

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
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RONALD SELLON, JR.
Appellant

v.

G2-05-172

MANSFIELD POLICE DEPARTMENT,
Respondent

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Ronald Sellon, Jr. (hereafter "Sellon" or "Appellant") appealed the decision of the Personnel Administrator (hereafter "HRD") to accept the reasons of the Respondent, the Mansfield Police Department (hereafter "Appointing Authority", "Department" or "Town"), bypassing him for promotional appointment to the position of sergeant in the Mansfield Police

Department. A full hearing was held on December 21, 2007 at the offices of the Civil Service Commission. Two tapes were made of the hearing.

FINDINGS OF FACT:

Seventeen (17) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Chief Arthur M. O'Neill, Mansfield Police Department;
- Lieutenant Walter Crickard, Mansfield Police Department;
- Chief Louis J. Pacheco, Raynham Police Department;
- Lieutenant Michael Bois, Bridgewater Police Department;
- Captain Emmanuel Gomes, Brockton Police Department;

For the Appellant:

- Ronald Sellon, Jr., Appellant;

I make the following findings of facts:

1. Ronald Sellon is a tenured civil service employee in the position of police officer in the Town of Mansfield and has served in that position since 1996. He received a bachelors degree in law enforcement from Western New England College and a masters degree in criminal justice, also from Western New England College.
(Testimony of Appellant)
2. Prior to his appointment as a police officer, the Appellant served in the United States Navy for two (2) years. During this time, he earned a Navy unit commendation medal; a Southwest Asia service medal; 2 Battle E awards; and a sea service ribbon. He is married and has two young children. (Testimony of Appellant and Exhibit 15)
3. On or about April 2005, the Town of Mansfield requested a civil service certification list for the selection of 1 full-time police sergeant. (Stipulated Fact)

4. On April 21, 2005, the state's Human Resources Division (HRD) certified civil service list number 250356 of eligible applicants for the position of police sergeant in the Town of Mansfield. (Stipulated Fact)
5. The Appellant achieved a score of eighty-seven (87) on the sergeant's exam which was used to generate the above-referenced certification list. (Stipulated Fact)
6. The Appellant was ranked first among three candidates on the certification list. Lawrence Crosman, another police officer, was ranked second on the same list. (Stipulated Fact and Exhibit 3)
7. Arthur O'Neill has been the Police Chief in the Town of Mansfield since 1993 and has been working for the Mansfield Police Department since 1974. During his tenure as Police Chief, O'Neill has at times served as President of the Southeastern Massachusetts Chiefs of Police Association as well as President of the Massachusetts Chiefs of Police Association. The Police Chief is the Appointing Authority for the Mansfield Police Department. (Testimony of Chief O'Neill)
8. Chief O'Neill is a consummate professional who takes great pride in the Mansfield Police Department. His testimony was highly credible and there was no evidence that he had any ulterior motive for not promoting the Appellant to the position of sergeant. Even when pointing out the shortcomings of the Appellant, Chief O'Neill was quick to mention the Appellant's potential for advancement in the future. (Testimony, demeanor of O'Neill)
9. The Town bypassed the Appellant for the promotional appointment that is the subject of this appeal. By correspondence dated May 10, 2005, Chief O'Neill notified HRD stating in part, "it is the opinion of me and my command staff that at this point in his

career, Officer Sellon lacks the command presence and decision-making ability that is fundamentally necessary to a superior officer.” The letter goes on to state that the below-discussed interview panel members reached the same conclusion. (Exhibit 6)

10. Upon receiving the above-referenced certification list with the names of three eligible candidates for the position of sergeant, Chief O’Neill recruited four individuals to serve on a panel and interview all three candidates. (Testimony of Chief O’Neill)
11. Walter Crickard was one of the panelists that interviewed the three candidates. Mr. Crickard has worked for the Mansfield Police Department for 28 years and has served as a lieutenant since 1995. He has participated on many interview panels in the past. (Testimony of Crickard)
12. Louis Pacheco was the second member of the panel that interviewed the three candidates. He is currently the Chief of Police in the Town of Raynham. He began his career as a police officer 36 years ago and has been involved with a couple hundred selection processes in the past. (Testimony of Pacheco)
13. Michael Bois was the third member of the panel that interviewed the three candidates. He began his career as a police officer 30 years ago and has served as a lieutenant for the Bridgewater Police Department since 1999. He has been involved in several selection processes in the past. (Testimony of Bois)
14. Emmanuel Gomes was the fourth member of the panel that interviewed the three candidates. He began his career as a police officer 21 years ago and currently serves as a captain for the Brockton Police Department. (Testimony of Gomes)
15. Each of the candidates was asked the same questions from the panelists. Based on the responses to the questions, the panelists ranked each of the candidates in the

following four categories: ability to reason clearly and make sound judgments (judgment); presenting ideas clearly and effectively (presentation); ability to establish satisfactory working relationships with others (working relationships); and ability to supervise, instruct, advise, direct and discipline subordinates (supervision).

(Testimony of O'Neill)

16. All four panelists ranked another police officer, Lawrence Crosman, as #1. One of the panelists ranked the Appellant as #2 and the remaining three panelists ranked the Appellant as #3. Panelist Crickard gave Crosman a total of 330 points and the Appellant 300 points. Panelist Pacheco gave Crosman a total of 367 points and the Appellant 337 points. Panelist Bois gave Crosman a total of 355 points and the Appellant 275 points. Panelist Gomes gave Crosman a total of 374 points and the Appellant 289 points. (Exhibits 11 - 14)
17. All four panelists testified as witnesses for the Town at the Commission hearing regarding this appeal. All four panelists testified that Mr. Crosman, based on his performance during the interview, ranked higher in the categories of sound judgment, working relationships and supervision. Two of the panelists also ranked Mr. Crosman higher in the category of presenting ideas while the remaining two panelists ranked the Appellant higher in this category. (Exhibits 11 – 14)
18. All four of the panelists were good witnesses. They testified credibly that they reached their conclusions independently before discussing their observations with other panelists. There was no evidence presented that any of the panelists had any ulterior motive for not recommending the Appellant for promotion to the position of sergeant. (Testimony, demeanor of Panelists)

19. In regard to the category of sound judgment, Lt. Crickard testified that the Appellant was too rigid when answering questions and that Mr. Crosman's experience allowed him to provide better answers. Similarly, Lieutenant Bois testified that the Appellant's answers were "too black and white"; that he wasn't able to elaborate on his answers; and that the Appellant's inability to provide descriptive answers was illustrative of his inexperience. Captain Gomes testified that Mr. Crosman displayed an ability to make better assessments when confronted with a problem. (Testimony of Panelists)
20. In regard to working relationships, Chief Pacheco testified that Mr. Crosman's answers showed him to be a consensus builder and that Mr. Crosman's answers were in sharp contrast to the more limited answers provided by the Appellant. Lieutenant Bois described Mr. Crosman as self confident and someone who was able to give many examples of how he had worked successfully with other individuals. In contrast, Lieutenant Bois testified that the Appellant talked about an incident in which someone had apparently taped something to his locker, leading him to question whether he had a good working relationship with his colleagues. Similarly, Captain Gomes testified that Mr. Crosman was able to provide more examples of how he had worked with other individuals, as opposed to the more limited answers provided by the Appellant. (Testimony of Panelists)
21. In regard to the category of supervision, Lieutenant Crickard was impressed with Mr. Crosman's leadership skills and his understanding the need to establish an environment in which officers want to follow you. Similarly, Chief Pacheco considered Mr. Crosman to be a "consensus builder", but was unable to make the

same assessment about the Appellant, based on his answers during the interview.

Captain Gomes testified that Mr. Crosman appeared to have a better understanding of how to manage a divergent workforce, as opposed to the Appellant who provided “rigid, black-and-white” answers to questions regarding his supervisory skills.

Lieutenant Bois testified that Mr. Crosman displayed a better demeanor and presence, traits he did not find present in the Appellant. (Testimony of Panelists)

22. In regard to presentation, two of the panelists found the Appellant to be more articulate with a broader vocabulary than Mr. Crosman, with one panelist testifying that the Appellant, “speaks like we’d all like to speak”. (Testimony of Panelists)

23. Chief O’Neill also testified at the Commission hearing. He testified that, for the position of sergeant, he was looking for a candidate with knowledge of the job; an ability to execute laws and procedures; someone who could “lead by example”; and someone who could relate to the public

24. Chief O’Neill testified that the selected candidate, Mr. Crosman, who had fourteen (14) years of experience as a police officer at the time of the promotion, had a demonstrated ability to work with his peers; a command presence with both the public and his fellow employees; performed well in both adversarial and non-adversarial situations; was extraordinarily organized; and had strong leadership skills. (Testimony of O’Neill)

25. In contrast, Chief O’Neill testified that the Appellant had problems with decision-making; including his tendency to be unnecessarily rigid; had demonstrated immaturity as a police officer; and lacked leadership abilities. (Testimony of O’Neill)

26. Chief O'Neill recounted two instances which illustrated the shortcomings of the Appellant. First, Chief O'Neill recalled an incident in which he was monitoring the radio and the Appellant called in on multiple occasions seeking answers to the same questions before taking any action. The Appellant's indecisiveness on the day in question led Chief O'Neill to take the unusual step of taking the radio and ordering the Appellant to "make a decision". (Testimony of O'Neill)
27. Chief O'Neill also recounted difficulties that the Appellant encountered as part of a leadership program sponsored by the Mansfield Police Department. A former police chief from another community had been hired as a consultant to coordinate the leadership program. The Appellant had a disagreement with the former police chief and ended up not completing the program. (Testimony of O'Neill)
28. The Appellant testified on his own behalf at the Commission. According to the Appellant, he prepared what he called "the Mansfield Police Department Introduction Manual" used to assist new officers hired by the Mansfield Police Department. (Testimony of Appellant)
29. In August 2000, the Appellant accepted the position as the D.A.R.E. / Crime Prevention Officer in the Mansfield Police Department. During this time, he performed the duties of the D.A.R.E. officer and the Appellant maintained a budget and applied for federal and state grants. (Exhibit 15)
30. The Appellant cited two examples of his strong performance as a police officer, including chasing a shoplifter and the apprehension of two individuals suspected of breaking and entering. The Appellant also testified that he has been assigned to

perform the duties as a supervisor, including the position of shift commander, many times during his tenure. (Testimony of Appellant)

31. The Appellant testified that he has participated in monthly meetings to stay current on case law; attended computer crime investigation courses; attended training regarding missing children; and participated in other training programs. (Testimony of Appellant)

32. On May 10, 2005, the Town notified HRD that it had selected Officer Crosman, the #2 candidate on the civil service list, over the Appellant and provided the reasons for not selecting the Appellant. (Stipulated Fact)

33. HRD approved the reasons for bypass and the Appellant appealed that decision to the Civil Service Commission. (Stipulated Facts)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, s. 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the

Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

Ronald Sellon, Jr. is a well-educated professional who had nine (9) years of experience as a police officer when the promotional opportunity for the sergeant's position arose in 2005. Lawrence Crosman had fourteen (14) years of experience as a police officer at the time. Both of these officers appeared among the three eligible candidates on the civil service promotional list for sergeant, with Sellon ranked first and Crosman ranked second.

Mansfield Police Chief Arthur O'Neill assembled an interview panel to assess the three candidates on the civil service list and asked them to submit their recommendation to him. The four panelists included a lieutenant in the Mansfield Police Department; a police Chief in Raynham; a lieutenant from the Bridgewater Police Department; and a captain from the Brockton Police Department. Collectively, the panelists had over 100 years of law enforcement experience. Each of the panelists testified before the Commission. Their integrity was evident to anyone in the hearing room, including this Commissioner. The Town of Mansfield was fortunate to have received their services in selecting their next police sergeant.

All four of the panelists independently reached the conclusion that Lawrence Crosman, the second-ranked candidate, was superior to the Appellant in the following three categories: sound judgment; working relationships; and supervisory abilities. Two of the four panelists gave the Appellant the nod regarding his ability to present ideas effectively.

While each of the panelists raised concerns about the Appellant's answers to individual questions, they shared a common assessment that Mr. Crosman, partly due to his greater experience, was able to provide more thorough and descriptive answers that demonstrated his greater command experience and leadership abilities. At least two of the panelists described the Appellant as too "rigid".

Although the panelists reached their conclusions independently, they were consistent with the observations of Mansfield Police Chief Arthur O'Neill, who had observed the Appellant during his nine-year tenure as a police officer. Chief O'Neill, through his

observations, had concluded that the Appellant had difficulty making decisions in addition to problems establishing working relationships.

Paper and pencil civil service examinations should not be used as the sole determinant when making hiring and promotional decisions, particularly when it concerns appointments as important and sensitive as a police sergeant. While it is appropriate for the Commission to assess whether an interview process is conducted on a level playing field free of political or personal bias, it would be contrary to the concept of basic merit principles, not to mention public safety, for the Commission to discourage public sector employers from exercising their valid discretion via an interview process.

In the instant case, the interview process, including the panelists chosen, was above reproach. The recommendation of the four-member panel was unanimous; based on fair and reasonable job-related criteria that indicated that Lawrence Crosman was the preferred candidate. Moreover, the conclusions of the interview panel, reached independently, were consistent with the nine years of observations of Chief O'Neill. The Mansfield Police Department bypassed the Appellant with just cause, providing sound, rationale reasons for its decision and there is no evidence of inappropriate motivations or objectives on the part of the Appointing Authority that would warrant the Commission's intervention.

For all of the above reasons, the appeal under Docket No. G2-05-172 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - YES; Guerin, Commissioner – YES; Henderson, Commissioner – NO; Marquis, Commissioner – YES; and Taylor, Commissioner - NO) on February 21, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice:

Frank McGee, Esq.

Joseph Bartulis, Esq.

John Marra, Esq. (HRD)