police and fire service.

Auxiliary Police

The term "Auxiliary Police" stems from the Civil Defense Act of 1950, St. 1950, c. 639, which established the Massachusetts Civil Defense Agency (CDA) to coordinate local civil defense activities with the newly created Federal Civil Defense Administration enacted by the Federal Civil Defense Act, P.L.920, 81st Cong., 2d Sess. (1950). The law was meant to expire after two years, evidently conceived to address a temporary, passing situation (the Soviet Union

⁶ Sgt. Ralph also worked during this same time for Suffolk University part-time from 1989 to 1992 (16 or more hours/week) and full time from 1994 to 1996 (40 or more hours per week) but, pursuant to the Commission's DeFranciso decision, he correctly did not claim creditable time for that employment.

recently had tested its first atomic bomb in late 1949), but that sunset was extended, eventually the law became permanent and its administration now resides at the local level with the Office of Emergency Preparedness of the Massachusetts Emergency Management Agency (MEMA) and with the Federal Emergency Management Agency (FEMA) at the federal level. See Director of CDA v. Civil Service Comm'n, 373 Mass. 401 (1977) (discussing history of CDA and application of civil service law to it). See also, CIVIL DEFENSE AND HOMELAND SECURITY: A SHORT HISTORY OF NAT'L PREPAREDNESS EFFORTS (Dep't Homeland Security, 2006), [https://training.fema.gov/hiedu/docs/dhs%20civil%20defense-hs%20-%20short %20 history.pdf](https://training.fema.gov/hiedu/docs/dhs%20civil%20defense-hs%20-%20short%20history.pdf)

Section 11 of the Civil Defense Act, not codified in the General Laws, provides, in part:

§ 11. Auxiliary Firemen and Police.

- (a) *The mayor and city council in cities and the selectmen in towns, or such other persons or bodies as are authorized by law . . . may appoint, train and equip volunteer, unpaid auxiliary firemen and auxiliary police and may establish and equip such other volunteer, unpaid public protection units as may be approved by [MEMA] Coats . . . worn . . . by auxiliary firemen shall bear on the back the letters C.D. five inches in height and helmet . . . shall be in yellow. Every such fireman, unless wearing a coat . . . and helmet issued as aforesaid, shall, while on duty as such, wear an arm band bearing the letters C.D. Chapters thirty-one, thirty-two and one hundred fifty-two of the General Laws shall not apply to persons appointed hereunder. Coats, shirts and other garments to be worn as outer clothing by auxiliary police officers shall bear a shoulder patch with the words "Auxiliary Police" in letters not less than one inch in height.*
- (b) *Cities and towns may by ordinance or by-law, or by vote . . . authorize their respective police departments to go to aid another city or town at the request of said city or town in the suppression of riots or other forms of violence therein, and, while . . . extending such aid, the members of such departments shall have the same powers, duties, immunities and privileges as if performing the same within their respective cities or towns. . . .*
- (c) *The head of the fire or police department of any city, town or district of the Commonwealth shall, after the issuing of any proclamation provided for in this act, order such portion of his department . . . for service in any part of the commonwealth where the governor may deem such service necessary for the protection of life and property. When on such service, police officers and firemen shall have the same powers, duties, immunities and privileges as if they were performing their duties within their respective cities, towns or districts. . . . Persons appointed to an auxiliary police force in a city of town shall exercise or perform such of the powers or duties of police officers as may be prescribed by the appointing authority including but not limited to replacing and performing the duties of regular personnel who may be actually engaged in the direct control or suppression of riots or other civil disturbance, and no civil defense personnel shall be so utilized in any such direct riot control activities; provided, that said powers or duties shall not be exercised or performed by them except. . . to meet a situation which*

. . . cannot be adequately handled by the regular police force and by the reserve police force . . . Auxiliary police in towns, but not in cities, may . . . exercise powers conferred by section ten⁷ of this act upon members of regular, special or reserve police forces of said towns except as provided above.

- (d) *Auxiliary police shall not be sent to another city or town pursuant to the provisions of paragraphs (b) or (c) of this section or any other provisions of law, except upon order of the head of the police force of the city or town in which such auxiliary police were appointed; provided, that auxiliary police shall not be so dispatched . . . unless they are authorized by the appointing authority to exercise or perform to the full powers or duties of police officers . . . except that auxiliary police appointed in a town shall not while performing their duties in a city, exercise the powers conferred by section ten in this act upon members of regular, special or reserve police forces of said town. When on such service, auxiliary police shall have the same powers, duties, immunities and privileges, except as provided above, as if they were performing their duties within their respective cities and towns.*

St. 1950, c. 679, as amended, as printed at <https://www.mass.gov/lists/emergency-preparedness-laws-and-regulations> (*emphasis added*)

The general laws do not mention the appointment or describe the duties of Auxiliary Police. See G.L.c.41, §96 through §99.⁸ Regular police officers appointed under G.L.c.31,§59 and reserve and intermittent police officers appointed under G.L.c.31,§58 are both positions governed by the civil service law and rules. No equivalent position to an Auxiliary Police Officer exists under civil service law. See HRD MUNICLASS MANUAL, pp.117-125 (Civil Defense, Fire Alarm & Police Signal Management and Police Series). I found no source that identifies how many municipalities continue to support an Auxiliary Police force. For most of those that still exist, the duties vary across municipalities; some have migrated from the statutory mandate to be used only in declared civil defense emergencies; they all, however, remain volunteer forces. See, e.g., <https://www.cambridgema.gov/cpd/policeunits/officeofthecommissioner/auxiliarypolice> (traffic and crowd control at Cambridge city events, weekend patrols as needed); <https://www.city.waltham.ma.us/police-department/pages/auxiliary-police> (non-sworn, unarmed, volunteers

⁷ Section 10 authorizes “regular, special and reserve members of the police and fire forces of the commonwealth or of its political subdivisions, and members of the state guard and the armed forces of the United States, while in uniform” to “enter upon private property for the purpose of enforcing blackout or air-raid precaution rules . . .”

⁸ The only mention in the General Laws of duties of Auxiliary Police is a statute prohibiting them from being called upon “in any industrial or labor dispute or to regulate picketing in connection with a strike.” G.L.c.149, §23B.

who mainly patrol Waltham school grounds and parks); <https://www.framinghamma.gov/790/Auxiliary-Police> (volunteers provide unpaid “community service”); <https://www.lawpd.com/410/Auxiliary-Police> (volunteers “assist and augment” Lawrence sworn force, monitor municipal buildings, church and local events, bike, foot and cruiser patrols); <https://wpd.org/divisions/auxiliary-police> (academy and firearms trained volunteers assist Wilmington police in emergencies, local events and evening school patrol); <https://www.natickma.gov/196/Auxiliary-Police> (traffic control at local Natick events, bike patrol, weekend school property monitoring, emergency disaster shelter security); <https://www.newtonauxpolice.com> (“observe, support and assist” full-time Newton police with disasters, event traffic and crowd control [e.g., Boston Marathon]); <http://www.belmontauxpd.org/> (reserve/academy trained volunteers assist Belmont police with patrol, events and disasters)

I could not locate any published information about the specific duties of Dedham Auxiliary Police or the Medfield Auxiliary Police and the parties provided none. I examined the documents submitted by Sgt. Ralph concerning the Dedham Police Auxiliary which he argues demonstrate that the Auxiliary force is an integral part of the Dedham Police Department’s regular police force. The documents, however, prove otherwise. The Police Department’s 2017 recommended budget actually shows that, while the department proposed adding four new Auxiliary Police officers, the payroll and FTE schedule shows a net reduction of one sworn regular officer and an increase of one “civilian” FTE. This information confirms that Dedham Auxiliary Police are civilian, non-sworn volunteers, and are not members of the “regular police force”.

In sum, given a dearth of authority to show that appointment as a Auxiliary Police Officer brings with it well-defined specific, uniformly assigned “regular” police duties (other than those prescribed for responding sporadically to a declared emergency under the Civil Defense Act), the

time served as a volunteer Auxiliary Police Officer is not cognizable as the type of full-time, sworn officer “regular police” work that qualifies for consideration in computing entitlement to the 25-Year Promotional Preference. For the same reasons that the Commission found that HRD was not required to parse all of the variations in the duties of “special state police officers” who staff campus police and other public and private institutions, HRD should not be burdened with investigating whether a particular Auxiliary Police force, if any, actually performs as a “regular police force.” Indeed, the possibility that any such force exists seems more remote than with “special state police” forces. The record, here, certainly did not show that the Dedham Auxiliary Police Department or the Medfield Auxiliary Police are, or were, such a qualifying police force.

Special Police Officer

Sgt. Ralph’s claim to 25-Year Promotional Preference creditable time for his service as a Medfield Special Police Officer is more simply resolved.

First, no documentation submitted by Sgt. Ralph, confirms the time, if any, that Sgt. Ralph actually performed the duties of such a position on any weekly, monthly or annual basis, or that he was paid for any of that service. As noted above, the eight hours Sgt. Ralph reported as working in Medfield may be double-counting Special Police and Auxiliary Police assignments (and some of this time also overlaps with other reported full time employment). HRD was fully justified to conclude that an undocumented, but apparently, a sporadic weekend job, is not the type of work the legislature intended to be counted as a year of creditable service.

Second, nothing in this record establishes what duties a Medfield Special Police Officer is authorized to perform, let alone whether those duties are equivalent to the type of work performed by Medfield’s “regular police force.” No equivalent civil service position of Special Police Officer exists. See HRD MuniClass Manual, supra. The only statutory duty expressly

conveyed on special police officers is one that allows them to arrest “tramps” and vagrants”, which has been declared problematic under the Massachusetts and U.S. Constitutions and is hardly the stuff of “regular police” work. See G.L.c.279,§63 *et seq.*; Alegata v. Commonwealth, 353 Mass. 287 (1967) (vagrancy laws “void for vagueness”). See also Scione v. Commonwealth, 481 Mass. 225 (2019) (part of G.L.c.279,§58A(1) unconstitutionally vague)⁹

Third, Sgt. Ralph points out that special police officers are covered by laws providing injured on duty (IOD), disability and other benefits due to injury and death “in the line of duty” afforded to regular police officers. To claim, however, that entitlement to such benefits means that special police officers must belong to the town’s regular police force when on duty, succumbs to a logical fallacy that applies two valid premises to reach an invalid conclusion – i.e. “Special Police Officers injured on duty are entitled to benefits (True); Regular Police officers injured on duty are entitled to benefits (True); therefore, Special Police Officers are Regular Police Officers when on duty (NOT TRUE). Such an inference – i.e., non-tenured special police officers can, in effect, temporarily step into the shoes of “regular” civil service officers without appointment as such, collides with the entire civil service system for filling such civil service positions, including provisional and temporary ones, solely through qualifying examinations and selection based on rank ordering of eligible lists. See generally, G.L.c.31,§8 through §27 and §58 through §65.

In sum, HRD appropriately denied Sgt. Ralph’s claim to creditable service toward the 25-Year Promotional Preference for a vaguely stated and largely undocumented claim for the time he served as a Medfield Special Police Officer.

⁹ G.L.c.41, §99 and related case law does not inform the question here. That statute authorizes appointment of sworn, regular police officer in one community as a “special police officer” a neighboring community, intended to resolve the jurisdictional issues that arise when that regular officer acts in “hot pursuit” or on request for mutual aid outside his appointed jurisdiction. See, e.g., Commonwealth v. Callahan, 428 Mass. 335 (1998); Commonwealth v. Kerr, 469 Mass. 284 (1991); Commonwealth v. Andrews, 34 Mass.App.Ct. 324, rev.den., 415 Mass. 1104 (1993)

UMass Lowell Campus Police

Sgt. Ralph's claim to 25-Year Promotional Preference creditable time for full-time employment as a UMass Lowell Campus Police Officer is a closer call. Sgt. Ralph correctly points out that his appointment was made by the UMass Lowell trustees, acting pursuant to their specific statutory authority to appoint "police officers" under the UMass enabling statute, G.L.c.75,§32A. Thus, decisions that the 25-Year Promotional Preference cannot be claimed by campus police appointed as "special state police officers" under the Massachusetts State Police statute, G.L.c.22C, §63 are informative, but they are not automatically dispositive here. See, e.g., DeFrancesco v. Human Resources Div. 21 MCSR 662 (2008), *aff'd sub nom, DeFrancesco v. Civil Service Comm'n*, C.A. 2009-00392 (Middlesex Sup. 2009). See also, Commonwealth v. Mullen, 40 Mass.App.Ct. 404, rev.den. 423 Mass. 1105 (1966) (state college campus police "special state police officer" did not have powers of a regular police officer and lacked authority to stop a motorist for a civil traffic violation). But see Arkelian v. Human Resources Div., 30 MCSR 253 (2017) (suggesting, but not deciding, that HRD consider whether state university campus police service should receive E&E examination points in some cases).

Although University of Massachusetts campus police forces appointed under G.L.c.75, §32A are clearly appointed under a different statute than police forces staffed by "special state police officers", the question still remains whether UMass campus police are equivalent to a "regular" municipal police force. After parsing the applicable statutes and legislative history, I conclude that the law now prescribes that police at all five UMass campuses in the "UMass segment" have sufficient, clearly identifiable and uniformly applied characteristics that may well entitle them, currently, to be treated as equivalent to a municipal "regular" police officers. I also conclude, however, that Sgt. Ralph served at UMass Lowell when the law was somewhat different and the

characteristics now in place were not so clearly established. Thus, I cannot reasonably conclude that the campus police force at UMass Lowell, as it existed at the time Sgt. Ralph served there nearly 25 years ago, then had the requisite characteristics that enable his duty to be considered the equivalent of service with a “regular” police force for the purposes of the 25-Year Promotional Preference.

The dozens of public universities included within the Commonwealth’s higher education system are now divided into three “segments”. See G.L.c.15A,§5. Chapter 75, §1A, §32A & §32B, dating from St.1962, c.648, govern the appointment of police officers at the University of Massachusetts segment (the UMass campuses at Amherst, Boston, Dartmouth, Lowell and Worcester); Chapter 15A,§22 and Chapter 73,§18 govern appointments at the remaining 25 institutions in the “state university” and the “community college” segments.

In addition, when G.L.c.90C was enacted to establish standard procedures for issuance of civil citations for violations of the motor vehicle laws, it defined “police chief” and “police officer” to cover the UMass police force. These definitions, as further amended to conform to the changing structure of Massachusetts higher education, now authorize campus police officers in all three segments of the system to issue civil citations for on-campus motor vehicle infractions. See G.L.c.90C,§1 & 2A , added by St.1982,c.586, as amended.¹⁰

In 2014, Chapter 75, §32A was amended to add the following paragraph:

Police officers appointed by the trustees of the University of Massachusetts, in connection with the operation of any part of the university within the limits of the campuses, may perform police duties under the direction of the commanding officer or the person in charge of such campus. While performing such duties within those

¹⁰ St. 2006,c.134,§3A added a mandate to G.L.c.90C, that requires state university and community college campus police chiefs (i.e., c.15A,§22/c.73,§18 departments) to certify that officers who issue civil motor vehicle citations have completed a MPTC or State Police academy, annual in-service training, and (if authorized to carry) MPTC firearm certification, and require adoption of policies and procedures covering use of force, search and seizure, racial profiling and agreements with local municipal police departments for arrest and detention of prisoners (if institution does not have a lock-up).

limits, the police officers shall have the same authority, immunities and privileges as duly appointed and qualified police officers acting elsewhere in the commonwealth. Every officer who receives an appointment to a position on a full-time basis in which that person may exercise police powers for any of the campuses of the University of Massachusetts, shall, prior to exercising those police powers, be assigned to and satisfactorily complete a prescribed course of study approved by the municipal police training committee or the department of the state police.

St. 2014, c.172, §2. (*emphasis added*)

The 2014 amendment also added Section 34B:

Notwithstanding any general or special law to the contrary, any campus of the University of Massachusetts¹¹ may enter into an agreement with any . . . federal or state government, town, city or other towns and cities . . . in states contiguous to the commonwealth, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety and property of the people in the area . . . when the resources normally available to the University or any municipality . . . are not sufficient to cope with a situation which requires police action. When providing such mutual aid, police officers shall have all the immunities and powers granted to them by the University or the municipalities that employ them including, but not limited to, the same duties, authority, immunities and privileges as duly appointed and qualified police officers acting as such in the municipality.

Id. (*emphasis added*)¹² See also St.2004, c.348, §2 (mutual aid authority for UMass Amherst)

The evolution of this statutory authority expressed the legislature’s intent that, by revising the laws to vest UMass campus police officers with broader authority now may well justify treating full-time public service with a UMass campus police force, currently, as equivalent to full-time service with a “regular police force”. UMass campus police must be MPTC or State Police academy trained; they are now expressly vested by law, on-campus, with all of “the same authority, immunities and privileges as duly appointed and qualified police officers acting elsewhere in the commonwealth”; and they are deemed competent to be assigned to perform police duties off-campus for any other federal, state or municipal police department “to cope

¹¹ A prior mutual aid law limited to UMass Amherst had been in place since 2004. That law also deemed UMass Amherst a “town” for purposes of invoking the right of “town” elders to use force to quell a riot. St.2004,c.348.

¹² St.2014,c.172,§1, repealed a portion of G.Lc.22C,§50, added by St.1991,c.412,§22, which read: “Guards . . . of the University of Massachusetts . . . within the limits of any reservation [of the United States of America] may perform police duties under the direction of the commanding officer or the person in charge of such reservation, and while performing such duties within such limits shall have the same authority, immunities and privileges as duly appointed and qualified police officers acting as such elsewhere within the commonwealth.” (*emphasis added*)

with a situation which requires police action” and “[w]hen providing such mutual aide, police officers shall have all the immunities and powers granted to them by the University or the municipalities that employ them, including, but not limited to, the same duties, authority, immunities and privileges as duly appointed and qualified police officers acting as such in the municipality.”

The question remains whether the 2014 legislative intent that UMass police forces should be considered “regular” police forces can be related back to 1993, when Sgt. Ralph served as a UMass Lowell police officer. The law then in effect focused mainly on authority to exercise “police powers” to enforce “traffic and parking rules and regulations” and to issue civil citations for motor vehicle offenses on school premises. G.L.c.15A,§22, added by St.1991,c.142,§7; G.L.c.90C,§1,added by St.1982,c.586; G.L.c.75,§1A,added by St.1991,c.142,§17. These limited grants of police power are essentially no different from the limited, rather than general, police powers that are granted to many other persons who are not, thereby, deemed “regular” police officers. See, e.g., G.L.c.22C, §56 et seq. See also Commonwealth v. Mullen, 40 Mass.App.Ct. 404, rev.den. 423 Mass. 1105 (1966) (cataloguing statutes providing limited grants of police powers). Thus, when Sgt. Ralph served as a UMass Lowell police officer in 1993--94, UMass campus police forces were not as clearly described to have all of the duties of a regular police force. Therefore, HRD was justified to conclude that his employment at UMass Lowell did not qualify for creditable time toward the 25-Year Promotional Preference.¹³

E&E Credit for Acting Auxiliary Lieutenant Time

Sgt. Ralph’s claim to “E&E” credit on his Webster Police Lieutenant’s exam for time spent as an “acting Lieutenant” with the Dedham Auxiliary Police Department can be addressed

¹³ The Commission reserves to a future decision whether the 25-years of service preference applies to post-2014 UMass campus police forces or other college and university police forces.

summarily. As noted earlier, in establishing the parameters for “E&E” credits, HRD is vested with broad authority under civil service law to establish parameters for “E&E” discretionary credits. See G.L.c.31,§3, §5 & §22. See, e.g., Nicholas v. Human Resources Div., 29 MCSR 358 (2016); Magino v. Human Resources Div., 27 MCSR 34 (2012). HRD was fully justified to disqualify volunteer, part-time “acting” service with an Auxiliary Police Department, supervising civilians who were being directly supervised by the Regular Police Officers whom they were “assisting . . . with traffic and crowd control at town events . . . traffic duties at church gatherings . . . weekend patrol duties of town buildings and property, when requested by the Regular Police” and attending “regular weekly meetings of the unit”. I found nothing in the 2016 Police Lieutenant’s E&E Claim Form that allows E&E credit for such service.

The fact that HRD allowed E&E credit for volunteer service as an Auxiliary Police officer on the 2005 and 2012 exams does not stop HRD from exercising discretion to change for good reason and, especially to correct errors in, the requirements for E&E points in a future exam, a decision the Commission is not inclined to second-guess. Similarly, Sgt. Ralph’s citation to Baston v. Human Resources Div., 29 MCSR 62 (2016) is not persuasive. That appeal turned on specific facts, namely, service by a Boston Police Deputy Superintendent, who the Commission found objectively, and undisputedly, met the specified requirement for E&E points, as set forth in the E&E Claim Form, for “acting” in the title of “Police Captain or higher”. Finally, no evidence was produced to infer that adding the E&E points involved would make any difference to Sgt. Ralph’s final, rounded exam score or his place on the eligible list.

CONCLUSION

For the reasons stated, the appeals of Sgt. Thomas V. Ralph in CSC Nos. B2-17-072, B2-17-073, B2-17-238 and B2-18-220, are *dismissed*.

/s/ Paul M. Stein

Paul M. Stein,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on February 14, 2019.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision. 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:

Sgt. Thomas V. Ralph. (Appellant)
Michael Downey Esq. (for HRD)