

#17

C. A. No. 2019-00176
Paper 13, filed by Town of Billerica
Plaintiff's Motion for Judgment on the Pleadings

The Town of Billerica (Town) appeals from a decision of the Civil Service Commission (the commission) and therefore bears the burden of proving that the decision is invalid. *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012). "That is a heavy burden since we give due weight to the experience, technical competence, and specialized knowledge of the commission in deciding these matters." *Id.* (internal quotations and citations omitted). The substantial rights of the Town may not be prejudiced "by a decision that is based on an error of law, unsupported by substantial evidence, or otherwise is not in accordance with the law. G. L. c. 30A, § 14(7)." *Id.*, quoting *Brackett v. Civil Service Comm'n*, 447 Mass. 233, 242 (2006).

The Town does not argue that the commission made an error of law. Instead, the Town disagrees with the hearing officer's findings of fact and credibility determinations. The hearing officer concluded that the Town did not show by a preponderance of the evidence that it had reasonable justification for bypassing Lt. Smith. See commission decision, pp. 8-11. In the commission decision, the hearing officer analyzed the evidence and explained why the Town's two reasons for bypass were not adequate reasons supported by the evidence.

As set forth in the commission decision and Lt. Smith's opposition memo (Paper 13), there is substantial evidence supporting the hearing officer's decision. This Court's "standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom." *Police Dep't of Boston v. Kavaleski*, supra at 240 (citation omitted). The Town takes issue with the factual findings but offers no genuine reason why the Court should ignore or dismiss them. The fact that the Town continues to believe its own witnesses and evidence is not cause for setting aside the commission's factual findings and reasonable inferences.

The Town also argues that "the remedy here is not only excessive, it is illegal." (Town's memo, Paper 14, p. 17). The Town characterizes the remedy as one that compels the promotion of Lt. Smith. This is an overstatement. Lt. Smith is highest ranked on the promotional list and presented evidence of his good job performance at the hearing. The remedy does not require Lt. Smith's immediate promotion or removal of the person who received the promotion over Lt. Smith. Instead, the remedy requires that Lt. Smith be certified as the highest ranked candidate for the next captain's vacancy, and that "the Town shall not bypass him as a result of any facts or circumstances which it had knowledge of prior to this most recent decision to bypass him." If the Town does bypass Lt. Smith again, the promotion is not effective until Lt. Smith has the chance to appeal to the commission. The commission ordered a remedy which prevents a second bypass of Lt. Smith for inadequate reasons. The Town points to no statute or case law which prevents the commission from exercising its broad remedial powers in this manner.

For the reasons stated above, the Town's motion is **DENIED**, the defendants' cross-motion is **ALLOWED**, and Judgment on the Pleadings shall enter for the defendants.

November 4, 2020

/s/ Joshua I. Wall
Joshua I. Wall
Justice of the Superior Court