

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JESSICA STRANO,
Appellant

CASE NO. G1-16-056

v.

MANSFIELD POLICE DEPARTMENT
Respondent

Appearance for Appellant:

Richard Heavey, Esq.
P.O. Box 147 – 50 North Street
Medfield, MA 02052

Appearance for Respondent:

Michael J. Macaro, Esq.
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Commissioner:

Paul M. Stein

DECISION

The Appellant, Jessica Strano, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest her bypass for appointment as a full-time permanent Police Officer with the Mansfield Police Department (MPD).¹ The Commission held a pre-hearing conference on April 8, 2016, followed by four days of full hearing (September 8, 2016, September 9, 2016, October 28, 2016 and November 15, 2016), which was digitally recorded.² Twenty-one exhibits (Exh.1 through Exh.21) were received in evidence. On February 13, 2017, each party submitted a Proposed Decision.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² Copies of the CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- MPD Police Chief, Ronald A. Sellon, Jr.
- MPD Police Lieutenant, Tracy Juda
- MPD Police Lieutenant Francis William Archer, Jr.
- MPD Police Sergeant Roy D. Bain, Jr.
- MPD Police Detective Ken Wright
- MPD Police Officer David M. Sennett
- MPD Administrative Assistant, Nancy O'Brien

Called by the Appellant:

- Mr. Jeffrey Platt
- Mr. Matthew Greathead
- Ms. Susan Mary Jaquin
- Appellant Jessica Strano

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

The Appellant

1. The Appellant, Jessica (“Jesse”) Strano, is a long-time Mansfield resident with close ties to the Town (through parents, sister and friends). She struggled as a youth and, in 2005, when she was sixteen, her parents sought assistance through the Massachusetts Child in Need of Services (CHINS) program. She dropped out of Mansfield High School during her senior year, later returning to obtain her high school diploma in 2006 through the Mansfield High School Evening Program, excelling academically and earning the Program Director’s praise for being “a responsible, respectful student taking advantage of a second chance opportunity.” (*Exh.4*)

2. In May 2009, Ms. Strano enlisted in the U.S. Air Force and served as a Military Police Officer with the 741st Missile Security Squadron at Malmstrom AFB, MT. She was Honorably Discharged with the rank of E-3 (Airman First Class) in September 2012. (*Exhs. 4 & 21*)

3. While on active duty, Ms. Strano earned an Associate of Science Degree in Criminal Justice Administration from Park University (Malmstrom Campus), where she made the Dean’s List.

She pursued a Bachelor's Degree in Criminal Justice/Law Enforcement through Park University (Hanscom Campus) and is 20 credits shy of a degree, with a 3.53 GPA. (*Exhs.4, 12 & 21*)

4. After discharge from the Air Force, Ms. Strano moved back to Mansfield. In 2013, she obtained a Class "C" License to Carry through the MPD. She also went through an acrimonious divorce from her husband whom she married in 2009. She was unemployed until August 2013 when she took a job as an unarmed security officer. (*Exh. 4*)

5. While employed as a security officer, Ms. Strano provided private security services to a wealthy Boston area CEO, including perimeter security and event security, as well as personal services such as transportation, dog-walking and trash disposal. She sometimes, but only rarely, confronted trespassers and curiosity seekers. She generally worked a 4PM-12AM shift alone and was relieved by her supervisor, Jeffery Platt, who worked the night shift. (*Exh. 4; Testimony of Appellant & Platt*)³

6. In or about March 2014, Ms. Strano began a dating relationship with J.P., to whom she had been introduced through her father. J.P. worked for the Massachusetts Department of Correction as a Correction Officer at MCI Concord, MA. (*Exh. 4; Testimony of Appellant*)

7. J.P. was "no stranger" to many MPD Officers. In February 2013, Officer Sennett had pulled over J.P. for traffic infractions and his female passenger, a suspected shoplifter, was arrested on three outstanding warrants. In December 2013, the woman died of a heroin overdose at J.P.'s home. (*Exh.4; Testimony of Appellant, Sellon & Sennett*)

8. Ms. Strano learned from her father about the death of J.P.'s former girlfriend, but he told her little about the woman or how she died. There were "rumors" that she had hung herself. He suggested Ms. Strano talk to J.P. which she did several months into the relationship. J.P. was not

³ Mr. Platt was called to testify about his claim that the security component of Ms. Strano's work was a "joke". He was inarticulate, admitted to "memory issues" (attributed by him to a football injury) and, for the most part, never actually observed her work. I give his testimony no weight. (*Exh. 4; Testimony/Demeanor of Platt*)

completely forthcoming, telling Ms. Strano that the woman was taking pills for depression and pain and “overdosed”. Ms. Strano did not inquire further. (*Testimony of Appellant*)

9. In July 2014, J.P. was arrested by the MPD for OUI, and lost his driving license for nine months. Ms. Strano bailed him out of jail. J.P. moved in with Ms. Strano and she drove him to and from work during that nine-month period, while he lived with her. A few months later (about May 2015), Ms. Strano and J.P. broke off the relationship. She has not had contact with him since. (*Exh. 4; Testimony of Appellant & Sennett*)

10. On Saturday, June 20, 2015, at a party for Ms. Strano (her birthday was a few days earlier), Ms. Strano met K.T., whom had come to the party with another friend of Ms. Strano. They met for a drink that evening with her father. He accompanied her on a “Walk For Cancer” on Sunday. He also visited her home several times later that month. (*Exh.4; Testimony of Appellant*)

11. A few days after meeting Ms. Strano, K.T. told her that he was going to court and needed money for a case that “had to do with his children”. She loaned him some money on his promise that he would repay her by the following Monday. When the weekend passed without repayment, Ms. Strano realized that K.T. had taken advantage and stole money from her. (*Testimony of Appellant*)

12. Thereafter, Ms. Strano had sporadic contact with K.T. She sometimes found him in the company of another female [A.F.]. Following one such encounter in the early morning hours of July 1, 2015, Ms. Strano reported to the Norton Police Dep’t that A.F. was harassing her, that she was concerned for K.T., and asked the police to check on his well-being. On July 2, 2015, Ms. Strano again reported a fight between K.T. and A.F. (*Exhs. 4 & 13; Testimony of Appellant*)

13. Also, about this same time, Ms. Strano began receiving disturbing text messages from K.T. which prompted her to contact K.T.’s mother. Ms. Strano told K.T.’s mother. Ms. Strano

learned that K.T. was homeless. She learned K.T. may be using the office building where his mother worked to sleep at night and she was afraid if he didn't find another place to live soon, her own job could be in jeopardy. (*Exh. 4; Testimony of Appellant & Jaquin*)

14. In the early morning on or about July 15, 2015, Ms. Strano was on her way home from work when she spotted K.T. in the parking lot of the office building where his mother worked. They engaged in conversation until interrupted by MPD Officer Titus who ordered them to disperse. At that time, or shortly thereafter, K.T. told Ms. Strano that "because of what happened" in the court case, he lost his job, but, was just hired by a landscaper and needed money to get pants and boots for the new job. At this point, Ms. Strano was wary, but wanted her money back. When K.T. said he couldn't get the money from his mother, Ms. Strano brought K.T. to Kohl's where she purchased the clothing for him. (*Testimony of Appellant*)

15. On July 21, 2015, K.T. contacted Ms. Strano and said he would meet to pay her back some of what he owed. She and K.T.'s mother traveled separately to Norton to meet K.T., who was with A.F. K.T. didn't have money on him but said they should follow him and he would get it. A 45-minute caravan through several towns ensued ending back at Wheaton College. Ms. Strano never received any money. (*Exh. 4; Testimony of Appellant & Jaquin*)

16. On or about July 27, 2015, K.T.'s mother initiated a Section 35⁴ proceeding against K.T. and he was confined to a residential rehabilitation home in Taunton. At some point thereafter, K.T.'s mother asked Ms. Strano to bring some food to K.T. at the rehabilitation home, which she did. That was her last contact with K.T. (*Exh. 4; Testimony of Appellant & Joquin*)

⁴ G.L.c.123,§35 provides for a court order to involuntarily commit someone who has an alcohol or substance abuse disorder that is likely to cause serious harm for the purpose of in-patient care up to 90 days. Ms. Jaquin knew K.T. had a "dark history" with the criminal justice system that was "well known", that he suffered from alcohol abuse. She suspected (but did not know "for sure") that he abused drugs. (*Testimony of Jaquin*)

17. Realizing that further efforts to be repaid were futile, Ms. Strano went to the MPD to file a complaint against K.T. for larceny. She met with Det. Wright, who informed her that K.T. was well-known to the MPD, but he did not elaborate. In fact, K.T.'s MPD "in-house packet" included incident concerning K.T.'s past involvement with the MPD dating from 2006. He told her that her actions were considered a "gift" and K.T. could not be prosecuted for larceny. (*Exh. 4; Testimony of Appellant, Sennett & Wright*)

18. I believe Ms. Strano's testimony that she knew nothing about J.P.'s or K.T.'s past history with the MPD when she began each of those two relationships. No percipient evidence proved otherwise. (*Testimony of Appellant, Sennett, Archer, Wright, Juda, Bain, Sellon & Jaquin*)

The 2015 MPD Hiring Process

19. In April 2015, Ms. Strano took and passed the civil service examination for municipal police officer and her name appeared on the eligible list established on October 2, 2015. (*Exh. 2*)

20. On December 14, 2015, the MPD received Certification #03455 issued by the Massachusetts Human Resources Division (HRD), which authorized the MPD to hire one full-time municipal police officer from the names listed on the Certification. (*Exh. 2*)

21. Ms. Strano and four others signed Certification #03445 as willing to accept appointment to the position of an MPD police officer. Ms. Strano's name was ranked second. (*Exhs. 2 & 4*)

22. The MPD is a municipal police force, appointed by the police chief, subject to civil service law, serving the Town of Mansfield, MA (pop.~24,000). The MPD employs 35 full-time sworn officers, 20-25 part-time police officers, 9 civilian dispatchers and several other civilian personnel. Four of the full-time police officers are female. (*Testimony of Sellon & Sennett*)

23. The current Police Chief, Ronald A. Sellon, Jr. started his career with the MPD in 1996, and became Police Chief in 2012. As Police Chief, he has hired six full-time patrol officers, the

first of which was female. He also has hired approximately 16 part-time reserve police officers, of which five are female and one is Asian-American. He has promoted two females – Tracy Juda to Police Lieutenant in 2013 and Nicole Boldrighini to Detective in 2015. (*Testimony of Sellon*)

24. On or about December 29, 2015, the five candidates who signed Certification #03455 received an application packet and “conditional offer of employment” (more appropriately an “invitation to apply”) to be returned the following week, subject to submission of the completed application and required documentation, a background investigation, an interview “during which time the candidates will be measured against each other”, no “disqualifying information” is found, a physical aptitude test and a psychological exam. (*Exhs. 4 & 5; Testimony of Sellon*)

25. Ms. Strano duly returned a completed packet on or about January 7, 2016. As part of her application, she answered: “NO” to the question: “Have any. . . licenses [including your Driver’s License] ever been suspended or revoked in this or any other State?” (*Exh. 4 [Page 14 of 21]*)

26. In the section of the application that required disclosure of “Current/Former Significant Other” relationships, Ms. Strano listed three persons: (1) [K.T.], unemployed, “boyfriend” “From June 2015 To June 2015”; (2) [J.P.], Corrections Officer, “boyfriend” “From March 2014 To May 2015”; and (3) [C.T.], “Former Spouse married Dec.2009, “From Jan 2008 To March 2013”. (*Exh. 4 [Page 13 of 21]*)

27. An MPD officer was assigned to conduct Ms. Strano’s background investigation. He had not known her previously. She “carried herself very well” and they had a “good rapport.” His 23-page (single-spaced) report references, among other things, the following:

Criminal History

- No criminal history
- MPD In-House Check: The applicant makes no fewer than 11 appearances in the MPD logs for a number of reasons including minor motor vehicle infractions dating back to 2006 (she was the Reporting Party in five of those cases for anything from reporting a DMV to an injured turkey in the road.)

- Reports about Ms. Strano’s interactions with K.T.
- Report of a 2005 juvenile incident (when Ms. Strano was 16 years old, in which then Officer Archer had taken her into custody).
- Inquiries to eleven (11) other local law enforcement agencies reporting other incidents involving K.T. in July 2015.
- Information known to the officer about K.T. and J.P.

Applicant Interview

I had the opportunity to interview the applicant on two occasions, the first being a brief & unplanned meeting while canvassing her neighborhood on Sunday, January 10, 2016. I decided that I wanted to see the interior of the applicant’s home to get a sense of how she lived. On this day, Strano invited me into her duplex, which was neat and tidy with the exception of some Christmas decorations in the process of being packed away until next year. Apparently, I had woken up the applicant, who had worked overtime the night before. She handled my intrusion with grace. After apologizing and then writing down her work schedule so I wouldn’t repeat today’s inconvenience, she made a statement that piqued my interest. She (sheepishly) told me on my way out the door that, when I looked at her application, I would see that she had made “*bad choices in men.*”

I conducted a more formal interview of Strano on Sunday, January 17th, 2016 . . . at the Mansfield Police Department. The applicant looked professional in a Security Officer uniform and conducted herself in a professional manner. . . .

. . . When asked if the MPD ever responded to her house, she recalled then-Officer Archers report . . . almost verbatim, attempting to hide nothing. . . .

I focused on her MPD In-House appearances beginning with her most-recent boyfriend, [K.T.]. I asked why she would date someone like [K.T.] when she’s trying to become a police officer. She claimed she did not know anything about [K.T.’s] criminal record or substance-abuse histories . . . She then said she didn’t have any contact with him after discovering his past history. . . . [T]he last time she saw [K.T.] was when she visited him at rehab in Norwood. We then moved on to Strano’s previous boyfriend, [J.P.]. She said that their relationship began when her father met [J.P.] She stated that [J.P.] eventually moved in with her and then lost his license (when he was arrested for OUI by the MPD in July of 2014) and she “*drove him to work*”. . . [S]he ended the relationship and hasn’t spoken to [J.P.] since May of 2015. . . .

I asked Strano why she had written on her MPD application that none of her licenses had ever been suspended when her KQ showed that her MA Driver’s License had been suspended two times for non-payment defaults back in 2005 & 2006. She claimed she did not know her license had ever been suspended (she was 17 & 18 years of age, respectively . . .)⁵

I asked Strano why she had a PCF number if she had never been charged with a crime. . . . *Note: [The Juvenile Probation Officer] . . . said that it was highly likely events happened exactly the way Strano described them . . . “back in those days.”

Recommendation

The applicant has a lot of positive characteristics to focus on. She comes from what some people I interviewed have termed a “strict” family and appears to have gone through, but overcome, a troubled teenage past. She has been a hard-worker since she was in high school and continues to be driven to this day, earning an Associate’s Degree while an active Airman in the USAF and continuing to work

⁵ The question about license suspension was based on the Driver’s History (KQ) obtained by the background investigator. At the Commission hearing, Ms. Strano produced a Massachusetts RMV document which proved that the investigator’s interpretation of the Driver’s History was erroneous and that, in fact, her license was never suspended. (*Exhs. 4 & 9; Testimony of Appellant*)

toward a Bachelor's Degree while employed full-time in the private security field. Friends describe her as somebody who helps others, often to her own detriment. She appears to be dedicated to achieving her law enforcement dreams and conducts herself impressively in person.

One could also argue that failing out of high school in her junior year; a two-year stint in the USAF without deployment followed by a year of unemployment; an unfinished Bachelor's Degree after six years of college; and a job in private security described by the applicant's supervisor as a "joke" hardly places her in the same category as some of our high-quality recent hires

But even more damaging is the fact that Strano has made, in her own words "bad choices in men" and appears to be setting a pattern in doing so. Her ex-husband was described by an associate of the applicant as "a dirtbag" He was followed by Mansfield's own [J.P.], a man with obvious substance abuse (alcohol) issues and a history with the MPD that includes his girlfriend overdosing on heroin and then dying while with him at home. An undocumented domestic disturbance when [J.P.] and Strano broke up . . . resulted in Strano apologizing door-to-door to her neighbors After [J.P.] came career criminal [K.T.], well-known to the MPD and a plethora of other local and not-so-local police departments as a substance-abuser who literally makes his living as a shoplifter. Strano dated [K.T.] as recently as six months ago which is, in my opinion, undeniably the choice of somebody who is looking to sabotage their own chances of a career in law enforcement. . . . Strano was described by [friends] . . . as somebody who "puts others before herself too much and burns out" and . . . "like Mother Teresa" I shudder to think of who she may choose to have a relationship with next. If we were to hire her, one would be left to wonder how the reputation and credibility of the Mansfield Police Department could be affected by her next choice in a partner.

(Exhs. 4 & 13)

28. As part of the application process, the MPD required a copy of the applicant's high school diploma. Ms. Strano left her diploma with her mother prior to leaving for military service and it was lost. She went to Mansfield High School, as well as searched on line, in an attempt to obtain a duplicate without success, and so informed the investigator. *(Testimony of Appellant)*

29. Also, MPD routinely verified an applicant's employment history and interviewed supervisors. Ms. Strano signed releases that authorized the MPD to obtain this information. When Officer Sennett attempted to obtain information about Ms. Strano's current employment with Allied Barton/SOS Security, it declined to respond. He asked Ms. Strano to provide him with her complete personnel file but she, too, was directed by the company to an on-line resource where she was able to obtain a "proof of employment" only. *(Exh. 4; Testimony of Appellant)*

30. The background investigations (several different investigators were assigned to conduct the investigation of the five candidates) were supervised by and submitted to Detective Sergeant

Crossman who reviewed the reports and submitted them for further review by one of the three MPD Lieutenants, in this case, Lieutenant Thompson. Thereafter, Chief Sellon established an interview panel, consisting of the two other Lieutenants (Tracy Juda [23 years with the MPD] and Francis William Archer [22 years with the MPD]), one Sergeant (Roy D. Bain, Jr. [21 years with the MPD]) and one Detective (Ken Wright [17 years with the MPD]). (*Testimony of Sellon, Juda, Archer, Bain & Wright*)⁶

31. In early February, each of the five candidates was contacted and interviews were arranged for February 19, 2016. Ms. Strano was serving on jury duty and said, if she could not get released in time, she would call to reschedule. She was placed last on the schedule (for 1:00 pm) and was the final interview of the day. (*Exh. 20; Testimony of Appellant, O'Brien & Greathead*)

32. The interviews were conducted in a semi-structured format. Prior to the interviews, the panel members briefly reviewed the candidates' MPD application packets and background investigation reports. Each panel member selected three questions from a matrix of 37 possible questions. These questions were to be asked of each candidate, with the opportunity for follow-up as needed. (*Exhs. 7, 11, 12, 17, 18, 19; Testimony of Sellon, Juda, Archer, Bain & Wright*)

33. During and/or immediately following the interview, each panel member completed an Interview Report on which they scored each candidate on a scale of 1 (low) to 5 (high) in 10 categories. (*Exhs. 4, 5, 14, 15 & 16; Testimony of Juda, Archer, Bain & Wright*)

⁶ Chief Sellon's practice was to ensure that no officer involved in conducting or reviewing a candidate's background investigations was assigned to the interview panel, but an officer's prior encounters with a candidate was not considered a reason to disqualify the officer from participating in the process so long as appropriate disclosure was made. I note that, as described earlier, Lt. Archer had responded to the 2005 incident involving the CHINS issue which Ms. Strano vividly recalled to Officer Sennett during her background interview and which he extensively described in his investigation report. Also, Detective Wright had met with Ms. Strano when she sought a criminal complaint against K.T for larceny, which was not pursued because Detective Wright believed no crime had been committed. (*Testimony of Sellon, Archer & Wright*).

34. According to MPD's standard practice, each interview must be video recorded. Chief Sellon relied on viewing the video record as an "extremely important" tool to reach his hiring decision as well as to serve as an important "check and balance on the interview process" and to insure "transparency" that individual bias or other misperceptions did not enter into the interview process which would require his further attention. (*Testimony of Sellon & Juda*)

35. Upon completion of each interview, the candidate received an assignment to prepare a four page research paper to be turned in to the MPD the following Monday morning at 0800 sharp on the topic of "Intelligence-led Policing".⁷ These papers were reviewed by Lt. Thompson, the one Lieutenant who did not sit on the interview panel. (*Exhs. 4, 5 & 8; Testimony of Sellon*)

36. As the appointing authority, Chief Sellon made the final decision. He looks for a person who thinks on his/her feet, handles stress, can problem solve, is articulate, flexible and adaptable, all of which are essential traits of a successful police officer. (*Testimony of Sellon*)

37. Prior to making a decision, Chief Sellon followed the practice he has employed in all prior hiring processes for the past three years. He discussed the candidates with the two Lieutenants on the interview panel (Lt. Archer & Lt. Judas) and the third Lieutenant who graded the research papers (Lt. Thompson). Lt. Archer and Lt. Judas informed Chief Sellon that there was no "stand out", that Candidate C.S.'s interview was "difficult" but "adequate" and that they both believed Ms. Strano's interview was "one of the worst ever." Chief Sellon, along with Lt. Thomson, then began to view all the videos and score sheets to confirm how their perceptions

⁷ "Intelligence-led Policing" is a business model and philosophy that, in broad terms, espouses an emphasis on crime prevention and targeted problem-oriented and neighborhood policing practices informed through data-driven intelligence, as opposed to "randomized patrolling" and "handcuffs" to catch criminals, i.e., "arrest your way" to reducing crime rates. Chief Sellon drew on these principles to develop his own vision of best-practices in policing, including the formation of a Problem-Oriented Policing Unit within the MPD (to which Officer Sennett had recently been assigned), tasked to focus on what Chief Sellon called "quality of life" issues, such as attacking substance abuse through proactive intervention, and using MPD officers to seek out users and steer them to treatment instead of incarceration. (*Testimony of Sellon & Sennett*)

matched those of the interview panelists. Finally, they reviewed the background investigations and the research papers (*Testimony of Sellon & Juda*)

38. In the course of Chief Sellon's review, he discovered that the interview tape had been allowed to run out during the interview of Candidate C.S. Only the first eight minutes of that interview were recorded. In the absence of a video record, Chief Sellon's made his evaluation of C.S. based on the score sheets and input from conversations with the interview panelists that C.S.'s interview was "adequate." (*Exh.11; Testimony of Sellon & Juda*)

39. During their Commission testimony, the interview panel members gave generally consistent recollections of Ms. Strano's interview, stating it was "painful" and "difficult to watch", recalling that Ms. Strano admitted to being unprepared, "sat at attention", sometimes took long pauses before responding, did not have answers for all questions, those she did answer were mostly "standard" and "one-word" responses and the panel had to "pull information out of her." After watching Ms. Strano's interview tape, Chief Sellon formed the opinion that she had been "wholly unprepared" and her performance was "atrocious". (*Testimony of Juda, Archer, Bain, Wright & Sellon*).

40. As to the interview with Candidate C.S., the interview panel provided somewhat more inconsistent recollections. Lt. Juda, whose gave Candidate C.S. the same overall "substandard" rating of Candidate C.S. as she did to Ms. Strano, said the interview was "difficult for him", because he "doesn't like to talk about himself" and was unable "to talk himself up." Lt. Archer thought Candidate C.S. performed "well", Detective Wright found Candidate C.S. was "friendly, poised, stable". Candidate C.S. was credited with "bringing up" and acknowledging his negative history with alcohol-related issues. (*Testimony of Juda, Archer, Wright, Bain & Sellon*)

41. The interview tapes confirm the interviewers' conclusions that none of the candidates "stood out". Although all interviews proceeded, in general, along the same line of questions, some interviews diverged into subjects that other interviews did not and every scripted question was asked of all candidates. For example, the panel spent time at the outset of the interview with Candidate #1 to ask detailed questions about his "questionable choices in life", but when Ms. Strano mentioned her past "rebellious behavior" and referenced her recent visit with Detective Wright, the panel did not pursue that subject with her. Candidate #4 & Candidate #5 were asked hypothetical questions posing ethical issues (fellow officer seen stealing, etc.) that Ms. Strano and others were not. (*Exhs. 10, 17 through 19*)

42. Ms. Strano did admit she had not "done much" to prepare for the interview, having come directly from court where she had been serving on jury duty for approximately two weeks, erroneously expecting to be meeting for some follow-up on her investigation, not to appear before a formal interview board. The tape also confirms that Ms. Strano's interview lasted about 21 minutes, approximately half the duration of the other candidates' interviews. She was soft-spoken and her body language and demeanor clearly showed that she was quite nervous. She did take time before answering a few of the questions, but overall, did provide substantive answers to many of the scripted questions and follow-up exchanges. (*Exhs. 10, 17 through 19*)⁸

43. Upon completing his review, Chief Sellon selected Candidate C.S., the candidate tied for third and ranked just below Ms. Strano for appointment, bypassing Ms. Strano and Candidate #1 (who was first on the list). Chief Sellon actually believed that Candidate #5 and, possibly

⁸ For example, she wanted to become an MPD police officer because she had done research on the problems of community and police relationships and wanted to help "build bridges" and "help" others. This prompted an off-script follow-up that asked if she would do it for "zero dollars", to which she said "probably not" but "would consider it", to which one of the panel members stated that would save them a lot of money. There was further off-script follow-up that "some people don't want to be helped" and how would she handle such people. She replied that she was "well-aware" of that, and said could deal with it and enforce the law against anyone. The one question for which she specifically said "nothing comes to mind" was to name her biggest challenge as a police officer. (*Exh. 10*)

Candidate #4, were better qualified than C.S., but neither could be selected as they were outside the “2n+1” formula he was bound to follow. (*Exhs. 2 & 3; Administrative Notice [HRD’s Personnel Administration Rules, PAR.0.09]*)

44. Candidate C.S. is a 2012 graduate of Mansfield High School. He was enrolled at Westfield State University and expected to graduate in June 2016 with a Bachelor’s Degree in Criminal Justice. He holds a Massachusetts EMT/Basic certificate. While in college, he worked with the Westfield State EMS, volunteered with the Blandford Fire Department and completed the Reserve/Intermittent Police Academy. He had not served as a police officer. He currently worked in the ER at a major Boston hospital. He had no military service. (*Exh. 5*)

45. The officer who conducted C.S.’s background investigation had not completed his investigation report when Candidate C.S. was interviewed, as C.S. had not yet submitted the required credit report and the background investigator had not reported on his interview with the Fire Chief at Blandford Fire Department (whom he visited on-site on February 17, 2016). He did not follow up with Candidate C.S.’s current employer, because his mother “is a surgical nurse so I doubt anyone . . . would give him an honest assessment.” The only prior employer with whom the background investigator spoke was the manager of the fast-food store where C.S. worked in 2010 (high school). (*Exh. 5*)

46. The background investigator’s final assessment of Candidate C.S. included both “Positive” and “Negative” assessments. Based on my review of this background investigation, along with the entire application packet for Candidate C.S., his record contains information, both positive and negative, about the candidate’s prior history and conduct in the application process that would warrant further review and assessment. (*Exh. 5*)

47. By letter dated February 24, 2016, Chief Sellon informed Ms. Strano that her application for employment with the MPD was denied. His letter stated the following reasons for bypass:

A lower scoring candidate fared better in the interview process, and had significantly stronger experience and credentials. . . . The reasons for your non-selection are as follows:

History of improper associations. As recently as this summer you were associating with individuals who would be improper under the rules and regulations of this agency. These associations are not limited to one questionable association but multiple that led you to interact not just with this agency, but other area law enforcement agencies. This led not just the members of this agency to question your judgment but those of outside agencies as well.

Untruthfulness and inability to complete the application process. On page 14 the application asks if “any licenses” to operate a motor vehicle have ever been revoked or suspended in this or any other state. In response to this question you marked “No”. However, a check of your drivers’ history shows this to not be the case, as that on 1/3/2006 and again on 11/21/2006 your license was suspended. Further you failed to supply the background investigator with the documents he requested multiple times.

On February 19, 2016 interviews were conducted At the conclusion of the interviews, the panel found a significant difference in the performance of the lower ranked candidate.

The successful candidate did not have the same issues, performing significantly better in the interview. [I]n being better prepared for the interview also displayed “Stronger relevant experience and credentials” including “past unblemished law enforcement experience” . . . better communications skills, better knowledge, and greater poise.

Chief Sellon’s letter concluded by emphasizing the importance of truthfulness to a police officer’s credibility, including reference to the “so-called Brady Rule”, as well as the ability to “follow instructions”, citing numerous judicial and Commission decisions on point. (*Exh. 1*)

48. The MPD rule to which Chief Sellon’s February 24, 2016 letter refers is found in Section 6.4. 3.9 of the MPD’s Rules and Regulations, which provides:

Improper Associations – officers and employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior, except as necessary for the performance of official duties, without the knowledge and approval of the Chief or the officer’s Commanding Officer, or where unavoidable because of family relationships of the officers.

(*Exh. 6*)

49. At the Commission hearing, Chief Sellon elaborated on the basis for his decision to bypass Ms. Strano and to appoint Candidate C.S., standing by the reasons set forth in his February 24, 2016 bypass letter. (*Testimony of Sellon*)

50. Chief Sellon, however, did candidly acknowledge on cross-examination, that, the evidence presented at the Commission hearing did, in fact, establish that Ms. Strano's answer on the application that her driver's license was never suspended is "consistent with the truth". (*Exhs. 4 & 9; Testimony of Sellon*)

51. Chief Sellon also candidly acknowledged that, to his knowledge, "the documents" Ms. Strano allegedly repeatedly failed to provide to the background investigator were limited to her high school diploma. He assumed that she had never responded to the request and he did not know about the good faith effort she had made to get a copy. (*Testimony of Sellon & Appellant*)

52. Chief Sellon defended his conclusion that Ms. Strano's "associations" were justification to question her "judgment" by pointing to Ms. Strano's own admission that she made "bad choices" in her personal relationships. He believed this involved an issue of "community perception" that the public trust in the integrity of law enforcement would be questioned if the MPD hired a police officer who recently had carried on multiple personal relationships with persons known in the community as criminals and substance abusers. (*Testimony of Sellon*)

53. Chief Sellon's final reason for selecting Candidate C.S. over Ms. Strano was his "significantly better performance" and "being better prepared" at the interview, displaying "better communications skills, better knowledge and better poise." This comparative conclusion was based on his viewing of Ms. Strano's interview, the score sheets and interviews of the other candidates, and the post-interview anecdotal recollections about Candidate C.S.'s performance that he received from Lt. Archer & Lt. Juda. (*Exh. ID; Testimony of Sellon, Juda & Archer*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” and ensuring that “all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31,§1. The core mechanism that ensures adherence to these principles in hiring and promotion is provision for regular competitive qualifying examinations administered by the Massachusetts Human Resources Division (HRD), open to all qualified applicants, from which “eligible lists” of successful applicants are established, ranking candidates in order of their exam scores, along with certain statutory credits and preferences. An eligible list is then used to create a “Certification” (containing the names of at least three candidate for each open position – known as the “2n+1” formula), also listing names in the same rank order as they appear on the eligible list, from which an appointing authority must select the candidate(s) for the civil service appointment. G.L.c 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person below the “person whose name appears highest” on the Certification, an appointing authority must provide specific, written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing the higher-ranked candidate. G.L.c.31,§1,§27; PAR.08:

“Upon determining that any candidate on a certification is to be bypassed . . . an appointing authority shall immediately. . . send . . . a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked. . . . Such statement shall indicate all . . . reasons for bypass on which the appointing authority intends to rely or might, in the future, rely to justify the bypass. . . . No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed . . . shall later be admissible as reasons for selection or bypass in any proceeding before the . . . Civil Service Commission.” PAR.08(4)

A person who is bypassed may appeal that decision under G.L.c.31,§2(b) for de novo review by the Commission. When a candidate appeals from a bypass, the Commission's role is not to determine if the candidate should have been bypassed. Rather, the Commission determines whether, by a preponderance of evidence, the bypass decision was made after an “impartial and reasonably thorough review” of the background and qualifications of the candidates’ fitness to perform the duties of the position and that there was “reasonable justification” for the decision. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012) citing Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm’n, 447 Mass. 233, 241 (2006) and cases cited; Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003). See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (appointing authority must prove, by a preponderance of evidence, that the reasons assigned to justify the bypass were “more probably than not sound and sufficient”); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (same)

“Reasonable justification in this context 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, 543 (2006) and cases cited; Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

In selecting public employees of skill and integrity, appointing authorities are vested with a certain degree of discretion. City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997). It is not necessary, however, for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” Rather, the governing

statute, G.L.c.31,§2(b), gives the commission broad “scope to evaluate the legal basis of the appointing authority's action, even if based on a rational ground.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997). In deciding “whether there was reasonable justification” shown for an appointing authority’s exercise of discretion, the Commission's primary concern is to ensure that the action comports with “[b]asic merit principles.” G.L.c.31,§1. See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 188 (2010); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm’n, 40 Mass.App.Ct. 632, 635 (1995), rev.den.,423 Mass.1106 (1996); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991). Although it is not within the authority of the commission “to substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority”, 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*)

ANALYSIS

Untruthfulness

The duty imposed upon a police officer to be truthful is one of the most serious obligations he or she assumes. “Police work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer.” Falmouth v. Civil Service Comm’n, 61 Mass.App.Ct. 796, 801 (2004) citing City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the

truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See, also, Desmond v. Town of West Bridgewater, 27 MCSR 645 (2014); Ung v. Lowell Police Dep’t, 24 MCRS 567 (2011); Robichau v. Town of Middleborough, 24 MCSR 352 (2011) and cases cited; Gallo v. City of Lynn, 23 MCSR 348 (2010) An officer’s demonstrated record of untruthfulness may compromise the officer’s ability to serve as a credible witness in the prosecution of a criminal case. See generally, United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2400 (1976), citing Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). See also Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995); United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985).⁹

Likewise, an Appointing Authority is well within its rights to bypass an individual for “purposefully” fudging the truth as part of an application process for the position of police officer. See, e.g., Barbosa v. New Bedford Police Dep’t, CSC No. G1-15-34, 29 MCSR 495 (2016) (pattern of inattention to detail and lack of candor regarding prior employment and criminal history); Minoie v. Town of Braintree, 27 MCSR 216 (2014) (multiple omissions about prior domestic abuse restraining orders and residences); Noble v. Massachusetts Bay Trans. Auth., 25 MCSR 391 (2012) (concealing suspension from school for involvement in criminal activity); Burns v. City of Holyoke, 23 MCSR 162 (2010) (claiming he “withdrew” from another law enforcement application process from which he was actually disqualified); Escobar v. Boston Police Dep’t, 21 MCSR 168 (2008) (misrepresenting residence)

⁹It bears notice that the Commonwealth’s jurisprudence takes a somewhat different path when ordering exculpatory evidence disclosed in criminal prosecutions. In particular, evidence “beyond information held by agents of the prosecution team”, including, in particular, internal affairs investigatory material, does not generally come within the sweep of the “Brady” test, but is subject to other, stricter rules. See, e.g., MASS.R.CRIM.P. 14(a)(1)(A); Commonwealth v. Laguer, 448 Mass. 585 (2007); Commonwealth v. Tucceri, 412 Mass. 401 (1992); Commonwealth v. Daye, 411 Mass. 719 (1992); Commonwealth v. Gallerelli, 399 Mass. 17 (1987); Commonwealth v. Wilson, 381 Mass. 90 (1980) See also Commonwealth v. Wanis, 426 Mass. 639, 643-44 (1998); Reporter’s Notes – Revised, 2004, Subdivision (a)(1)(A), MASS.R.CRIM.P. 14(a)(1)(A); Commonwealth v. Thomas, 451 Mass. 451 (2008)

The corollary, however, to the serious consequences that flow from a finding that a police officer or applicant has violated the duty of truthfulness requires that any such charges must be carefully scrutinized so that the officer or applicant is not unreasonably disparaged for honest mistakes or good faith mutual misunderstandings. See, e.g., DeTerra v. New Bedford Police Dep't, 29 MCSR 502 (2016) (forgetting a 20-year-old license suspension); Boyd v. City of New Bedford, 29 MCSR 471 (2016) (honest mistakes in answering ambiguous questions on NBPD Personal History Questionnaire); Morley v. Boston Police Dep't, 29 MCSR 456 (2016) (candidate unlawfully bypassed on misunderstanding appellant's responses about his "combat" experience); Michaud v. Saugus Police Dep't, 28 MSCR 534 (2015) (immaterial omissions of information applicant could not obtain and/or was covered elsewhere in application); Lucas v. Boston Police Dep't, 25 MCSR 420 (2012) (mistake about appellant's characterization of past medical history)

Applying these principles to the facts of this appeal, I conclude that the MPD did not meet its burden to prove that Ms. Strano was untruthful or otherwise demonstrated a lack of candor in completing the application process. Thus, those reasons stated in MPD's bypass letter do not provide a reasonable justification to bypass her.

First, the Massachusetts RMV documents produced by Ms. Stranl conclusively established that her contention that she had never had her driver's license suspended or revoked was, in fact, a truthful statement. Rather, it was the MPD investigator's reliance on the "KQ" printout that was erroneous. Thus, this most serious charge against Ms. Strano is without merit.

Second, the evidence also established that Ms. Strano's failure to procure a high school diploma was not the result of inattention or intentional failure to "complete" the application requirements. Rather, she had lost her original diploma and, despite good-faith and diligent

effort to get a replacement, was unable to do so. The MPD investigator's assertion that she had never responded to his "multiple" requests, upon which the MPD bypass letter relied, was credibly rebutted by the evidence to the contrary. Moreover, the fact that Ms. Strano did graduate from Mansfield High School was vouched for by the school's Evening Program Director, and is not disputed.

Third, Ms. Strano's failure to procure her complete personnel file from her security company employer, similarly, does not establish reasonable justification to bypass her for failing to "complete" the application. She sought to comply in good faith with the MPD's request for these documents, but the security company's policy was limited to providing a proof of employment only. The MPD investigator did interview Ms. Strano's direct supervisor. I also note that, as to Candidate C.S., the MPD did not even pursue any effort to reach out to his current employer, on the assumption that, since his mother worked there and had gotten him the job, no one would provide an "honest" assessment. In sum, Ms. Strano's inability to obtain detailed employment records is not reasonable justification to bypass her.

Improper Personal Associations

The Commission has consistently recognized that law enforcement personnel, especially police officers, are held to a "higher standard" than other public employees and "carr[y] the burden to comport himself or herself in an exemplary fashion" both as to their on-duty and off-duty behavior. See, e.g., McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473 (1995) (off-duty mishandling of firearm).

"These cases teach a simple lesson. Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable 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 Commissioner of Boston v. Civil Service Comm’n, 22 Mass.App.Ct. 364, rev.den., 398 Mass. 1103 (1986).

However, the duty of care that can be demanded of public employees is not absolute. Prohibited conduct cannot be arbitrarily defined and must bear some nexus, based on reliable evidence of a pattern of behavior or character flaw, that, in fact, “calls into question their ability and fitness to perform their official duties” and is “reasonably related to the fitness of the employee to perform in his position.” G.L.c.31,§43,¶2. See, e.g., City of Cambridge v. Baldasaro, 50 Mass.App.Ct. 1, 4, rev.den., 432 Mass. 1110 (2000); School Committee of Brockton v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 491-92, rev.den., 426 Mass. 1104 (1997); Police Commissioner of Boston v. Civil Service Comm’n, 22 Mass.App.Ct. 364, rev.den., 398 Mass. 1103 (1986). This certainly includes egregious personal behavior that rises to the level of “conduct unbecoming” a police officer. See generally, McCormack v. Massachusetts Dep’t of State Police, 26 MCSR 531 (2013), aff’d, 92 Mass.App.Ct. 1103 (2017) (drug addicted trooper terminated for, among other things, carrying on long-term relationship with another known substance abuser and permitting her to wear his state police badge); Pellot v. City of Haverhill, 21 MCSR 205 (2008) (police sergeant demoted for repeatedly associating with cousin known to be selling drugs in officer’s presence); Williams v. Boston Police Dep’t, 11 MCSR 368 (1998)(upholding bypass of police candidate who had long-term relationship with notorious gang leader and, after his execution-style murder, married current spouse, a convicted murderer serving a 15-20 year sentence)

In particular, past personal associations, without more, have not been, and should not necessarily be disqualifying. See Shackford v. Boston Police Dep’t, 27 MCSR 466 (2014)

(overturning bypass based on poor judgment for having relationship with co-worker who was terminated for misconduct); Cuff v. Department of Correction, 23 MCSR 762 (2010) (allowing bypass appeal, in part, by candidate who had maintained contact with father of her children, who was then incarcerated in prison, in violation of DOC rules); Sostre v. Boston Police Dep't, 26 MCSR 456 (2013) (3-2 decision overturning bypass of candidate based on her involvement in a “large number” of police incident reports that involved crimes of violence, “mutual assault” and gang activity, rejecting BPD’s rationale that the alleged record showed a “pattern of poor judgment” about “whom she associates with”); Allard v. Department of Correction, 23 MCSR 399 (2010) (3-2 decision upholding five-day suspension of Correction Officer who made contact with a former inmate and his wife provided him bail money without known the person’s status, because he failed to report these contacts as required by DOC rules, once he did know the facts)

Here, the MPD’s decision to bypass Ms. Strano is based on Chief Sellon’s perceived “community perception” that her past associations with supposedly “known criminals”, J.P. and K.T., would reflect poorly on the MPD, and generated concern within the MPD about “who she may choose to have a relationship with next. If we were to hire her, one would be left to wonder how the reputation and credibility of the Mansfield Police Department could be affected by her next choice in a partner.” On the evidence presented, this unsubstantiated rationale cannot serve as reasonable justification to bypass her. See generally, City of Leominster v. Stratton, 56 Mass.App.Ct. 726, 732-32, rev.den., 440 Mass. 1108 (2003) (affirming Commission decision to reinstate police officer after termination following disputed, but unsubstantiated, allegations that he abused his wife, daughter and step-daughter, rejecting argument that it would violate public policy to require “the reasonable citizens of Leominster . . . to badge, arm and retain” such an officer)

First, the MPD's conclusion is based on the flawed assumption that Ms. Strano never should have entered into a relationship with either J.P. or K.T., because she knew (or should have known) sufficient facts to give her pause about befriending either of them. The credible evidence proved otherwise. J.P. was introduced to Ms. Strano through her father, and he was then gainfully employed as a Massachusetts Corrections Officer. Whatever truth there may have been to any rumors about how J.P.'s former girlfriend had died, the evidence did not prove that anything Ms. Strano knew put her on notice that J.P. was implicated in her death or that he, personally, had a problem with alcohol or drugs. As to K.T., he, too was introduced to Ms. Strano through a friend and, initially, he gave the appearance that they shared legitimate common interests.

Second, Ms. Strano's past relationships with J.P. and K.T. are distinctly different and do not rationally warrant the conclusion that she is prone to repeating her prior "bad choices" in such a way that would interfere with her current or future fitness and ability to serve as an MPD police officer. She ended her relationship with J.P. after she had learned of his issues with alcohol, had given him the chance to reform, and left him when it was clear he had not been rehabilitated. Her "relationship" with K.T. ended quickly (within weeks) after she realized he was a con-artist who had taken advantage of her. She has long-severed all ties with both men.

Third, the facts in this appeal do not establish that Ms. Strano, herself, is implicated as an accomplice or enabler in unlawful or criminal behavior, if any, that either J.P. or K.T. committed. If anything, she tried to help keep them both out of trouble, until it became clear that they continued to behave badly and would not respond to her efforts to help them.¹⁰

¹⁰ I find it somewhat ironic that the MPD would view Ms. Strano's generous spirit to be a flaw, when the MPD so strongly espouses the principles of "intelligence-led policing" and touts its efforts to reach out to potential offenders to turn them away from crime instead of having to use an "arrest your way out" approach.

Fourth, the MPD's assessment of her "bad choices" and lack of "experience", while dismissing similarly questionable behavior by Candidate C.S. and touting his own limited law enforcement experience as "superior", carries the sort of "overtone" of disparate treatment that must not be tolerated in civil service employment decisions.

"The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion." *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 260, 748 N.E.2d 455 (2001), citing *City of Cambridge v. Civil Serv. Comm'n*, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923 (1997). The commission may, and indeed should, closely scrutinize appointments and promotions "[w]hen there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy." *City of Cambridge v. Civil Serv. Comm'n, supra*.

"Significantly . . . the commission noted that there were a number of factors in this case supporting a concern that gender bias might have played a role in the bypass determination, which would be a violation of basic merit principles. We share the commission's stated concerns. Where there are overtones of gender bias, any proffered justification for a bypass must be weighed carefully to ensure decision making in accordance with basic merit principles. See *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, supra* at 264 . . ."

Malloch v. Town of Hanover, 472 Mass. 783, 799-800 (2015)

In sum, the preponderance of the evidence does not justify a conclusion that Ms. Strano's past association with J.P. and K.T., and/or her "next choice in a partner", compromised the "reputation and credibility" of the MPD or implied that she is unable to perform the duties of an MPD police officer upon appointment to that position.

The Interview Process

Police departments and other public safety agencies are properly entitled, and often do, conduct interviews of potential candidates as part of the hiring process. In an appropriate case, a properly documented poor interview may justify bypassing a candidate for a more qualified one. See, e.g., Dorney v. Wakefield Police Dep't, 29 MCSR 405 (2016); Cardona v. City of Holyoke, 28 MCSR 365 (2015). Some degree of subjectivity is inherent (and permissible) in any interview

procedure, but care must be taken to preserve a “level playing field” and “protect candidates from arbitrary action and undue subjectivity on the part of the interviewers”, which is the lynchpin to the basic merit principle of civil service law. E.g., Flynn v. Civil Service Comm’n, 15 Mass.App.Ct. 206, 208, rev.den., 388 Mass. 1105 (1983). The Commission’s decisions have commented on a wide range of interview plans, some of which are commendable and some more problematic. Example of the former: Anthony v. Springfield, 23 MCSR 201 (2010), Gagnon v. Springfield, 23 MCSR 128 (2010); Boardman v. Beverly Fire Dep’t, 11 MCSR 179 (1998). Examples of the latter: Conley v. New Bedford Police Dep’t, 29 MCSR 477 (2016); Phillips v. City of Methuen, 28 MCSR 345 (2015); Morris v. Braintree Police Dep’t, 27 MCSR 656 (2014); Monagle v. City of Medford, 23 MCSR 267 (2010); Mainini v. Town of Whitman, 20 MCSR 647, 651 (2007); Belanger v. Town of Ludlow, 20 MCSR 285 (2007); Horvath v. Town of Pembroke, 18 MCSR 212 (2005); Fairbanks v. Town of Oxford, 18 MCSR 167 (2005); Saborin v. Town of Natick, 18 MCSR 79 (2005); Sihpol v. Beverly Fire Dep’t, 12 MCSR 72 (1999); Bannish v. Westfield Fire Dep’t, 11 MCSR 157 (1998); Roberts v. Lynn Fire Dep’t, 10 MCSR 133 (1997).

Here, to its credit, the MPD’s interview plan has much to be commended. For the most part, candidates were asked the same series of questions, although there were some material variances as noted in the findings of fact. Chief Sellon strived to appoint interview panel members who would be fair and independent and chose not to sit on the panels, himself, so as to minimize the risk that the other panel members would give undue weight to his assessments. Chief Sellon required all interviews to be audio-video recorded and used the recordings as an essential tool in making his own decision, as the appointing authority, whom to select for appointment. A

uniform numerical score sheet was used to rank each candidate's interview performance, to be independently graded by each panel member.

Unfortunately, here, the MPD's interview process did not conform to its intended plan. The actual process raises a substantial number of red flags that make the MPD's reliance on Ms. Strano's interview performance too flawed a process upon which to rest a bypass decision.

First, differences appear in the interview scores that I find hard to assess and reconcile with the testimony of the witnesses that portrayed a huge difference in the performance of Ms. Strano and Candidate C.S., absent the benefit of Candidate C.S.'s interview tape. Save for Lt. Archer, whose scoring is a bit of an "outlier", no glaring differences appear between the scoring of Ms. Strano and Candidate C.S. Given the inherent subjectivity of most of the rating categories, there does not seem to be a clear and uniform distinction, based simply on rote reliance on the paper scoring, that explains why one would conclude that Candidate C.S.'s performance was barely "adequate", while Ms. Strano's was "one of the worst ever".

Second, the fact that two of the four members of the interview panel (Lt. Archer & Sgt. Wright) had prior contact with Ms. Strano in their official capacities as MPD officers bears notice. Lt. Archer had been the officer who responded to the Strano household and took Ms. Strano to juvenile court. Ms. Strano vividly remembered that unpleasant encounter in her interview when the background investigator brought it up, and he devoted considerable effort to explore and highlight the incident in his background investigation report. In addition, Sgt. Wright was the officer to whom Ms. Strano had described how K.T. had conned her out of her money, something which was alluded to in the interview. Neither of these prior interactions posed a strict conflict of interest that compelled their recusal, and the MPD cannot be faulted for not doing so. I cannot overlook the fact, however, that, these superior officers' presence on the

interview panel (which Ms. Strano did not anticipate), was likely a significant contributing factor that added to what the panel perceived as her unusually uncomfortable demeanor. As this situation was unique to Ms. Strano, it does compound the concern that the interview process was not the “level playing field” it ought to have been.

Third, a review of the interview recordings adds further doubt about the paper scores and the recollections of the interview panelists in the particular circumstances of this case. In general, the MPD witnesses seem mostly to recall, and focused their testimony on, the unpleasant parts of Ms. Strano’s interview. On the one hand, she did, indeed, seem nervous (but so did other candidates; one predicated almost every response with the phrase “it feels like”); she did often take time before responding to a question and was not as verbose as other candidates; the interview was half as long as those of the other candidates; she did admit that she had not prepared as much as she would have wanted to. On the other hand, some parts of the interview flow satisfactorily, such as when she was talking about working for free, when she brought up her interest in community oriented police work, when she talked about the police officer’s “higher standard”, and when she responded to the question about being a follower or a leader (to which there was no right or wrong answer). Some of her shorter answers could have been characterized as responsive as much as they might be parsed as uncommunicative.¹¹

Fourth, the interview recordings disclose that Ms. Strano received short shrift in at least two respects which are problematic, as they appear to raise the same “overtones” of disparate treatment in the interview process as I noted with the assessment of Ms. Strano and Candidate C.S.’s background investigation. See Malloch v. Town of Hanover, 472 Mass. 783, 796-800 (2015)

¹¹ I also note that Ms. Strano’s interview was the last one of the day, running into the afternoon, which might have been a factor in how truly independently she was judged or why the interview was cut short.

Despite acknowledging that she had a “rebellious” past and had made some mistakes, the interview panel did not pick up on this point, tell her of their concerns, or even provide her with an opportunity through follow-up questions to clear up those concerns, as they did for at least two other candidates, one of which, allegedly, was the selected Candidate C.S., who was able to clear up comparable aspects of Candidate C.S.’s history that called into question his judgment, dedication to police work, as opposed to the fire service. (although that critical part of C.S.’s interview was not recorded, so what he actually was asked and responded is unknown). This omission, in allegedly affording others, but not Ms. Strano, to clear their record, looms especially large as poor judgment in associating with J.P. and K.T. formed a core reason for her bypass.

Also, Chief Sellon’s conclusion that Candidate C.S. possessed “stronger relevant experience and credentials” and “past unblemished law enforcement experience”, is contradicted by the evidence. Both Ms. Strano and Candidate C.S. were just shy of receiving a Bachelor’s Degree in Criminal Justice. Ms. Strano held an Associate’s Degree; Candidate C.S. was still in college. Ms. Strano was trained in military police work and worked patrols guarding military missiles (for which she received specialized training and special security clearance to access the secret security codes). She explained this in her application and in her interview. C.S. had completed a Reserve Police Academy, but did not have “unblemished law enforcement experience”, as did Ms. Strano. Many of Candidate C.S.’s references expressed that he seemed ambivalent about becoming a police officer. If anyone had an edge here, it was Ms. Strano, not Candidate C.S.¹²

¹² Chief Sellon discounted Ms. Strano’s military police training and experience as less desirable than Candidate C.S.’s completing the Reserve Police Academy, because he believed a Reserve Academy, unlike military police experience, qualified C.S. for an MPTC waiver from attending the Full Time Police Academy before performing police duties. This assumption is not entirely accurate. Reserve Academy training (370 hours) does not excuse completing a Full Time Academy (800 hours) unless the officer has at least one year of actual experience as a police officer. G.L.c.41,§96B; 550 CMR 303; https://www.mass.gov/files/2017-07/exemption-application_0.pdf

These comments are not meant to induce the Commission to substitute its judgment for that of the interview panel or Chief Sellon, had the full interview record been available, which would not be appropriate on this record. Nor do they mean to suggest that the MPD's selection process was intentionally and knowingly skewed for ulterior reasons of personal animus or bias. My observations are taken only to inform my judgment that the paper record and testimonial record of the interview assessments, along with the other independent evidence, raises sufficient reason to infer disparate treatment that cannot be dismissed (and should not have been dismissed by the MPD) without having the benefit of viewing the interview recording for Candidate C.S., the selected applicant. After carefully considering this matter, I conclude that, indeed, in view of the MPD's deviation from its standard procedure, together with the "red flags" noted above, the absence of the recording of Candidate C.S.'s interview is fatal. Without that recording, the Commission cannot definitively and fairly assess whether a decision to bypass Ms. Strano based on her interview performance can be found to be reasonably justified after a reasonably thorough review, and free of overtones disparate treatment, as civil service law requires. Thus, in the particular circumstances of this appeal, Ms. Strano's allegedly relatively poor interview performance, cannot form a sufficient reason to have bypassed her. As the MPD failed to prove that any of the other reasons (untruthfulness and improper associations) given for her bypass were justified, Ms. Strano's appeal must be allowed.

CONCLUSION

In sum, Ms. Strano deserved one additional opportunity for a future consideration to be appointed to the MPD, consistent with this Decision and in full compliance with the requirements of civil service law. For the reasons stated herein, the appeal of the Appellant, Jessica Strano, is hereby *allowed*.

RELIEF TO BE GRANTED

Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS:

A., The name of the Appellant, Jessica Strano, shall be placed at the top of all current and future certifications for original appointment to the position of Police Officer in the Mansfield Police Department until she either selected for appointment or bypassed.

B. If and when Ms. Strano is selected for appointment and commences employment as a Mansfield Police Officer, her civil service records shall be retroactively adjusted to show, for civil service purposes only, as her starting date, the same Employment Date as the candidate previously appointed from Certification #03455. This retroactive seniority date is not intended to provide Ms. Strano with any additional pay or benefits including, without limitation, credible service toward retirement.

Civil Service Commission
/s/Paul M. Stein
Paul M. Stein, Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman [NO]; Camuso [AYE], Ittleman [NO], Stein [AYE] and Tivnan [AYE], Commissioners) on November 9, 2017.

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:
Richard Heavey, Esq. (for Appellant)
Michael J. Macaro, Esq. (for Respondent)
John Marra, Esq. (HRD)

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JESSICA STRANO,

Appellant

CASE NO. G1-16-056

v.

MANSFIELD POLICE DEPARTMENT

Respondent

OPINION OF CHRISTOPHER BOWMAN

I respectfully reach a different conclusion here and believe Ms. Strano's bypass appeal should be denied for the reasons discussed below.

First, based on a review of the record, I do not believe the Police Department's decision-making process here was tainted by any personal or political bias.

Second, I believe the overall review process used by the Police Department was reasonably thorough, sufficiently objective and focused on matters directly related to the duties and responsibilities of a police officer.

Third, I believe the interview panelists, all of whom provided testimony before the Commission, provided specific, concrete examples of why they concluded (unanimously) that Ms. Strano's interview performance was poor. It is not for the Commission to rate a candidate's interview performance, but, rather, assess whether the Appointing Authority provided sufficient evidence to support their conclusion. I believe they did. The video recording of Ms. Strano's interview and their testimony before the Commission support the conclusions they reached at the time of bypass.

Standing alone, I believe the Police Department's serious concerns about Ms. Strano's poor interview performance justify their decision to bypass her for appointment as a police officer.

/s/ Christopher Bowman

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OPINION OF CYNTHIA ITTLEMAN

I respectfully dissent.

MPD Rules and Regulations, section 6.4.3.9, specifically addresses improper associations of officers and employees, providing,

... officers and employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior, except as necessary for the performance of official duties, without the knowledge and approval of the Chief or the officer's Commanding Officer, or where unavoidable because of family relationships of the officers.
(Fact 48)

This Rule applies to officers and employees. The Appellant was a candidate, not an officer or employee of the MPD. However, this decision finds that the Appellant repeatedly engaged in associations with people who appear to qualify as “persons under criminal investigation ... or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior”. The Appellant herself acknowledged that she had made “bad choices” in that regard repeatedly and fairly recently. Even giving the Appellant the benefit of the doubt, that she did not know that the several persons with whom she associated fell under the category of persons referenced in MPD Rule 6.4.3.9, it is troublesome either that she did not detect their status and/or chose not to find out. Combined with her low interview scores, and in view of the more than reasonably thorough review of the candidates conducted by the Respondent pursuant

to Beverly, I believe that the Respondent established, by a preponderance of the evidence, that it had reasonable justification to bypass the Appellant.

/s/ Cynthia A. Ittleman