

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503  
Boston, MA 02108

TIMOTHY M. RIVET,  
*Appellant*

v.

G1-19-138

CITY OF LAWRENCE,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Timothy M. Rivet

Appearance for Respondent:

Jennifer King, Esq.  
Wendy Chu, Esq.  
Valerio Dominello & Hillman, LLC  
One University Ave., Suite 300B  
Westwood, MA 02090

Commissioner:

Cynthia A. Ittleman<sup>1</sup>

DECISION

The Appellant, Timothy M. Rivet, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission), contesting the decision of the City of Lawrence (City) to bypass him for original appointment to the position of police officer. On August 12, 2019, a pre-hearing conference was held at the Armand P. Mercier Community Center (Mercier Community Center) in Lowell, Massachusetts. A full hearing was held at the same location on September 23, 2019, and at the Commission's offices in Boston on November 1, 2019.<sup>2</sup> As no

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<sup>1</sup> Commissioner Ittleman was the presiding Commissioner who heard this appeal. Although Commissioner Ittleman recently retired from the Commission, she authored this decision prior to her retirement.

<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

party requested a public hearing, the hearing was declared private. The full hearing was digitally recorded and both parties received a copy of the recording.<sup>3</sup> As indicated herein, the appeal is denied.

**FINDINGS OF FACT:**

The Respondent and Appellant submitted (13) exhibits; exhibits 1-11 were offered by and admitted for the Respondent and exhibits 12 and 13 were offered by and admitted for the Appellant. Following the hearing, the Commission admitted one (1) post hearing exhibit for the Respondent (Post Hearing Respondent Ex. 1) and three (3) post hearing exhibits for the Appellant (Post Hearing Appellants Exs. 1, 2 and 3). Based upon the evidence and the testimony of the following witnesses:

*For the City of Lawrence:*

- James Fitzpatrick, then-Chief of the Lawrence Police Department; and
- Frank Bonet, Personnel Director, City of Lawrence

*For Timothy M. Rivet:*

- Timothy M. Rivet, Appellant;
- Daniel Fleming, then-Lieutenant Lawrence Police Department;
- Scott McNamara, then-Captain, Lawrence Police Department; and
- Gregory Levesque

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

1. The Mayor of Lawrence is the Appointing Authority for the Lawrence Police Department (LPD). Daniel Rivera was the Mayor of Lawrence at all times relevant to this appeal.

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<sup>3</sup> Subsequent to the full hearing, the Commission had a written transcript of the two days of full hearing prepared.

(Testimony of Bonet and Fitzpatrick)

2. Timothy M. Rivet is a lifelong resident of Lawrence, Massachusetts and held the position of Traffic Control Officer<sup>4</sup> in the City from 2003-2018. He has also worked as a Special Police Officer for the Salisbury Police Department (SPD) since 2006 and currently works as a dispatcher for the SPD. (Testimony of Rivet; Ex. 1)

*Appellant's Previous Bypass*

3. On or about June 15, 2013, Mr. Rivet took and passed the civil service examination for the position of permanent full-time police officer. On December 23, 2013, Lawrence requested a Certification from the Commonwealth's Human Resource Division (HRD) for the appointment of twelve (12) full-time police officers. Mr. Rivet was ranked thirteenth (13) on Certification #01451 from which Lawrence ultimately appointed eight (8) police officers, one (1) of whom was ranked below Mr. Rivet. (Ex. 1)
4. The City's reasons for bypass were due to a verbal warning and a sick leave warning that were part of his personnel file as a Traffic Control Officer. HRD approved the reasons for bypass and ultimately approved the City's request under PAR.09(2) to remove the Appellant's name from the then-current eligible list.<sup>5</sup> (Ex. 1)
5. On or about August 28, 2014, Mr. Rivet appealed his bypass to the Commission. On or about August 15, 2015, the Commission ruled in Mr. Rivet's favor, allowing his appeal. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission ordered HRD to "place the name of Timothy Rivet at the top of any current or

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<sup>4</sup> This position is under the supervision of the Lawrence Department of Public Works. (Ex. 1).

<sup>5</sup> Lawrence asked HRD for a Certification for the hiring of four (4) additional police officers on September 19, 2014. Mr. Rivet's name did not appear on the Certification that HRD issued to Lawrence in response to this request, indicating that Mr. Rivet's name had been removed from the existing eligible list. Mr. Rivet had not been informed of this fact until after he filed his bypass appeal. (Ex. 1)

future Certifications for the position of Lawrence Police Officer until he is appointed or bypassed. If Mr. Rivet is appointed as a Lawrence Police Officer, he shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 01451....” (Ex. 1)

*Following Allowance of Appellant’s Prior Appeal*

6. In or around September of 2016, Mr. Rivet approached Chief James Fitzpatrick, a twenty-six (26) year veteran of the Department. Chief Fitzpatrick was appointed Interim Chief of the Department in 2013. Chief Fitzpatrick was familiar with Mr. Rivet through his employment with the City as a Traffic Control Officer. They did not interact on a regular basis, however. (Testimony of Fitzpatrick; Ex. 1)
7. In their conversation, Mr. Rivet explained the Chapter 310 relief he had been granted by the Commission in 2015, given his successful bypass appeal, and that the Salisbury Police Department was willing to hire him as a Permanent Reserve Police Officer by way of a lateral transfer from the City of Lawrence. He asked Captain Fitzpatrick if the City would agree to appoint him as a Permanent Reserve Officer and then laterally transfer him to Salisbury. (Testimony of Fitzpatrick; Testimony of Rivet)
8. Mr. Rivet had spoken with Lieutenant Anthony King of the Salisbury Police Department. Lieutenant King advised Mr. Rivet that becoming a Reserve Officer in Salisbury could ultimately lead to being hired as a permanent full-time Police Officer for Salisbury in the future. (Testimony of Rivet).
9. Chief Fitzpatrick told Mr. Rivet that the LPD could make arrangements for the transfer, pending approval by the City’s Mayor since the Mayor of Lawrence is the Appointing Authority for the LPD. The Chief requested that Mr. Rivet put something in writing. Chief

Fitzpatrick outlined what the requirements were for the letter, but he did not “give him a word for word draft.” (Testimony of Fitzpatrick and Rivet; Ex. 5)

10. Mr. Rivet never stated to Chief Fitzpatrick that he intended to return in the future and seek employment as a police officer in Lawrence. (Testimony of Fitzpatrick)

11. Captain Scott McNamara, a twenty-three (23) year veteran of the Lawrence Police Department, was Mr. Rivet’s supervisor as a Traffic Control Officer in the City’s Department of Public Works. Captain McNamara, as the Captain in Charge of the Patrol Division, considered Mr. Rivet a good employee who did everything he was asked, having performed admirably as a Traffic Control Officer. (Testimony of McNamara and Rivet; Ex. 1)

12. On or about September 15, 2016, Mr. Rivet sent an email to Mayor Daniel Rivera with a letter attached, stating as follows:

The purpose of this letter is to ask you to consider appointing me a Reserve Police Officer for the City of Lawrence Massachusetts. Upon my appointment, it is my intention to immediately transfer to the Town of Salisbury Massachusetts as a Reserve Police Officer. Upon my successful transfer to the Town of Salisbury Massachusetts, I will agree to waive all rights to appointment within the City of Lawrence. (Ex. 5)

13. Captain McNamara had helped Mr. Rivet draft the letter that was emailed to the Mayor. At the time, Captain McNamara did not contemplate the implications of the letter beyond what they were trying to achieve at that time, with regard to the Salisbury lateral transfer. Captain McNamara believed that Mr. Rivet’s future “was a moot point” because Mr. Rivet would be a full-time police officer in Salisbury someday. (Testimony of McNamara)

14. Nothing in the Appellant’s September 15, 2016 email/letter to Mayor Rivera states that Mr. Rivet intended to return to the City in the future. (Testimony of Rivet)

15. Captain McNamara spoke to Chief Fitzpatrick about Mr. Rivet's email/letter but he never spoke to the Mayor about the letter. Initially, when he spoke to Chief Fitzpatrick about the subject, they discussed Mr. Rivet's proposed lateral transfer. The Chief asked Captain McNamara to give Mr. Rivet help with the letter because the Mayor would need some sort of written document to close the agreement. (Testimony of McNamara)
16. On October 3, 2016, Mr. Rivet sent a second written request to the City via email. The two (2) letters were nearly identical, with the only difference between the September and the October letters being that the second letter was addressed to the Chief and not the Mayor and the eligible list ranking designation in the second sentence was changed from "third (3<sup>rd</sup>)" to "third (2<sup>nd</sup>)." Chief Fitzpatrick does not know why this second letter was addressed to him and not the Mayor. (Ex. 6; Testimony of Fitzpatrick)
17. Nothing in Mr. Rivet's October 3, 2016 email/letter says that Mr. Rivet intended to return to the City in the future. (Testimony of Rivet)
18. Chief Fitzpatrick explained that, to effectuate a lateral transfer, the Department would need to requisition a certification and that the Department had not had a Reserve Police Officer roster for many years. (Testimony of Fitzpatrick)
19. Additionally, at or around this time, Chief Fitzpatrick spoke to Chief Thomas Fowler of the Salisbury Police Department. At that time, Mr. Rivet had been a Special Police Officer in Salisbury and he was police academy-trained. As a result, having Mr. Rivet appointed as a Reserve Officer in Lawrence and then laterally transferred to Salisbury would be a way for Salisbury to save money in hiring and training costs. The ideal plan would be for the Appellant to begin working in Salisbury as a Reserve Officer and then to be fully appointed

as a permanent full-time Police Officer since Salisbury expected a vacancy in the Department at some point. (Testimony of Fitzpatrick)

20. At no time did Mr. Rivet tell anyone at the Salisbury Police Department that he wanted, or intended, to go back to work in the City of Lawrence as a police officer. He felt that was nobody's business. (Testimony of Rivet)

21. At no time did Salisbury Chief Fowler tell LPD Chief Fitzpatrick that Mr. Rivet had told him (Fowler) that he (Rivet) had expressed an interest in returning to the Lawrence Police Department in the future. (Testimony of Fitzpatrick)

22. Mr. Rivet did not tell Mayor Rivera that he intended to return to the City of Lawrence to work as a police officer in the future. (Testimony of Rivet)

23. Mr. Rivet did not tell Frank Bonet, the Director of Personnel for the City, that he intended to return to the City of Lawrence to work as a police officer in the future. (Testimony of Rivet and Bonet)

24. Mr. Rivet never indicated to Chief Fitzpatrick that he intended to return to work for the City of Lawrence. (Testimony of Rivet; Testimony of Fitzpatrick)

25. Chief Fitzpatrick's reason for assisting in the process of Mr. Rivet's becoming a Reserve Police Officer in Salisbury was so that the Appellant would establish a career and stay in Salisbury. Chief Fitzpatrick never thought that the Appellant's return to work in Lawrence was a possibility. (Testimony of Fitzpatrick)

26. On or about December 22, 2016, HRD provided the City with Certification #04090 to fill the position of permanent reserve Police Officer. HRD authorized the City to fill three (3) permanent reserve police officer positions. Mr. Rivet's name appeared first (1) on the list as a result of his successful prior bypass appeal. (Administrative Record, p. 55)

27. On December 22, 2016, Mr. Rivet was appointed to the position of permanent reserve Police Officer for the Lawrence Police Department from Certification #04090 based on the Chapter 310 relief he was awarded in his prior appeal to the Commission. (Ex. 7, 11; Testimony of Fitzpatrick and Bonet)

28. Mr. Rivet was transferred from the Lawrence Police Department as a Reserve Officer to the Salisbury Police Department as a Permanent Reserve Police Officer effective June 22, 2017.<sup>6</sup> (Ex. 8)

Appellant's Current Bypass

29. In March or April of 2017, just a couple of months prior to Mr. Rivet's transfer from the LPD to the Salisbury Police Department (SPD) as a reserve officer, Mr. Rivet took the Civil Service Exam again for permanent Police Officer.<sup>7</sup> (Stipulated Fact).

30. In July 2018, Lawrence requested a certification from HRD for permanent full-time Police Officers. HRD sent the City Certification #05615 wherein Mr. Rivet's name appeared eighteenth (18). Ultimately, twenty-seven (27) candidates were selected for appointment by the City, fifteen (15) of whose names ranked lower on the Certification than Mr. Rivet. (Stipulated Facts, Administrative Record, p. 60).

31. In September 2018, Mr. Rivet resigned from his position as Traffic Control Officer with the City, via email to the City.<sup>8</sup> His email stated:

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<sup>6</sup> The Administrative Record contains multiple post-hearing emails from the Commission to the Appellant, asking the Appellant to produce a Certification from the Salisbury Police Department for a reserve Police Officer on which the Appellant's name appeared to show when he was transferred to Salisbury from Lawrence. The Appellant has not produced any such list, representing to the Commission that Salisbury is not in possession of any such list. (Administrative Record, pp. 313-332).

<sup>7</sup> Mr. Rivet did not take the 2019 Civil Service exam for Permanent Police Officer. (Testimony of Rivet).

<sup>8</sup> Frank Bonet, the City's Personnel Director, testified that the Appellant agreed to resign from his position as Traffic Control Officer in exchange for the agreement to make him a Reserve Officer in Lawrence, with an eventual transfer to Salisbury. Mr. Bonet further testified that Mr. Rivet's service as Traffic Control Officer was extended with the City because of a delayed appointment to Salisbury due to funding issues in Salisbury. (Testimony of Bonet).

“ ... I’m detaching from service after close to 16 years of service with the City of Lawrence as my position as Traffic Control Officer. Thank you and the City for a great opportunity and hope all stay safe and blessed in your paths of life. Thank you again. This is my resignation.” (Ex. 9).

32. Nothing in Mr. Rivet’s resignation letter indicated anything about returning to work in the City in the future. (Testimony of Rivet).
33. On April 28, 2019, Mr. Rivet sent Frank Bonet, the Personnel Director for the City, an email asking Mr. Bonet if he had been bypassed for appointment as a police officer again and, if so, when he would be notified by mail. (Ex. 10).
34. The next day, April 29, 2018, Mr. Bonet responded to the email by referring Mr. Rivet to the September 15, 2016 email/letter that Mr. Rivet had sent to the Mayor “in which you waived your right to appointment.” (Testimony of Bonet; Ex. 10).
35. Mr. Rivet responded with another email to Mr. Bonet on April 29, 2018, stating:

I never wrote that first of all frank [sic], our agreement was to make me a reserve officer under a different list where I had won a previous case and awarded top of the list and future list, which the city never provided me the opportunity, second I signed a new list accepting a position under a new test, which had nothing to do with the reserve position he allowed me to do. That letter you showed is something I’ve never seen or signed....

(Ex. 10; Testimony of Bonet).
36. Mr. Bonet then contacted the City IT Department for the City to make sure that the email actually did come from Mr. Rivet’s email address. The IT Department confirmed that the September 15, 2016 email/letter was indeed sent via Mr. Rivet’s City email address.

(Testimony of Bonet; Ex. 10).
37. On or about May 6, 2019, the City sent a letter to HRD seeking approval of its decision to bypass Mr. Rivet for appointment. The City did not do a background investigation of Mr. Rivet prior to bypassing him for appointment on this occasion since the City relied upon the September 15, 2016 agreement it had with Mr. Rivet regarding his appointment as a Reserve

Officer and transfer to Salisbury in exchange for Mr. Rivet's intention to "waive all rights to appointment within the City." (Ex. 4).

38. On or about June 26, 2019, HRD notified Mr. Rivet that it had approved the City's request to bypass him. (Testimony of Rivet).

39. On or about July 3, 2019, Mr. Rivet duly filed his appeal with the Commission. (Stipulated Fact).

#### *Applicable Law*

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

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

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority has shown,

by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. *See also* Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev. den.*, 428 Mass. 1102 (1997). The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*, then the occasion is appropriate for intervention by the commission.” *Id.* (*emphasis added*). *See also* Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

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

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

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

### *Analysis*

The City of Lawrence filed a Motion to Dismiss and the motion was heard just prior to the start of the first day of the full hearing of this appeal. The Commission ultimately denied the Respondent's Motion, citing factual issues that needed to be resolved through the testimony of witnesses and presentation of evidence. The City repeated its contention in its post-hearing brief that the Commission lacks jurisdiction to hear the Appellant's case, citing Sawicki v. City of Malden, 25 MCSR 118 (2012), and arguing that the Commission lacks subject matter jurisdiction to enforce private contracts.

In Sawicki, Michael Sawicki appealed to the Civil Service Commission seeking to be reinstated to his former position as a police officer in the City of Malden. Sawicki had previously entered into a Separation Agreement wherein he agreed to resign from his position as a police officer for alleged misconduct.<sup>9</sup> 25 MCSR at 118. Sawicki claimed that the City violated the terms of the settlement and asked the Commission to reinstate him. The City of Malden moved

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<sup>9</sup> Sawicki was alleged to have committed misconduct by receiving payment for overtime he did not work. The City and Sawicki entered into a written Settlement Agreement, wherein Sawicki agreed to resign, to make restitution, and to waive any rights to claim a pension. In return, Malden agreed not to prosecute Sawicki and to cooperate in drafting an official Malden Police statement to be used in the event that the City was requested to provide employment references. Sawicki claimed Malden violated the agreement by unauthorized disclosures of Sawicki's misconduct. (Sawicki, 25 MCSR 118 (2012)).

for Summary Decision claiming that Sawicki failed to state any basis on which the Commission could find a violation of any of his rights *under civil service law*. The Commission opined that: “[W]hatever merit there may be to the Appellant’s contention that Malden violated the terms of the Separation Agreement, the Commission lacks subject matter jurisdiction to interpret or enforce private contracts or to grant relief in the nature of rescission.” Nothing in the civil service law allowed for an employee who resigned from employment to appeal to the Commission seeking an order of “involuntary” reinstatement. The Commission also ruled that Sawicki had no right to appeal to the Commission since he was not “discharged” from employment but resigned. The Commission ruled that Sawicki’s appeal patently fell short of asserting any facts that could establish that his civil service rights had been infringed or that he had been aggrieved by any violation of civil service law or rules within the jurisdiction of the Commission. His appeal was dismissed as a matter of law. Sawicki, *supra*.

The Appellant’s appeal is distinguishable from Sawicki’s situation in that, unlike Mr. Sawicki, Mr. Rivet’s claim falls under Massachusetts civil service law. Mr. Rivet alleges to have been aggrieved by the decision of the Mayor of the City of Lawrence, the Appointing Authority, when he was bypassed by lower ranking candidates on a certification of candidates for the position of permanent, full-time Police Officer for the City of Lawrence, pursuant to G.L. c. 31, § 2(b). Basic merit principles in hiring and promotion call for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. In order to

deviate from that formula, an appointing authority must provide specific, written reasons – positive or negative, or both, consistent with basic merit principles—to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 2; PAR.08(4).

Mr. Rivet contends that the City of Lawrence did not have reasonable justification to bypass him for the position of permanent, full-time police officer in his current appeal. Factually, there may be little merit to this contention but legally the Appellant is correct that the Commission may properly exercise jurisdiction over his appeal. Mr. Rivet previously won a bypass appeal against the City in 2015. Pursuant to the Commission’s authority under Chapter 310 of the Acts of 1993, the Commission ordered HRD to place Mr. Rivet’s name at the top of any current or future certifications for the position of Lawrence Police Officer until he is appointed or bypassed. Thereafter, Mr. Rivet, upon his own initiative, approached Lawrence Police Chief James Fitzpatrick with a proposal in September 2016. Mr. Rivet explained that he had been granted Chapter 310 relief and placed at the top of the certification because of his successful appeal, and that the Salisbury Police Department was willing to hire him as a Permanent Reserve Police Officer by way of a lateral transfer from the City of Lawrence. The Chief was amenable to this proposal and sought approval from Mayor Daniel Rivera, the City’s Appointing Authority.

At the suggestion of the Chief, Mr. Rivet put his proposal in writing. The Chief generally explained to Mr. Rivera what should be included in the document. Captain Scott McNamara, who was Mr. Rivet’s supervisor as a Traffic Control Officer for the City, helped Mr. Rivet draft the appropriate documents. Although Mr. Rivet was represented by an attorney at the 2015 bypass appeal, he did not have representation relative to these discussions about the lateral

transfer or in this appeal. On September 15, 2016, Mr. Rivet sent an email to the Mayor, from his work email account, with a letter attached that stated:

The purpose of this letter is to ask you to consider appointing me a Reserve Police Officer for the City of Lawrence Massachusetts. Upon my appointment, it is my intention to immediately transfer to the Town of Salisbury Massachusetts as a Reserve Police Officer. Upon my successful transfer to the Town of Salisbury Massachusetts, I will agree to waive all rights to appointment within the City of Lawrence.

Mr. Rivet then sent an identical email and letter, with minor typographical corrections in the second email, to the Chief on October 3, 2016. In response to Mr. Rivet's emails, City officials undertook conversations with their Salisbury counterparts and completed the necessary paperwork to effectuate Mr. Rivet's proposal to be appointed to a reserve position in Lawrence and ultimately to be transferred to a reserve position in Salisbury. On December 22, 2016, HRD provided the City with Certification #04090 for Permanent Reserve Police Officer. On that date, Mr. Rivet was appointed to the reserve position, utilizing his mandated Chapter 310 relief. Six months later, on June 22, 2017, Mr. Rivet was transferred from the Lawrence Police Department to the Salisbury Police Department by means of a lateral transfer, per the agreement the Appellant had struck with his superiors. The City had performed its end of the bargain.

Just six (6) months earlier, in April 2017, Mr. Rivet took yet another Civil Service examination for police officer although he had signed an agreement with the City stating that he waived his rights to such an appointment. He did not inform the Mayor, the Chief, or the Personnel Director for the City of Lawrence that he was trying to become a police officer in the City again. In July 2018, the City requested a certification to hire permanent full-time Police Officers and HRD sent Certification #05615, wherein Mr. Rivet's name appeared. The City ultimately hired twenty-seven (27) candidates, fifteen (15) of whom were ranked lower on the certification than Mr. Rivet. On April 28, 2019, Mr. Rivet sent Frank Bonet, the Director of Personnel for the City, an email asking if he had been bypassed for appointment again and, if so, when he would be

notified. Mr. Bonet emailed back, informing Mr. Rivet that he had been bypassed based on the September 15, 2016 email/letter, “in which you waived your right to appointment.” Mr. Rivet responded to Mr. Bonet, claiming that he had never seen or signed it, never mind wrote it. This was not true and Mr. Rivet admitted during his testimony that he did write the letter, but that he did not recall writing the part where it indicates his ranking on the list, since the two emails have different rankings listed. Mr. Bonet confirmed with the City IT Department that the email/letter had indeed come from Mr. Rivet’s City email address.

The City and Mr. Rivet came to an agreement in September 2015. In a document drafted by the Appellant himself, Mr. Rivet clearly states: “[U]pon my appointment, it is my intention to immediately transfer to the Town of Salisbury Massachusetts as a Reserve Police Officer. Upon my successful transfer to the Town of Salisbury Massachusetts, I will agree to waive all rights to appointment within the City of Lawrence.” (emphasis added). Mr. Rivet, who wrote the agreement, put no language limiting this waiver in any way. Thus, Mr. Rivet’s interpretation of the agreement, that the waiver language only applied to the 2013 police officer examination, is untenable. In addition, having appointed the Appellant to the position of permanent reserve police officer, the City may have complied with the Commission’s Chapter 310 relief order. If so, Mr. Rivet’s name then would have been automatically removed from the eligible list established from the 2013 examination. Since Mr. Rivet’s name would be automatically removed from the 2013 eligible list, a waiver of his rights to appointment would be wholly unnecessary.

In its brief, the City contends that “[t]he Appellant’s interpretation of the waiver and agreement cannot be afforded any deference because his interpretation would not require the waiver language in the first place.” I agree in part. Mr. Rivet clearly agreed to something beyond what he was already legally entitled to by entering into this agreement with the City;

otherwise, there would be no reason to enter into the agreement. The City contends that Mr. Rivet waived his rights to appointment forever, while Mr. Rivet claims to have only waived his rights to a second bite of the same apple, to which he would not, in fact, be entitled under civil service law.

Looking to the circumstances surrounding the time Mr. Rivet first proposed and subsequently entered into the agreement, I find that Mr. Rivet gave no indication whatsoever to anyone involved in this agreement that he did not fully intend to keep it. Mr. Rivet admits that he did not inform Mayor Rivera, Chief Fitzpatrick, Frank Bonet of the Personnel Department, or anyone at the Salisbury Police Department that his intention was to return to Lawrence and seek employment as a police officer in the future. Mr. Rivet claimed at the hearing that he has told well over fifty (50) people that he had this intention to return all along and that it was common knowledge. Not one witness for either the Appellant or the Respondent testified in support of that contention. Mr. Rivet, himself, testified that his intention was to stay in Salisbury and hopefully be promoted to a full-time police officer in the near future. He had conversations with Lieutenant Anthony King of the Salisbury Police Department to that effect, prior to proposing the lateral transfer agreement with the City. I find that the Appellant was, at a minimum, disingenuous with the City about his intentions. He even concealed the fact that he had already taken another civil service examination (presumably with a clear intention of applying for appointment as a Lawrence resident) when he professed to the City his (false) desire to make a career in Salisbury. His failure to be candid leaves him with unclean hands and, under these circumstances, the Commission concludes that he does not merit exercise of the Commission's discretionary powers to grant equitable relief to a person who must prove his civil service rights were infringed "through no fault of his own." Mr. Rivet alleges that Mayor Daniel Rivera had a

longstanding grudge against him for choosing to aggressively enforce this agreement. He proposed, without any evidence, that the Mayor most likely has an issue with Mr. Rivet's father, a former police officer for the City who worked in the housing projects where the Mayor lived as a child. Mr. Rivet admits that he has no evidence to prove such a claim, beyond mere conjecture. Mr. Levesque, a close friend of Mr. Rivet, testified about an alleged conversation he (Mr. Levesque) had with the Mayor at a St. Patrick's Day parade fundraiser five to six (5-6) years prior to the hearing in this case. The witness testified that Mayor Rivera stated to him that Mr. Rivet would never become a full-time police officer in the City. It is unclear in what context this statement was made, if this statement was made at all. The witness testified that he had only known Mr. Rivet for one (1) year at the time he was discussing Mr. Rivet's future with the Mayor of the City. It is also unclear in what year this statement was allegedly made or why Mayor Rivera would have made such a categorical statement. When Mr. Rivet testified, he gave no further evidence relative to this witness as to when, why, or in what context this witness spoke to the Mayor on his behalf. Given the lack of reliable information about the Mayor's alleged hearsay statement, I am unpersuaded by this witness's testimony.

The Appointing Authority granted Mr. Rivet a substantial benefit in approving his appointment and transfer request. The City expended significant time and resources in granting Mr. Rivet's request to be appointed as a reserve police officer and transferring him to the Salisbury Police Department in 2016, a request made by Mr. Rivet. Had Mr. Rivet not initiated the reserve/transfer proposal, his name would have automatically appeared at the top of a Lawrence permanent police officer certification, having just won his 2015 bypass appeal. He chose not to go that route and, instead, initiated and entered into an agreement "to waive all rights to appointment" in the City. It was reasonable for the City to have believed at the time it

made its bypass decision that Mr. Rivet would not pursue future employment in the City, never mind that he would not actually pursue it *the next chance he* got by taking the 2017 Civil Service police officer examination. What would be the purpose of the agreement between the parties if Mr. Rivet planned on taking the next examination and appearing on the next list? It is illogical to believe that the City would have gone through such an effort to effectuate Mr. Rivet's reserve appointment and transfer request if he was going to apply for a full-time Police Officer position with the City only months later. Mr. Rivet had just agreed that he waived all rights to appointment *in consideration* for the City's diligence in effectuating his request for a reserve position and then a transfer. The City had sound and sufficient reasons to bypass Mr. Rivet in 2017, relying in good faith on an agreement between the parties. For all of the aforesaid reasons, Timothy Rivet's bypass appeal under Docket No. G1-19-138 is **denied**.

Nothing in this Decision is intended to authorize the City to bypass the Appellant in perpetuity, should he take and pass another civil service examination for Police Officer and be reached for consideration in the future.

Civil Service Commission  
/s/ Cynthia A. Ittleman  
Cynthia A. Ittleman  
Commissioner

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

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision. Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:  
Timothy Rivet (Appellant)  
Jennifer King, Esq. (for Respondent)  
Wendy Chu, Esq. (for Respondent)