

NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2017-3987

TOWN OF MANSFIELD

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION and another¹

Notice sent (J&B)
8/26/19
LO-RH / R.H.
C of MA/O-AG/R.L.Q.
B+D / P.B.

MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR
JUDGMENT ON THE PLEADINGS

REC'D CIV. SERVICE COMM
AUG 30 2019 PM 1:02

Defendant Jessica Strano applied to the Police Department of the Plaintiff Town of Mansfield (the "Town") for employment as a police officer. The Town's appointing authority, Police Chief Ronald A. Sellon, Jr., bypassed Ms. Strano and hired a candidate who ranked below her on the civil service list. Ms. Strano appealed that decision to the Defendant Civil Service Commission (the "Commission"). After a lengthy hearing, the Commission overturned the decision of the Town's appointing authority by a 3-2 vote, issuing a decision on November 9, 2017 (the "Decision") that directed the Town to place Ms. Strano's name at the top of the lists for all current and future appointments to the position of Town police officer.

This lawsuit is the Town's M.G.L. c. 30A, § 14 appeal of that decision of the Commission. The Town and Ms. Strano have cross-moved for judgment on the pleadings.² With the benefit of the briefs submitted by these two parties, as well as oral argument on July 30, 2019, I have reviewed the Administrative Record. For the reasons set out below, I will allow the

¹ Jessica Strano

² The Commission has not participated in these proceedings other than by filing the Administrative Record. It has filed no motions or briefs, and has waived oral argument in writing.

Town's motion for judgment on the pleadings, deny Ms. Strano's motion, and order that judgment enter in favor of the Town.

Background

Unless otherwise noted, I take all of the facts below from the Decision, which is found in the Administrative Record ("AR") at pages 194-228.

1. Ms. Strano's Education and Experience

Ms. Strano is a longtime resident of the Town, who "struggled as a youth." AR 195. She dropped out of Mansfield High School during her senior year, but obtained her high school diploma a year later, in 2006, through the high school's evening program, excelling academically.

Between 2009 and 2012, Ms. Strano served as a military police officer in the United States Air Force, from which she was honorably discharged. While in the Air Force, she obtained an Associate of Science Degree in Criminal Justice Administration from Park University, and ended up 20 credits shy of a Bachelor's Degree in Criminal Justice/Law Enforcement from the same institution, where she carried a 3.53 grade point average.

Upon her discharge, Ms. Strano returned to Mansfield. After a year of unemployment, during which she went through an acrimonious divorce that ended her four-year marriage, Ms. Strano found employment as an unarmed security officer in August 2013. In that job, she "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." *Id.* at 196.

2. Ms. Strano's "Associations"

Between about March 2014 and May 2015, Ms. Strano had a relationship with J.P., a Correction Officer whom she met through her father. Sometime prior to this relationship, the Mansfield Police Department stopped J.P. for traffic infractions and arrested his female passenger on three outstanding warrants. Three months before Ms. Strano began dating J.P., that woman died of a heroin overdose at J.P.'s home. The Commission made a finding of fact that Ms. Strano's father told her about this woman's death and suggested that she talk to J.P. about it. The Decision does not say whether Ms. Strano's father made this suggestion before or after he introduced Ms. Strano to J.P. When Ms. Strano attempted to have the conversation suggested by her father, "J.P. was not completely forthcoming [and] Ms. Strano did not inquire further." AR 196-197.

Two months into their relationship, the Mansfield Police Department arrested J.P. for operating under the influence, and he lost his driver's license for nine months. Ms. Strano bailed J.P. out of jail, moved in with him, and drove him to and from work for nine months. In May 2015, shortly after she took the April 2015 civil service examination, Ms. Strano broke off her relationship with J.P. As of the Commission hearing more than a year later, Ms. Strano had not seen J.P. again.

In June and July 20, 2015, Ms. Strano had a relationship with K.T., whom she identified as a "boyfriend" on her later application to the Mansfield Police Department. Within a week or so of meeting him, Ms. Strano loaned K.T. money after he told her he was going to court and needed money for a case that had to do with his children. K.T. soon reneged on his promise to repay Ms. Strano by the following Monday.

On July 1, 2015, about 10 days after she met K.T., Ms. Strano reported to the Norton Police Department that a female sometimes in K.T.'s company was harassing Ms. Strano. She also asked the Norton police to do a well-being check on K.T. The next day, Ms. Strano filed a police report about a fight between K.T. and this other woman. At about the same time, Ms. Strano began receiving disturbing text messages from K.T., which led to her discovery that K.T. was homeless.

About a month into their relationship, although he had not paid back Ms. Strano's earlier loan for his alleged court costs, K.T. again asked Ms. Strano for money. She was now wary, but K.T. convinced Ms. Strano to take him to a department store where she purchased clothing for him that he said he needed for his new job as a landscaper.

Two weeks later, K.T. was "confined to a residential rehabilitation home" on the petition of his mother. AR 198. Ms. Strano's last contact with K.T. was a visit she paid to him at this facility sometime during his confinement.

Eventually Ms. Strano attempted to file a complaint with the Mansfield Police Department against K.T. for larceny. A detective told her that K.T. was "well-known" to the Mansfield Police Department, but that he could not be prosecuted for accepting her "gift" to him. *Id.* at 199.

3. The Hiring Process

On December 14, 2015, the Massachusetts Human Resources Division authorized the Town to hire one full-time municipal police officer, and provided the Town with a list of eligible candidates who had passed the April 2015 civil service examination. Five of the people on that list, including Ms. Strano, expressed interest in the position, and the Town considered all of them.

Based on her score on the civil service examination, Ms. Strano was ranked second among those five candidates.

Ms. Strano returned her application packet to the Town on or about January 7, 2016. In response to a question asking about "Current/Former Significant Other" relationships, Ms. Strano listed three people, in reverse chronological order. The first was K.T., whom she said was unemployed, and had been her "boyfriend" in June 2015. The second was J.P., whom she identified as a Correction Officer, who had been her "boyfriend" for 14 months, from March 2014 to May 2015. The third was her former spouse, whom she married in December 2009 and with whom she had a relationship from January 2008 to March 2013, when they divorced. AR 200. Ms. Strano did not list an occupation for her former spouse. Application, AR 253. The application also asked if any license of hers, including a driver's license, had ever been suspended or revoked, and she answered "NO." AR 200.

A Mansfield police officer, whom Ms. Strano did not know, conducted a background investigation. During that investigation, the officer discovered that Ms. Strano had been taken into custody by a Mansfield police officer in a juvenile incident in 2005, when she was 16 years old. The officer also found a "KQ" report that indicated that Ms. Strano's driver's license had been twice suspended, when she was 17 and 18 years of age, for non-payment defaults. AR 201.

The investigating officer interviewed Ms. Strano twice, including during an unannounced visit to her home. During one of those interviews, Ms. Strano described the 2005 juvenile incident consistently with the police report. *Id.* Ms. Strano also volunteered, "sheepishly," that she had "made bad choices in men." *Id.* The officer also told Ms. Strano that "her KQ showed that her MA Driver's License had been suspended two times for non-payment defaults back in

2005 and 2006.” *Id.* In response, Ms. Strano “claimed she did not know her license had ever been suspended.” *Id.*

The officer prepared a 23-page, single-spaced report. The Decision quotes that report at some length, at AR 200-202.

In the conclusion section of his report, the investigating officer wrote in quite unflattering terms about three men with whom Ms. Strano had recent relationships. First was her ex-husband, described by “an associate” of Ms. Strano as “a dirtbag.” *Id.* Next was J.P., “a man with an obvious substance abuse (alcohol) problem and a history with the [Mansfield Police Department] that includes his girlfriend overdosing on heroin and then dying while with him at home.” AR 202. The investigating officer also noted that, after one domestic disturbance between J.P. and Ms. Strano, Ms. Strano had gone door-to-door to their neighbors to apologize for the ruckus. Finally, the report noted, there was her relationship with “career criminal” K.T., well known to many police departments “as a substance-abuser who literally makes his living as a shoplifter.” *Id.* Ms. Strano’s choice to date him as recently as six months ago “is, in my opinion, undeniably the choice of somebody was looking to sabotage their own chances of a career in law enforcement,” the investigating officer wrote. *Id.*

At the Commission’s hearing, Ms. Strano testified that she was unaware of J.P.’s history, and the history of K.T.’s police involvement, when she entered into relationships with them. The Commissioner who conducted the hearing credited Ms. Strano’s testimony on this point. AR 199.

The application process required Ms. Strano to produce her high school diploma, and the investigator also needed to verify her employment. The diploma, which she left with her mother when she entered the military, was lost. Neither her visit to the high school nor an online search

led Ms. Strano to a copy of the diploma, and she so informed the investigator. Her employer, Allied Barton/SOS Security, did not respond to police requests for an interview, and declined to give Ms. Strano a copy of her personnel file, instead only providing a “proof of employment” through an online procedure.

On February 19, 2016, a panel of four veteran (and senior) Mansfield police officers interviewed Ms. Strano and the other four candidates. One of the panel members, now a lieutenant, was the officer who had responded to Ms. Strano’s 2005 juvenile incident, and another, a detective, was the person from whom Ms. Strano unsuccessfully sought a criminal complaint against K.T. for larceny. Ms. Strano came to the interview directly from two weeks of jury duty, and testified before the Commission that she did not expect to be appearing before a formal interview panel at that time.

The interviews were conducted in a “semi-structured format,” with each panel member selecting three questions from a matrix of 37 possible questions, asking these questions of each of the five candidates. The interviews were video recorded, but the recording equipment failed to capture much of the interview of the person ultimately appointed when Ms. Strano was bypassed.

The two lieutenants on the panel of interviewers told Chief Sellon that Ms. Strano’s interview was “one of the worst ever.” AR 204. During their later testimony before the Commission, all four of the interview panel members testified consistently that Ms. Strano’s interview was “painful,” and “difficult to watch.” *Id.* at 205. The interviewers testified that Ms. Strano had admitted being unprepared; took long pauses before responding; did not have answers for all the questions; and, when she did answer, used “standard and one-word responses” and so

the panel had to “pull information out of her.” When he later watched the recording of the interview, Chief Sellon formed the opinion that her performance was “atrocious.” *Id.*

After he completed his review of all relevant information, Chief Sellon decided to bypass the highest-ranking candidate on the civil service list, and also to bypass Ms. Strano, who ranked second. He offered the position to the third-ranked candidate. That person, C.S., was then about to graduate from Westfield State University with a bachelor’s degree in criminal justice. While in college, C.S. worked with the Westfield State EMS, volunteered with the Blandford Fire Department, and completed the Reserve/Intermittent Police Academy. He had never served as a police officer, or served in the military. He currently worked in the emergency room at a major Boston hospital.

In his letter informing Ms. Strano about the bypass, Chief Sellon stated his reasons. They included her “[h]istory of improper associations; “untruthfulness” (a reference to her negative answer about having her driver’s license suspended); her “inability to complete the application process” (referring to her failure “to supply the background investigator with the documents he requested multiple times”); and the fact that the interview panel found a significant difference in her performance compared to that of C.S. AR 208. Chief Sellon also stated that C.S. had “[s]tronger relevant experience and credentials,” and better communication skills, knowledge, and poise. *Id.*

Chief Sellon’s letter noted that Ms. Strano’s “improper associations” were recent and multiple, leading her to interact with the Mansfield Police Department and other law enforcement agencies (presumably a reference to her dealings with the Norton Police Department concerning K.T.). Those associations, Chief Sellon said, had led members of his Police Department and others to question her judgment. Moreover, those associations “would be

improper under the rules and regulations of this agency.” Here Chief Sellon was referring to a rule of the Mansfield Police Department that says that officers “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.” AR 208.

When he testified before the Commission, Chief Sellon “did candidly acknowledge” that the evidence presented before the Commission actually established that Ms. Strano’s answer that her driver’s license was never suspended was “consistent with the truth.” He also “candidly acknowledged” that he believed that the “documents” that Ms. Strano had repeatedly failed to provide were limited to her high school diploma, and he was unaware of her efforts to obtain a copy of that document. AR 209.

I reserve a few additional facts appearing in the Administrative Record for discussion below.

Analysis

1. The Decision

In overturning the Town’s decision to bypass Ms. Strano, the Commission focused on four bases for the Town’s decision. Those bases were Ms. Strano’s alleged untruthfulness (also including, in the Commission’s analysis, her inability to produce certain required documentation); her past improper associations; the interview process; and the relevant experience and credentials of Ms. Strano and the successful candidate, C.S. I will describe the Commission’s reasoning on each of these issues in turn.

a. Untruthfulness

In his letter to Ms. Strano explaining the Town's decision not to hire her, Chief Sellon cited her "[u]ntruthfulness and inability to complete the application process." AR 208.

As to "untruthfulness," Chief Sellon cited her assertion that her driver's license was never suspended, and noted that "a check of your drivers' history shows . . . that on 1/3/2006 and again on 11/21/2006 your license was suspended." AR 208. The Commission found that the Town did not meet its burden of showing Ms. Strano to be untruthful on this point. The Commission decided that the police officer who conducted the background check had erred by relying on an inaccurate "KQ" printout. AR 214. The Commission concluded that the printout was inaccurate because Ms. Strano produced a document from the Massachusetts Registry of Motor Vehicles that "conclusively established" that her license had never been suspended. AR 214. The Decision states, however, that Ms. Strano produced this RMV document "[a]t the Commission hearing," AR 201 n.5, so it appears that she had not given it to the Town during the application process.

Chief Sellon also noted in his letter to Ms. Strano that "you failed to supply the background investigator with the documents he requested multiple times." AR 208. The Commission disagreed, finding that her "failure to procure a high school diploma was not the result of inattention or intentional failure to 'complete' the application requirements," but rather that her "good-faith and diligent efforts to get a replacement" diploma had not borne fruit. AR 214-215. Furthermore, the Commission noted, a school official had "vouched for" the fact that she graduated from the high school's evening program (although, again, the Decision does not make clear if this vouching occurred during Ms. Strano's application process, or, rather, for the first time during the Commission's hearing). AR 215. The Commission also noted that Ms.

Strano “sought to comply in good faith with the [police investigator’s] request” for her “complete personnel file from her security company employer,” but failed because “the security company’s policy was limited to providing a proof of employment only.” AR 215.

At oral argument before me, the Town conceded that it was not challenging the Commission’s findings on these points. Rather, the Town believes that the Commission’s errors concerned other issues, to which I now turn.

b. Improper Associations

According to Chief Sellon’s letter to Ms. Strano, one reason for her rejection was her “[h]istory of improper associations.” AR 208. The Decision quotes Chief Sellon’s letter at some length on this point, as follows:

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 law enforcement agencies. This led not just the members of this agency to question your judgment but those of outside agencies as well.

Id.

The Decision recognizes that a police officer is “held to a ‘higher standard’ than other public employees” and must “‘comport himself or herself in an exemplary fashion’ both as to their on-duty and off-duty behavior.” AR 215, citing *McIsaac v. Civil Serv. Comm’n*, 38 Mass. App. Ct. 473, 475 (1995) and *Police Commissioner of Boston v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 371, rev. denied, 398 Mass. 1103 (1986). The Decision notes, however, that this duty “is not absolute.” AR 216.

In its analysis of the improper associations question, the Decision makes four points.

First, the Decision criticizes the Town’s “flawed assumption that Ms. Strano never should have entered into a relationship with either J.P. or K.T.” AR 218. The “credible evidence proved otherwise,” the Decision notes, because Ms. Strano met K.T. through a friend and

“initially, he gave the appearance that they shared legitimate common interests.” *Id.* As for J.P., Ms. Strano met him through her father, he was gainfully employed, and “the evidence did not prove that anything Ms. Strano knew put her on notice the J.P. was implicated in [his former girlfriend’s death from an overdose in J.P.’s house] or that he, personally, had a problem with alcohol or drugs.” *Id.*

The Decision’s second point concerning improper associations is that her relationships with J.P. and K.T. “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 [a Town] police officer.” AR 218. This is because she “ended her relationship with J.P. after she learned of his issues with alcohol,” and “her ‘relationship’ with K.T. ended quickly (within weeks) after she realized he was a con-artist who would take advantage of her.” AR 218.

The Decision’s third point about improper associations is that Ms. Strano was not an accomplice or an enabler of unlawful or criminal behavior by either J.P. or K.T., a conclusion well supported in the record. The Commission suggests that Ms. Strano was actually attempting to keep J.P. and K.T. out of trouble, and it criticizes the Town for finding her “generous spirit to be a flaw.” AR 218 n.10.

The fourth and final point made in the Decision about improper associations is that the successful candidate, C.S., engaged in “similarly questionable behavior.” The only reference in the Decision to questionable behavior by C.S. is a brief mention that the interview panel credited him with bringing up and acknowledging “his negative history with alcohol-related issues.” AR 205. The Decision gives no details about this negative history.

c. The Interview Process

The third issue considered by the Commission was the interview process. The Decision acknowledges that police departments “are properly entitled, and often do, conduct interviews of potential candidates as part of the hiring process,” and that “a properly documented poor interview may justify bypassing a candidate for a more qualified one.” AR 219. The interview plan devised by Chief Sellon, the Decision says, “has much to be commended,” such as, among other factors, the Chief’s effort to appoint fair and independent panel members who would separately grade the interviewees on a uniform numerical score sheet, and the Chief’s decision not to sit on the panel himself for fear that other panel members might defer to him. AR 220. The Commission concludes, however, that the “interview process did not conform to its intended plan,” raising “a substantial number of red flags.” AR 221.

Again the Decision raises four points, apparently the “red flags” spotted by the Commission.

First, the Commission suggests that the testimony by the interviewers describing a “huge difference in the performance of Ms. Strano and [successful] Candidate C.S. is at odds with the numerical interview scores.” AR 221.

The Commission’s second point is that two members of the interview panel had prior contact with Ms. Strano in their official capacities as police officers. Twelve years earlier, Lieutenant Archer had taken Ms. Strano into custody and to Juvenile Court, an event that Ms. Strano had described to the background investigator, who said she was “attempting to hide nothing.” AR 201. Six months or so before the interview, Detective Wright was the officer to whom Ms. Strano complained about K.T.’s alleged larceny, when he refused to repay the money she loaned him, a subject discussed in the interview. AR 221. The Decision makes clear that

“[n]either of these prior interactions posed a strict conflict of interest that compelled their recusal, and the [Mansfield Police Department] cannot be faulted for not doing so.” AR 221. Nonetheless, the Decision notes, the presence of these two officers might have contributed to Ms. Strano’s “unusually uncomfortable demeanor” noted by the interviewers. This might have disadvantaged Ms. Strano because the other candidates had no such prior interaction with the interviewing officers.

The Commission’s third point rests on its independent review of the interview recordings. That review, by the Commissioner who conducted the hearing, “adds further doubt about the paper scores and the recollections of the interview panelists,” the Decision suggests. AR 222.

The fourth and final point in the Decision concerning the interview process is that the panel members “gave short shrift” to Ms. Strano when she acknowledged “her ‘rebellious’ past,” by failing to tell her of their concerns or to ask follow-up questions. The Decision notes that the panel did this for at least two other candidates, including the successful one, C.S. AR 223.

d. Relevant Experience and Credentials

The final factor cited by the Commission in support of its Decision to overturn the bypass is its conclusion that Chief Sellon got it wrong when he stated that C.S. possessed stronger relevant experience and credentials. The Decision points out that the two candidates were academically comparable, both being “just shy of receiving a Bachelor’s Degree in Criminal Justice” (although Ms. Strano already held an Associate’s Degree). AR 223. Ms. Strano was trained in military police work, the Decision notes, while C.S.’s training was his completion of Reserve Police Academy, a course that takes 370 hours to complete. AR 223 and n.12.

2. The Legal Standard

a. On Appeal to the Commission

When a candidate for appointment as a police officer appeals a bypass decision to the Commission, the Commission must decide “whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was a reasonable justification” for the bypass. *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303, rev. denied, 428 Mass. 1102 (1997). As the Commission properly conceded in its Decision here, “the Commission’s role is not to determine if the candidate should have been bypassed.” AR 211. Rather, “the Commission determines whether, by a preponderance of the 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.” *Id.*³ “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.’” AR 211, quoting *Brckett v. Civil Service Comm’n.*, 447 Mass. 233, 241 (2006).

The Decision acknowledges, as it must, that “[i]n selecting public employees of skill and integrity, appointing authorities are vested with a certain degree of discretion.” AR 211, citing *Cambridge*, 43 Mass App. Ct. at 303-305. And it is not for the Commission “to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” *Id.* at 304.

³ The Decision cites *Police Dept. of Boston v. Kavaleski*, 463 Mass. 680, 688-689 (2012) for these principles. *Id.* While the Decision accurately paraphrases *Kavaleski*, the internally quoted phrase “impartial and reasonably thorough review” does not appear at the cited pages of *Kavaleski*, but does appear in other cases describing the Commission’s task when it considers a police department’s bypass decision, such as *Sherman v. Randolph*, 472 Mass. 802, 813-814 n.18 (2015).

b. On Further Appeal to the Superior Court

A party aggrieved by a decision of the Commission as to a bypass may appeal to the Superior Court under M.G.L. c. 31, § 44. That statute provides that such appeals “shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A,” the Massachusetts Administrative Procedures Act. Under M.G.L. c. 30A, § 14, this court may reverse, remand, or modify an agency decision if the decision is in violation of constitutional provisions, based upon an error of law, unsupported by substantial evidence, arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. M.G.L. c. 30A, § 14(7).

The party appealing to the court, in this case the Town, bears the burden of demonstrating the Decision’s invalidity. *Tiger Rose Group, LLC v. Alcoholic Beverages Control Comm’n*, ___ Mass. App. Ct. ___, ___, 2019 WL 3819786, at *1 (August 15, 2019) (decision under Appeals Court Rule 1:28), citing *Burke v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds*, 90 Mass. App. Ct. 203, 206 (2016). In reviewing an agency decision, the court is required to “give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it” by statute. *Id.* “But deference does not suggest abdication” *Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm’n*, 481 Mass. 506, 512 (2019).

3. Application of the Legal Standard

The Town contends that the Commission simply overstepped its role here. The Commission went far beyond determining whether the Town engaged in an “impartial and reasonably thorough review” of the background and qualifications of the candidates, to determine whether there was a “reasonable justification” for the bypass decision, as the Supreme

Judicial Court described the Commission's task in *Kavaleski*, 463 Mass.at 688-689, and *Sherman*, 472 Mass. at 813 n.18. Instead, according to the Town, the Commission "substitute[d] its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority," a step that the law does not permit. *Cambridge*, 43 Mass App. Ct. at 304. By applying the wrong legal standard, the Commission committed an error of law, the Town argues. Consequently reversal of its decision is required under M.G.L. c. 30A, § 14.

Before reaching the Town's error of law argument, I will briefly consider one of the other bases for overturning an agency decision under Chapter 30A: a lack of substantial evidence in the record to support certain of the Commission's conclusions.

a. The Substantial Evidence Test

The Commission concluded that the four senior officers who conducted the interviews must have been exaggerating or misremembering when they testified that there was a "huge difference in the [interview] performance of Ms. Strano and [successful] Candidate C.S.," because that testimony "is at odds with the numerical interview scores." AR 221. Not only is the record devoid of any substantial evidence to support the Commission's conclusion, but the evidence is directly to the contrary.

The Commission could only conclude that the numerical interview scores did not show a wide gap in performance by ignoring altogether the scores awarded by one of the four interviewers, Lieutenant Archer. That interviewer gave C.S. a score that doubled the score he gave Ms. Strano – 36 out of 50, as opposed to 18 out of 50. The Commission justifies its decision to ignore his scores by calling Lieutenant Archer "a bit of an 'outlier.'" AR 221. Even if that were a sufficient reason to toss out the scores of one of the interviewers – and the Decision

does not explain why it might be – it turns out that Lieutenant Archer was, indeed, only “a bit” of an outlier.

In comparing the scores awarded by the other three interviewers, “no glaring differences appear between the scoring of Ms. Strano and Candidate C.S.,” the Decision says. AR 221. But in fact each of the other three interviewers also gave better scores – in some cases substantially better scores – to C.S. Sergeant Bain awarded C.S. 35 points, and Ms. Strano 25 points, which is a 40% disparity. Detective Wright awarded C.S. 29 points, and Ms. Strano 21 points. Only Lieutenant Juda’s scoring of the two candidates was even close; she gave 25 points to C.S. and 21 points to Ms. Strano. Score Sheets, AR 302-305 and 503-506; see also Commission Exhibit 5 at 39-42. Tallying up the points awarded by all four interviewers, C.S. outscored Ms. Strano 125 to 85. Numerically speaking, C.S.’s scores were 47% better than those of Ms. Strano.

Another Commission conclusion unsupported by substantial evidence is that Chief Sellon was “not rational[]” when he concluded that Ms. Strano might repeat her “bad choices” in men, because, the Decision says, she “ended her relationship with J.P. after she learned of his issues with alcohol.” AR 218. In fact, the evidence showed that, once J.P. lost his driver’s license because of his “issues with alcohol,” Ms. Strano did not end the relationship; to the contrary, she moved in with J.P. and drove him to and from work every day for nine months.

Another questionable Commission conclusion is its view that Chief Sellon erred in concluding that C.S. possessed stronger relevant credentials and experience. The Commission rested this conclusion in part on evidence that Ms. Strano was trained for military police work while in the Air Force, while C.S. had only attended a 370-hour police academy. Yet the record makes clear the Ms. Strano’s actual police work in the military was “guarding military missiles,” AR 223.

Perhaps it is unfair to criticize the Commission for concluding that Ms. Strano actually had better training and experience than C.S.; after all, it is a judgment call about the relative value of attending a 370-hour police academy versus being trained to guard military missiles. But that judgment call was for Chief Sellon to make, not the Commission. And that brings us to the Town's primary argument, that the Commission made an error of law by applying the wrong legal standard in its review of the bypass decision.

b. The Commission's Substitution of Its Judgment for That of the Town

An important basis – arguably the most important basis – for the Commission's decision to overturn Chief Sellon's bypass decision was its view that he was wrong to worry about Ms. Strano's prior improper associations. The Town is correct in arguing that the Commission overstepped its statutorily-assigned role in this regard.

The thorough background investigation conducted by a Town police officer revealed – and Ms. Strano “sheepishly” agreed – that Ms. Strano had been involved in three consecutive disastrous relationships. The first was her four-year marriage to a man described to the police investigator as a “dirt bag,” AR 202, which ended in a divorce that the Commission itself characterized as “acrimonious.” AR 196. The Decision fails to mention this relationship at all in its analysis of Ms. Strano's “bad choices,” perhaps because the record includes no evidence of criminal behavior by this ex-husband. Next came her relationships, in quick succession, with J.P. and K.T. – men who did engage in criminal behavior, both before and during their relationships with Ms. Strano.

The Decision makes clear that the Commission simply draws a different conclusion about whether this history warranted Chief Sellon's fear that Ms. Strano might be prone to repeating these “bad choices” in a manner that would affect her fitness to serve as a police officer. In the

Commission's view, Ms. Strano should be praised, not penalized, for her relationships with J.P. and K.T., because, "[i]f anything, she tried to help keep both out of trouble, until it became clear that they continued to behave badly and would not respond to her efforts to help them." AR 218 (emphasis in original). Therefore the Decision reaches the following conclusion:

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 [Mansfield Police Department] or implied that she is unable to perform the duties of [a Town] police officer upon appointment to that position.

AR 219.

As a moral matter, the Commission might well be correct that Ms. Strano's "generous spirit" should not be regarded as "a flaw." AR 218 n.10. But it was not for the Commission to decide whether to reward Ms. Strano's "generous spirit" with a police officer position. Such judgment calls are left to the Town, so long as the Town's 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. Decision, AR 211; accord, *Randolph*, 472 Mass. at 813 n.18; *Kavaleski*, 463 Mass. at 688-689. Recognizing what the law requires, one of the two dissenting Commission members was willing to give Ms. Strano "the benefit of the doubt" as to her self-admitted "bad choices," but nonetheless concluded that the Commission could not overturn the bypass decision "in view of the more than reasonably thorough review of the candidates conducted by the [Town]."

Dissenting Opinion of Commissioner Ittlemen, AR 227.

The Decision also notes that the successful candidate, C.S., engaged in "similarly questionable behavior." AR 219. Because the Decision says nothing about the nature of this "questionable behavior," it is impossible to gauge whether it is in fact "similar[]" to Ms. Strano's

improper associations. The Decision does note that this “questionable behavior” came up in C.S.’s interview, so presumably the interviewers, and therefore Chief Sellon, learned more about that negative history than the Decision describes. In any event, balancing one sort of “questionable behavior” against another is quintessentially a “merit or policy consideration[] by an appointing authority.” *Cambridge*, 43 Mass App. Ct. at 304. The law simply does not permit the Commission “to substitute its judgment about a valid exercise of discretion” of this sort by the appointing authority. See *id.*

The Commission’s tendency to substitute its judgment for that of Chief Sellon extends to other bases for its decision to overturn the bypass. One such Commission overreach concerns Ms. Strano’s performance in her interview.

The Commissioner who conducted the Commission’s hearing himself viewed the interview recordings, which were exhibits at the hearing. The Decision recounts his assessment of Ms. Strano’s interview, describing its negative aspects, and then stating, “On the other hand, some parts of the interview flow satisfactorily.” AR 222. But, as the Decision also reports, Chief Sellon reviewed that interview recording, and he concluded that Ms. Strano’s interview performance was “atrocious.” AR 205. And, as the Decision also reports, the two lieutenants on the interview panel told Chief Sellon that “they both believed Ms. Strano’s interview was ‘one of the worst ever.’” AR 204. In other words, after reviewing the video recording of Ms. Strano’s interview, the Commissioner simply disagreed with the evaluation of that interview by the senior officers who conducted it, and, upon later review of the recording, by a Chief of Police who had made 22 previous hiring decisions. AR at 199-200.

Once again, as a matter of law, it was for the appointing authority, not the Commission, to make the discretionary judgment about the quality of Ms. Strano’s performance in the

interview, and the weight to be given to her interview in the hiring decision. One of the dissenting Commissioners recognized this, writing:

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.

Dissenting Opinion of Commission Chair Bowman, AR 226.

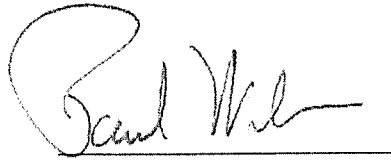
One other example should suffice. After comparing the relevant experience and credentials of Ms. Strano and C.S., the Decision concludes, "If anyone had an edge here, it was Ms. Strano, not Candidate C.S." AR 223. Thus, the Commission could hardly have made it clearer that, on this issue as well, it was seizing for itself the power to judge the relative qualifications of the two candidates, rather than simply deciding whether the appointing authority had a reasonable justification for its decision.

Conclusion and Order

As the Commission properly conceded in its Decision, "the Commission's role is not to determine if the candidate should have been bypassed." AR 211. Rather, its task is to "determine[] whether, by a preponderance of the 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." *Id.*; see *Kavaleski*, 463 Mass. at 688-689, and *Randolph*, 472 Mass. at 813 n.18.

For the reasons stated above, I have concluded that the Commission overstepped its statutory role, by evaluating the merits of the bypass decision, and determining that it would not have bypassed Ms. Strano. That was an error of law.

Plaintiff Town of Mansfield's Motion for Judgment on the Pleadings is ALLOWED. Defendant Jessica Strano's Cross-Motion for Judgment on the Pleadings is DENIED. The decision of Defendant Civil Service Commission is VACATED. The clerk will ENTER JUDGMENT in favor of the Town.

A handwritten signature in black ink, appearing to read "Paul Wilson", written over a horizontal line.

Paul D. Wilson
Justice of the Superior Court

August 23, 2019