

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 979-1900

JOHN TIVINIS,
Appellant

v.

G1-20-045

CITY OF SOMERVILLE,
Respondent

Appearance for Appellant:

Leah Marie Barrault, Esq.
Pyle Rome Ehrenberg PC
2 Liberty Square, 10th Floor
Boston, MA 02109

Appearance for Respondent:

Hannah Pappenheim, Esq.
Assistant City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

DECISION

On March 16, 2020, the Appellant, John Tivinis (Mr. Tivinis or Appellant), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the City of Somerville (City) to bypass him for original appointment to the position of permanent reserve police officer in the City's Police Department (SPD). A pre-hearing conference was held remotely by video conference on May 12, 2020.¹ The full hearing was

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.

recorded via Webex and both parties received a link to access the recording.² Both parties submitted post-hearing proposed decisions.

FINDINGS OF FACT

Six (6) Joint Exhibits, forty-eight (48) Appellant Exhibits, and one (1) City Exhibit were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

Called by the Somerville Police Department:

- Skye Stewart
- Steven Carrabino, Deputy Chief
- David Fallon, Chief

Called by Appellant:

- John Tivinis, Appellant

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

1. Mr. Tivinis is twenty-five (25) years old and was raised in Middleton, MA. He graduated from Masconomet High School in Boxford, MA in 2013. Thereafter, he attended one (1) year of college at North Shore Community College. (Testimony of Appellant).
2. On December 4, 2019, HRD issued Certification No. 06794 to the City of Somerville, authorizing the City to appoint ten (10) reserve police officer candidates. (Joint Ex. 1).
3. Mr. Tivinis appeared 14th on this Certification. (City Exhibit 1).

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. If such an appeal is filed, the recording sent to the parties should be used by a transcriptionist to transcribe the hearing.

4. The City requested an expansion of vacancies based on the number of candidates it anticipated sending to the Academy, along with the attrition rate of candidates entering the Academy. (City Exhibit 1).
5. On January 6th, 2019, HRD approved the City's request to expand the number of candidates for potential appointment from ten (10) to sixteen (16). (Stipulated Fact).
6. The City uses its reserve list to immediately fill spots in the police academy, and then hire graduated officers without further hiring process. Therefore, if the City intended to fill ten (10) academy spots using this Certification, it also had room on its reserve list for additional officers. (City Exhibit 1; Testimony of Chief Fallon).
7. Chief David Fallon (Fallon) wanted extra officers on the reserve list so that when the time came to fill seats in the academy, he did not have to wait for the hiring process to play out. (Testimony of Chief Fallon).
8. The City ultimately sent conditional offer letters to nine (9) candidates on Certification No. 06794. Of those nine candidates, seven (7) candidates were ranked below Mr. Tivinis. (Joint Exhibit 1; Joint Exhibit 6).
9. The City only sent nine (9) conditional offers because the panel felt that only nine (9) applicants were viable candidates for the position. (Testimony of Stewart; Testimony of Carrabino)
10. One of the candidates below Mr. Tivinis who was given a conditional offer is the son of a Somerville Police Captain. He was ranked 27th on the Certification. (Joint Exhibit 1; Testimony of Carrabino).
11. All candidates on Certification No. 06794, including Mr. Tivinis, who went through the City's hiring process were required to submit documentation to the City including an

application, resume, credit scores, tax returns, verify residency through a residency check, and undergo a background investigation conducted by a detective of the SPD. (Testimony of Carrabino).

12. Following the background investigation, all candidates, including Mr. Tivinis, were interviewed by the same Interview Panel consisting of the following individuals: Skye Stewart (Stewart) (former Chief of Staff to the Appointing Authority Mayor Curtatone); Deputy Chief Stephen Carrabino (Carrabino) of the SPD; and the Deputy Director of Health and Human Services for the City of Somerville, Nancy Bacci. (Testimony of Stewart; Testimony of Carrabino).

13. Before becoming a deputy in the Somerville Police Department, Carrabino held the following positions in SPD: patrol officer, community police officer, detective, head of the domestic violence unit, head of the gang unit, liaison to the Mayor, commander, and as a captain was in charge of half the patrol operations in the City. He has been a deputy for the past six years. (Testimony of Carrabino).

14. Skye Stewart served as the Chief of Staff to Mayor Joseph Curtatone in the City of Somerville from June of 2016 until her departure in August of 2019 (due to her family move to Michigan). In this role, she was a senior advisor to the Mayor; managing his line of sight on several high priority projects and initiatives; serving as the direct liaison to different department heads including the public safety department heads, the HR director with whom she worked closely on hiring, collective bargaining, operational issues and financial issues, conducting strategic planning around staffing levels. In this role, she was also the direct supervisor for the Chief of Police, Fire Chief, Personnel Director, Finance Director, Director of Strategic Planning and Community Development, etc. As Chief of Staff, she would stay

informed of upcoming certifications, promotional process timelines, and any potential bypasses in the civil service hiring processes. She also managed the municipal legislative process of getting the candidates before the City Council for confirmation to civil service positions after conditional hiring offer letters were issued. (Testimony of Stewart).

15. Prior to serving as Chief of Staff, Skye Stewart worked as an analyst in the City's SomerStat office in 2011, became budget manager for the City in 2014, then moved into the Director role in SomerStat in 2014. She was often involved in senior level hiring for directors of various Departments and other City employees and for her own staff in her role as Director. SomerStat is where all operational, performance data is managed in the City to help all departments better use data for decision-making. (Testimony of Stewart).

16. Stewart was contacted in the beginning of February 2020 by the then current Chief of Staff for the Mayor and asked if she had any availability and willingness to sit in on the Interview Panel for police reserve candidates on Certification No. 06794. The City Personnel Director who normally sat on these interview panels was on leave. (Testimony of Stewart).

17. Nancy Bacci, the Deputy Director of Health and Human Services for the City of Somerville was the third panelist for the City's interviews. She has participated in past hiring processes and interviews. She works closely with the police department in her role with the City. (Testimony of Stewart).

18. Prior to the interviews, all interview panelists were given access to electronic files of the various candidates. These files consisted of documents such as the candidates' full application, resume, transcript, tax returns, credit scores, military documentation, certifications, police records and background investigation reports. (Testimony of Stewart; Testimony of Carrabino).

19. The interview panel met to discuss the candidates on the day of the candidates' interviews.

The panel reserved half an hour to discuss any concerns they had based on their individual review of the electronic file prior to each interview. (Testimony of Stewart; Testimony of Carrabino).

20. During the interviews, the panelists took turns asking questions. The general format for each interview was the same. The panel would meticulously go through each line of the multi-page application the candidate completed. Following that review, the panel walked the candidate through the findings of the background investigator's report. Finally, the candidate was then asked seventeen (17) standard interview questions, which included numerous hypothetical scenarios. Once this process was complete, every candidate was given the opportunity to ask any questions he or she had before the interview was complete.

(Testimony of Carrabino; Testimony of Stewart; Joint Exhibits 2-5; Appellant Exhibits 1-48).

21. Every candidate interview was audio recorded, with the consent and knowledge of the candidates, by the City and has been submitted as evidence at the hearing of this matter.

(Appellant's Exhibits 28-36, 48).

22. Once a candidate's interview was over, Jessica Pavao of the City's HR (Personnel)

Department came into the room and gathered any documents the panelists had written on, and jotted down on a yellow piece of paper the top concerns the panel had with each individual candidate. She then assembled this yellow paper capturing the general concerns and any documents the panelists had taken notes on or highlighted, into an "interview packet" that the panel could refer to later when reviewing the candidates. (Testimony of Stewart; Appellant's Exhibits 19-27).

23. Following the final candidate interview, the panel met again to discuss and review every candidate. The panel made a unanimous decision as to which candidate would be bypassed and which candidate would be given a conditional offer of employment. (Testimony of Carrabino; Testimony of Stewart).
24. Following Mr. Tivinis' interview with the panel, he was notified by the Appointing Authority on March 3, 2020 that he would not be given a conditional offer of employment at that time. The bypass letter noted that panel was "concerned with your overall suitability for the position of Police Officer based on information you shared during your interview and your responses to several interview questions." (Joint Exhibit 6).
25. Ms. Stewart drafted every bypass letter and utilized this packet to do so. Stewart presented the bypass letters to the current-Chief of Staff, who in turn had the Mayor review those letters. The following day, Ms. Stewart received a phone call from the Chief of Staff indicating that the Mayor supported the letters and to move forward with the process. (Testimony of Stewart; Appellant's Exhibits 37-47; Joint Exhibit 6).

Panelists' Concerns with Appellant's Answer to School Discipline Questions

26. In Mr. Tivinis' application packet, he was asked: "Were you ever suspended or dismissed from a school or was any disciplinary action, including scholastic probation, ever taken against you during your scholastic career." Mr. Tivinis answered "yes" and provided an explanation of a physical altercation in high school that resulted in his suspension. (Joint Exhibit 2).
27. The panel interviewed Mr. Tivinis on February 9, 2020, for two hours and three minutes (2.03). Mr. Tivinis was asked about his educational history at length, including his disciplinary history. The panel asked Mr. Tivinis to speak to the significant number of

absences and tardiness in his transcript, 39 tardies and 102 absences. In one particular class, Financial Management, he was tardy 23 times and absent 27 times. What concerned the panel was that he had “not served as ordered.” (Testimony of Stewart; Testimony of Carrabino; Joint Exhibits 2, 3, 5).

28. Mr. Tivinis’ punishment for being tardy was to pick up trash in the cafeteria on numerous occasions. Mr. Tivinis chose not to pick up the trash when he felt he did not deserve the punishment because his father told him not to do it. His father had told him that the school has janitors to do that. He rationalized his failure to follow the school’s orders by stating that other students, even the “straight A students,” chose not to pick up the trash. He told the panel that he did not feel he deserved to pick up trash if he was only 30 seconds late or if he had been in the bathroom before homeroom and the teacher marked him late for school. In those circumstances, he did not believe he deserved punishment, so he did not comply. (Testimony of Stewart; Testimony of Carrabino; Joint Exhibit 5).

29. The crux of the panel’s deep concern with this interview response was that Mr. Tivinis had clearly failed to learn from his experiences in high school relative to school discipline. The City noted that it was not the fact that Mr. Tivinis was disciplined – indeed other candidates had been disciplined in high school and the panelists understand that it is not unusual for students to have problems in high school. The panel’s concern was that Mr. Tivinis both now, as an adult, and back then as a student, could not grasp why it was important for him to listen to authority and follow the school’s orders. As a paramilitary organization, it is essential for a police officer follow orders, even those he does not feel like following, since a large part of being a police officer is responding to orders. (Testimony of Stewart; Testimony of Carrabino).

30. During the interview, Mr. Tivinis had not changed his attitude about his failure to follow a directive and accept the discipline. Instead, he continued to rationalize it by saying that his father agreed with him, that other students refused, and he did not receive further discipline because of his refusal to comply. (Joint Exhibit 5; Testimony of Stewart; Testimony of Carrabino).

Panelists' Concerns with Appellant's Employment History & Financial Responsibilities

31. In Mr. Tivinis' application, he indicated he worked ten (10) hours per week at his father's business, Fellsway Autor Repair, since 2013, when he graduated high school. (Joint Exhibit 2; Testimony of Appellant).

32. The information in the 2019 Somerville Police Department application conflicts with reports from the background investigation the Department undertook as part of the Appellant's candidacy. For example, Mr. Tivinis' girlfriend stated that he was a "workaholic" and another reference stated that Mr. Tivinis worked 12-hour days and sometimes worked on Saturdays. (Joint Exhibit 3).

33. During the interview, Mr. Tivinis was asked about these discrepancies and he stated that his hours varied based on when his father needed him and also that a lot of his time in the shop was spent working on his own dirt bikes and snow mobiles. (Joint Exhibit 5).

34. During the interview, Mr. Tivinis was asked why, at twenty-five (25) years old, he had never filed income taxes. He stated that he did not get paid for his work at his father's auto shop since he and his father had an agreement that the Appellant would care for his sick mother. Mr. Tivinis stated, "we're a privileged family and he just kind of took – he took care of us." (Joint Exhibit 5).

35. Mr. Tivinis has never worked a full-time job nor has he ever worked anywhere other than his father's business. (Joint Exhibit 5).
36. During the interview, Mr. Tivinis stated that he recently asked his father to be paid and his father said he would talk to his accountant. (Joint Exhibit 5).
37. At the time of the interview, Mr. Tivinis noted that his father puts money on his debit card and he uses that money to pay his credit card bills. He also stated that his mother goes to the bank and puts money into his account. At the time of the February 2020 interview, Mr. Tivinis did not personally pay for his rent, utilities, health insurance, streaming television, or car insurance. (Joint Exhibit 5).
38. Mr. Tivinis drove his father's vehicles until 2019 and his grandfather's Volvo, as well. He would use "whatever vehicle his father wasn't using." (Joint Exhibit 5).
39. Mr. Tivinis' father had purchased a jet ski in the Appellant's name and pays for the insurance, in addition to a \$12,000 snowmobile. His parents had paid for his vacation to the Dominican Republic. His father has also given the Appellant money to purchase firearms. (Joint Exhibit 5).
40. The interview panel was concerned with the Appellant's employment history and financial history because, to them, it indicated a lack of maturity and life experience. He had never reported to a supervisor other than his father, he did not have set hours at which he needed to report to the shop, nor did he have the general life experience of working in a structured setting with continual responsibilities and accountability. (Testimony Stewart; Testimony of Carrabino).
41. Mr. Tivinis' admirable care for his mother when she was ill did not alleviate the panel's deep concerns that Mr. Tivinis has never managed his own money or that he has never worked for

anyone other than his father, either prior to or since his mother's illness (which had been 5-7 years prior to his application).³ The expectations of a police officers are to account for their time on patrol and to timely file and write reports and the panel was concerned he would not be up for that task given his life experience, thus far. (Testimony of Stewart; Testimony of Carrabino).

"Why Become a Police Officer" and "Role of Police Officer" Interview Questions

42. When asked why he wanted to become a police officer, Mr. Tivinis stated: "I want to become a Somerville Police Officer because I want to help the community. Um, I want to, you know... There's news on police officers, you know, becoming viral for helping people out and just being there for people and I, I want to be that guy. I want to help the community... I want to be a hero ... I want to be that guy." (Joint Exhibit 5).
43. When asked what the role a police officer plays in the community, Mr. Tivinis responded, "I would say a hero ... a good role model... people look at police officers as people to protect them. So you, you want to make sure you're there for the community. You want to make sure they're there for people, that ... they see you as a .. hero - ..." (Joint Exhibit 5).
44. Additionally, Mr. Tivinis was asked a question about his conflict resolution skills during the interview. He said he was skilled at talking to people and to "make them feel happy, make them feel calm." When pressed on how he calms people down, he repeated that he makes them "feel happy." (Testimony of Appellant).
45. The interview panel found that Mr. Tivinis' responses in multiple questions about being a "hero" and "making people happy" displayed a limited, superficial view of policing in the

³ The Appellant testified at the hearing of this appeal that he took care of his mother in 2015; however, in his interview, he indicated that he took care of her from 2013-2014. (Testimony of Appellant and Joint Exhibit 5). He may well have cared for her in 2015, rather than 2013-2014, but Deputy Chief Carrabino testified accurately at the hearing that the Appellant told him in the interview that he cared for his mother in 2013-14. (Joint Exhibit 5 and Testimony of Carrabino).

modern times. One panelist felt it was not reflective of a twenty-five year old's view.

(Testimony of Carrabino). Mr. Tivinis' desire to "go viral" for being a hero simply did not reflect a full understanding of the role of a police officer. His repeated use of the term "hero" to try to articulate his thought process was concerning because there was nothing else in the response of any substance. It revealed he had a narrow view of what the role is. Deputy Carrabino was concerned with that response because police officers are typically not seen as heroes in reality and they do not make people happy with many of the actions they take.

(Testimony of Stewart; Testimony of Carrabino).

Hypothetical School Shooter Scenario Interview Question

46. The panel asked Mr. Tivinis about a general hypothetical situation where he, as a police officer, is given an order that he does not agree with and could put his life in jeopardy. Mr. Tivinis was asked if he would comply with the order. (Testimony of Carrabino; Testimony of Stewart).

47. Mr. Tivinis' response fluctuated back and forth repeatedly. At first, he said that "it is your job and you have to do it... If you are getting paid, you should do whatever it takes." When pressed further by Carrabino, Mr. Tivinis went on to say that if he did not agree, he would talk to a superior officer by asking him questions first, but if it was his job, he would do it. He then qualified that response by saying that he would ask questions first, "like why do it this way when you could do it- maybe do it this way." He then said that he would have to do what a superior officer says. (Joint Exhibit 5).

48. Next, Deputy Chief Carrabino became very specific with the hypothetical, explaining a school shooting scenario like Columbine High School. At first the Appellant did not know what that was, but then had his recollection refreshed. Carrabino described that the

Somerville Police policy, which he explained is outdated, recommends that the Department wait for four officers to arrive on scene before they go in the school. Carrabino told Mr. Tivinis that law enforcement has since learned that every second matters -seconds and minutes mean lives. Carrabino told the Appellant that in this hypothetical, they both arrive on scene and can hear an AK inside and Carrabino tells Tivinis that they have to go in – does he go in? (Joint Exhibit 5; Testimony of Carrabino).

49. The Appellant first asked about the policy and if it was a law. Carrabino made it clear that it is not a law, just a policy – “a broad outline,” he stated. Mr. Tivinis’ response deeply concerned the panel. He unequivocally stated, “If the policy says wait, I’d tell my supervisor - hey, that’s not what the policy says. We should wait, we should wait. You know we should wait.” Carrabino pressed him further and stressed that the Appellant was there with him, his supervisor, and again, the Appellant said that they should wait. Finally, Carrabino said, “It’s me” – practically telegraphing to Mr. Tivinis to realize that he should indicate that he would go inside the school. Finally, Mr. Tivinis stated that he would go in and that he would not debate it with Carrabino, he would just do it. (Joint Exhibit 5; Testimony of Carrabino).
50. The City’s representative admitted that this and other hypotheticals are difficult questions and panelists ask them, in part, to see how a candidate thinks through problems. The panel felt Mr. Tivinis’ response indicated a lack of maturity and decisiveness since the panel had to go through the scenario multiple times. The panel felt he was not decisive and wanted an “out” and this was concerning. (Testimony of Stewart)
51. Deputy Chief Carrabino wanted “to see if a candidate can put life first.” He felt Mr. Tivinis gave a poor answer because he could not grasp that he, as the supervisor, was there with him

at the hypothetical school. Mr. Tivinis wanted to discuss it and, in an emergency situation, it is time to act. (Testimony of Carrabino).

52. All seven (7) other candidates whose name appeared lower than Mr. Tivinis on the Certification stated in their interview that they would immediately go into the school with Deputy Chief Carrabino. Two (2) of the candidates noted some concern about the policy but stated that they would take any concerns up with the supervisor *after* the emergency was over. None of them stated, as Mr. Tivinis did repeatedly, that they would wait for backup and discuss the policy first. (Appellant Exhibits 28-26).

Interview Question Regarding Gaining Cooperation of a Group

53. During the interview, Mr. Tivinis was asked to explain a time he had to gain the cooperation of a group over which he had little to no authority. Mr. Tivinis' response was "school groups." He stated that he would be in a group and he would take charge of the group and say, "Hey listen, I think we should do this. Like this would be a good idea. Um, what do you guys think. You know, we should... um, I, I really think this is a good idea and just ask them... for their reviews or opinions on things and I, I would take charge of that group stuff." He went on to say that he has good ideas and "they really liked my ideas... they had really good opinions.... And they helped me out with everything, too." The panel felt Mr. Tivinis' response was scattered, vague, and amorphous. The panel questioned whether he was describing an actual instance in which he gained cooperation of a group. (Joint Exhibit 5; Testimony of Carrabino; Testimony of Stewart).

54. Based on a review of the recordings of the seven (7) candidates who bypassed the Appellant, each responded to this question with instances when they gained the cooperation of a group they had little to no authority over. Their answers were related to a specific instance in their past where they assume a leadership role of their own volition. (Appellant's Exhibits 27-36).

Interview Question about Involvement in Confrontation

55. Mr. Tivinis was also asked in the interview about a time when he was involved in a confrontation and to describe the steps he took to remedy the situation. The Appellant's response did not make a lot of sense to the panel. The Appellant described a situation at his father's auto body shop with a disgruntled customer whose engine had blown out, blaming it on the auto body shop; however, the panel was not convinced Mr. Tivinis was the actual person being confronted, rather they felt his father was being confronted. Mr. Tivinis' role in the confrontation appeared to involve speaking calmly to the customer to try to get him to calm down and just talk, rather than yell and swear. He did not indicate any further steps he took to remedy the situation beyond that. The panel felt that, although Mr. Tivinis may have been involved, it sounded as though his father, as the owner of the business, handled the majority of the situation. (Joint Exhibit 5; Testimony of Stewart; Testimony of Carrabino).

56. All seven (7) candidates who bypassed the Appellant responded to this question in their own interview with a specific instance in which he/she was the only individual saddled with the responsibility of meeting the confrontation head on against someone else. Their examples did not involve a group effort to de-escalate a confrontation, as the Appellant's example heavily involved his father. Each clearly indicated in their interview what steps they took to resolve the situation on their own and to ultimately de-escalate a heated exchange. (Appellant's Exhibits 28-36).

Interview Question Regarding "Unconscious Bias"

57. During his interview, Mr. Tivinis was asked about his "thoughts on unconscious bias and how it effects the work that police officers perform." Mr. Tivinis did not know what unconscious bias meant. The panel provided him with a quick definition. The fact that Mr.

Tivinis was unaware of what the term meant was not held against him. (Joint Exhibit 5; Testimony of Stewart; Testimony of Carrabino).

58. Of the seven (7) candidates who bypassed Mr. Tivinis on the Certification, three (3) knew the term and, according to panelists, immediately answered the question in a coherent, appropriate, and informed manner without any definition. Four (4) candidates needed a quick definition – with one needing the definition twice - yet almost all immediately answered the question in a coherent, appropriate, and informed manner. (Appellant’s Exhibits 28-36).
59. Even after being given the definition of unconscious bias, Mr. Tivinis was unable to discuss the issue in a coherent manner. He stated: “What – so maybe what you would do if you were a police officer but since you – you know, if... If you were a police officer, obviously you got to act like a police officer. If you were just a normal human being you would act differently from a police officer would because you’re – you’re law enforcement. You, you – you know, you got rules, regulations. You got all that. So, um, you got to follow through. You have to, um – you have to be professional, where if... You know if you’re just a normal human being, you can kind of almost – not do whatever you want but act differently if you’re not a police officer.” (Joint Exhibit 5).
60. Deputy Chief Carrabino noted that “this is probably the most important issue in policing today.” He was concerned that Mr. Tivinis could not understand the question even after it was explained to him. (Testimony of Carrabino). His struggle to answer this question was further proof that Mr. Tivinis did not have a clear sense of the roles, responsibilities, and issues police officers currently face. (Testimony of Carrabino; Testimony of Stewart).
61. The selected candidates below Mr. Tivinis on the Certification responded to the unconscious bias question as follows:

Candidate 17 on the Certification⁴: Most of the things that are happening now are people just saying things without knowing the facts. I'm against it just because before you start judging you should do your homework. Find out what's really going on before you start assuming or becoming part of that issue instead of the solution. I think if we all take a little bit of time and kind of do our homework, investigate, this world would be a safer place to live in. People are just so quick to judge sometimes and without finding out exactly what's going on. And yes it does effect a lot of police officers because you are sitting there trying to protect the City, but yeah sometimes you don't get the same respect back from the residents or because everyone is just focusing on what they hear, especially on the media.

Candidate 20 on the Certification⁵: It's a real thing, people obviously will profile some people even though they don't intend to. Sometimes it just wraps their head on a certain person doing a certain thing, and it doesn't allow for any growth in the field. (Follow up question: How do you combat that?) Just try to be a better person and don't just instantly react. Most people I guess always see color. Just try your best not to see color and just see them as a person. (Follow up question: What if you're not aware of it because it is unconscious?) If it's unconscious I believe maybe in that moment you won't know what you're doing is wrong until afterwards, maybe ask an officer for feedback - how did I handle this, what could I have done better? Ask for some criticism. If you realize what you did was wrong, take responsibility for it and try to be a better person, especially a better cop.

Candidate 22 on the Certification⁶: I think everybody would have them. And the effect it would have on police officers' work is sometimes they are in a situation where one of those unconscious bias are triggered, and it ultimately comes down to whether they want to react to it or not and the reasons why they would react on it. (Follow- up question: How would you combat unconscious bias?) I think just looking at it from a different perspective like although I feel a certain way and I'm not really sure why I'm feeling that way, just looking at it from a different perspective than my own will help me combat conscious, I mean unconscious bias, sorry.

Candidate 25 on Certification⁷: I think depending on your upbringing there are obviously are going to be unconscious biases. Luckily in Somerville it is a very diverse population so I don't think it occurs as often here as it would for say 40-60 years ago. However, I do think that the unconscious biases can play a role in policing where they will kind of get focused on, if there's for say a sketch they can kind of get focused on that. I do know with new training they are trying to turn away from that, but I do think it just takes time and awareness to push away from your unconscious bias – it has to be brought to your attention for you to know it and take the steps to rectify that.

⁴ In its proposed decision, the Respondent refers to this person as Candidate 19. At the hearing of this matter, the labels used for each candidate by all parties became confusing and inconsistent. For purposes of this Decision, the Commission will refer to the candidate by their ranking on the certified list. The Commission has tried, in the footnotes, to cross reference this label with numbers used by the Attorneys. The Appellant's attorney usually referenced the candidate by their placement on the Certification, although sometimes, the candidate was referred to by their listing on the Appellant's Exhibit list.

⁵ In its proposed decision, the Respondent refers to this person as Candidate 3.

⁶ In its proposed decision, the Respondent refers to this person as Candidate 8.

⁷ In its proposed decision, the Respondent refers to this person as Candidate 7.

Candidate 25 on the Certification:⁸ I think as dealing with people as a police officer does, many, many different contacts you are going to have a tendency to cause someone in this position to form opinions. Not necessarily, I wouldn't say hateful opinions but just kind of generalizations... It could cloud their decision making. Cause them to make to decisions based on their bias and not the objective facts that are in front of them. (Follow-up question: How do you work on that) Keep things in perspective. Keep things as objective as possible. Treat people with respect at all times and it becomes an automatic thing. (Follow-up question: What if you are not aware of it?) If someone is made aware of the existence of the theory of unconscious bias maybe it will make them take a look in the mirror and think about what is going on inside of themselves...you need to become aware of it... through education, asking tough questions.

Candidate 27 on Certification:⁹ I believe I actually touched on this earlier when I said that there's a knee jerk reaction. When you see something it goes right to your brain stem and a lot of times if you take a second to focus and really think about the situation then you can understand that what you thought initially might not actually be correct because of unconscious bias. And it affects most people so it's important to acknowledge that mostly everyone is affected by it and so we should take steps in our thought process to account for it.

Candidate 31 on Certification:¹⁰ That's definitely a thing. It's definitely, I feel like a lot of people do have an unconscious bias, um...I feel that if there's a lot of instances where officers might think that a person is going to escalate the situation very quickly and they will go in at a level where they think that person is going to be. It's like the saying "you can go in as lamb and come out as a lion, but you can't go in as a lamb and come out as a lamb." They are starting off at a point that they feel the other person is going to start out at, and that could be due to race or however they might think. And they start higher than the other person and they have no chance of going down, they just have to keep going up, which just escalates the situation much faster than if it was resolved at a lower, more levelheaded place.

(Appellant's Exhibits 28-36).¹¹

Certain Candidates' Background History

62. The candidate who appeared ranked #27 on the certification is the son of a Somerville police captain. He attends UMass Boston and currently majors in Criminal Justice and Spanish. He has held two part-time jobs and one seasonal full time job as a lifeguard while he attends school and currently lives with his parents. He is a 2017 graduate of Somerville High School

⁸ In its proposed decision, the Respondent refers to this person as Candidate 27.

⁹ In its proposed decision, the Respondent refers to this person as Candidate 31.

¹⁰ In its proposed decision, the Respondent refers to this person as Candidate 23.

and played hockey. He provided complete answers to all questions in the interview, especially the questions related to unconscious bias and the school shooter scenario, as compared to the Appellant's responses. (Testimony of Stewart; Appellant Exhibit 4, 13, 22, 31,).

63. The candidate who appeared ranked #31 on the certification attends Bunker Hill Community College and majors in Criminal Justice. He was twenty-one years old at the time of the interview and lives with his parents while he attends school. He does not pay his own bills. He has held part time jobs since graduating high school, as a supervisor for Somerville Recreation and at the front desk at Crunch Fitness, as a college student. He answered the question about unconscious bias and the school shooter scenario appropriately. (Appellant Exhibit 5, 14, 23, 32).

64. The candidate ranked no. 31 on the certification answered a question about two current issues involving police officers, noting that (1) excessive use of force and (2) racial profiling were two such issues. Ms. Stewart was asked on cross-examination about Candidate 31's interview and whether it bothered her that the Candidate said that sometimes excessive force is a misunderstanding by the public. Ms. Stewart testified that "the tape better explains it than my notes" and "listen to the tape – it's not necessarily what he is saying." (Appellant Exhibit 32; Testimony of Stewart).

65. A review of Candidate 31's full interview shows that, within that response about excessive use of force, Candidate 31 stated that it is "more just a misunderstanding by the community since a lot of the time police officers are following what they are told to do, how to handle certain situations in certain ways – and people just see that if somebody with any form of authority is using force on another person that it is excessive use of force but there's

definitely cases where it is blatantly clear that is an excessive use of force ... but a lot of the times its just people who don't know the trainings and the protocol people have to go through to make sure everybody else is safe....” (Appellant Exhibit 32).

66. Candidate ranked # 17 on the certification failed to list all of his prior employment history on his application, particularly those just after he graduated high school. He graduated high school in 2000 and began working part-time at Aldo Shoes at the Cambridge Side Galleria from 2001-2004. He indicated that he did not list this information on his packet because he focused on his most recent positions on the application and that was so long ago. The panel told him that he should have included that information so there were no gaps in his timeline. At the time of the interview, he was thirty-eight (38) years old. He is a divorced father of an eleven (11) year old girl. He currently works fifty (50) hours per week as the branch manager for Premier, and travels for this job to Canada – sometimes for five months out of the year, back and forth and from Canada. (Appellant’s Exhibits 1, 10, 19, 28).

67. A large majority of the other bypassed candidates were not given a conditional offer of employment from the City, at least in in part, due to poor interview performance. (Appellant Exhibits 37-47; Joint Exhibit 6).

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, citing Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel

administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for Civil Service Commission intervention. Cambridge at 304.

The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission’s role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority’s actions. City of Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm’n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington and another v. McCarthy, 60 Mass. App. Ct. 914, 915 (2004).

Analysis

A core mission of the Civil Service Commission is to ensure that Appointing Authorities, as part of a fair and impartial hiring process, offer valid reasons for bypassing a candidate in favor of lower-ranked candidates. As part of that review, the Commission must consider whether there is any evidence of personal or political bias by the Appointing Authority.

As part of this appeal, I considered the sequence of events that resulted in additional candidates, included the son of a Police Captain, being considered for appointment, as I did in Daniel O'Donnell v. City of Somerville, G1-20-044. As referenced in the findings, the City first requested authorization to appoint ten (10) reserve candidates, which would limit the City's consideration to the first 21 candidates who signed the Certification as willing to accept appointment under the so-called 2N+1 formula. At least four candidates who were ultimately appointed by the City were not among the first 21 candidates on the Certification. Approximately four weeks later, the City requested authorization from HRD to appoint 16 (as opposed to 10) candidates from this Certification, thus, in theory, increasing the number of candidates that could potentially be considered from 21 to 33. As a result, the City considered additional, lower-ranked candidates on the Certification, including four other lower-ranked candidates who were ultimately appointed. However, the City only appointed a total of 9 reserve candidates, based on the interview panel's recommendation.

One of those candidates, ranked #27 on the certification, was twenty (20) years old at the time of the interview, still lived at home with his parents while he attends college, and is the son of a Somerville Police captain. I carefully considered whether Candidate 27's familial relationship played any role in his appointment. Candidate #27 had graduated high school in 2017 and his employment history was limited, although he had worked two part-time jobs and one full time, seasonal job as a lifeguard at for DCR, and is a criminal justice major in college. It is difficult to

compare the life experiences of a twenty-year old to that of the twenty-five year old Appellant simply based on the age of the candidate. In this instance, however, the Appellant, at twenty-five, for the reasons discussed in more detail below, conveyed little in the way of life experiences and displayed a troubling degree of immaturity. In candidate #27's interview, he appeared to have a good grasp of the requirements of being a police officer and was easily conversant regarding some of the nuances and difficulties that may arise on the job. He was more decisive when he spoke, especially in response to questions about a school shooting, and he had a firm grasp on the concept of unconscious bias. In sum, even applying heightened scrutiny, I do not believe that the panel's decision to recommend Candidate #27 was the result of personal or political bias. As stated in O'Donnell, however, the Commission reserves the right to investigate whether the City acted within the confines of the civil service law, and, more specifically, the 2N+1 formula, based on its actions here. This potential issue, however, does not change my conclusion that the City had reasonable justification to bypass the Appellant for the reasons discussed below.

Ms. Stewart and Deputy Chief Carrabino were good witnesses. They had a command of the facts and were able to articulate both the positive and negative aspects of Mr. Tivinis' candidacy. They were accommodating during his interview, multiple times offering to take a break or to provide water, acknowledging how stressful the situation can be. Neither of them had any personal animus against the Appellant. Neither of them tried to paint Mr. Tivinis in a bad light and/or pile on with other reasons to justify their decision here. They noted that he did a good job filling in certain areas of the application and gave him the benefit of the doubt regarding various errors or omissions on his application after listening to Mr. Tivinis' explanation for the error, as the panel did for other applicants as well. The interview panelists were not predisposed to

bypassing Mr. Tivinis nor did they develop any animus or bias against Mr. Tivinis that factored into their decision to bypass him for appointment.

Rather, the panelists testified credibly that they had serious concerns regarding many answers that Mr. Tivinis provided to numerous questions, including questions involving his life-experiences, his financial independence/history, and hypothetical questions meant to assess whether Mr. Tivinis fully appreciated the realistic roles and responsibilities of police officers. Mr. Tivinis' interview raised serious concerns about his maturity level as it relates to his overall suitability for the position of police officer. Mr. Tivinis is a twenty-five (25) year old man who is clearly devoted to his family. He obviously strives to make his father proud and is a devoted son who took care of his mother during a very trying time in her life and his. The interview panel acknowledged these truths. Mr. Tivinis graduated from high school in 2013 and has only ever worked at his father's business for roughly ten (10) hours per week, on average. He does not get paid for his time at the autobody shop. Since he does not get paid, he has never filed tax returns. At twenty-five (25), he has never held a full-time job and has never adhered to a set schedule.

In his interview and application, he admits to working only ten (10) hours per week on average, yet his girlfriend told the investigator that he is a "workaholic" and another friend stated that he works every day, sometimes on Saturdays, and that he works twelve (12) hour days. The panel asked about this inconsistency and Mr. Tivinis struggled to account for his time and noted that much of his time at the autobody shop is devoted to working on his own snowmobile and dirt bikes. Mr. Tivinis has never managed his own finances; his father puts money on his debit card or his mother personally goes to the bank and puts money into his account and he uses that money to pay his credit card bills. At the time of the February 2020 interview, Mr. Tivinis did not pay for his own rent, utilities, health insurance, streaming television, or car insurance. The

interview panel was concerned with the Appellant's employment history and financial history because, to them, it indicated a lack of maturity and life experience. This was a reasonable concern since police officers are required to adhere to a strict schedule, to report for duty on time, to work long hours, to keep detailed paperwork, and to report to superiors that are not family members.

Mr. Tivinis has applied for the difficult position of police officer. When asked why he wanted to be a police officer and what his understanding of the roles and responsibilities of an officer are, the Appellant indicated repeatedly that he wanted to be a hero and that he wanted to make people happy. The panel was not impressed with Mr. Tivinis' response and thought some of his interview responses portrayed an unrealistic view of policing. He referenced officers being on the news, or going viral, for helping people. The panel did not believe Mr. Tivinis had a realistic understanding of the job since being a police officer is often a difficult job where your actions make other people very unhappy. An officer is not seen as a hero on most days and one often encounters other people on their worst days. The panel felt this response was superficial and lacked any insight into the job requirements. The panel felt this response would be something a twelve-year old may give.

Although the answer to "why do you want to be a police officer" question itself was not the sole reason for bypass, it set the stage for Mr. Tivinis' additional responses to more detailed questions regarding (1) how he had showed leadership in the past by gaining the cooperation of a group and (2) how he has handled a confrontation in the past. When asked of a time where he was able to gain the cooperation of a group that he had little to no authority over, Mr. Tivinis was unable to provide a specific instance of when he gained cooperation of a group. He was vague with his response, referring to "school groups" in general. His response lacked any detail

as to what class the groups met for, what the purpose of the groups were, or what the groups' project or goals were. He concluded his answer, devoid of any details, by saying that he felt he was effective in the situation and the group felt he had good ideas, that he helped the group and the group helped him. Additionally, Mr. Tivinis was asked to describe a time he was involved in a confrontation and what steps he took to remedy the situation. Mr. Tivinis described an incident at his father's autobody shop with an angry customer whose engine had blown out. Mr. Tivinis indicated to the interview panel that he spoke calmly to the customer to try to calm him down and stop screaming. Mr. Tivinis' description of the incident, which included his father as a key player in the scenario, did not satisfy the interview panel that Mr. Tivinis himself was the person who rectified the situation. To the panel, it appeared that his father was likely more involved in coming up with a solution with the customer than Mr. Tivinis himself. While Mr. Tivinis' response to these questions, standing alone, may not be a valid reason for bypass alone, I credit the City's witness testimony that they were not strong responses as compared to other candidates who bypassed him.

When discussing Mr. Tivinis' educational history during the interview, Mr. Tivinis indicated that he had been suspended from school for an altercation with another student. He had included this information in his application as well, which the panel appreciated. When asked a follow up question about other disciplinary actions in high school, Mr. Tivinis indicated that he was punished with detention for being late to school. His high school records confirmed disciplinary action and that he had 39 instances of tardiness and 102 absences. The panel was not concerned with the high school discipline itself. For this Appellant and all other candidates, the panel acknowledged that it is not uncommon for candidates to have had discipline in high school. What concerned the panel was Mr. Tivinis' attitude towards the discipline he received and his apparent

failure to learn from those instances of discipline, even to this day. Mr. Tivinis was punished by having to pick up trash in the cafeteria and often chose not to follow an order to pick up trash during lunch, because his father told him he should not do it as the school district pays janitors for that. He rationalized his decision to disobey an order because other students chose not to do it. This response was justifiably concerning to the panel. A police department is a paramilitary organization and officers may be given orders with which they do not agree, orders that will likely put their lives on the line, yet they will be expected to follow those orders.

In that same vein of willingness to respond to orders, Mr. Tivinis was asked about a hypothetical school shooting scenario in which candidates are asked how they would respond if ordered to go into a school during an active shooting, complete with gunfire heard in the background, even if the requisite number of officers had not arrived on the scene per an outdated department policy. The City's witnesses acknowledge that this is a difficult question, meant to make the candidate think through the answer and ask any questions. All candidates who were ranked below Mr. Tivinis on the certification list and given conditional offers immediately stated they would go into the building as ordered by their superior officer. Two candidates noted that they would discuss any issues they had after the emergency situation was over. Unlike those candidates who bypassed him for appointment, Mr. Tivinis unequivocally stated that if the policy says wait, he would tell his supervisor to wait. He repeated several times that he would tell the supervisor that they should wait. Carrabino pressed him further and stressed to Mr. Tivinis that he was there with him, his supervisor, and again, Mr. Tivinis said that they should wait. Finally, Carrabino said, "It's me" – practically telegraphing to Mr. Tivinis to realize that he should indicate that he would go inside the school. Finally, Mr. Tivinis stated that he would go in. Deputy Chief Carrabino wanted "to see if a candidate can put life first." The panel felt Mr.

Tivinis' response indicated a lack of maturity and indecisiveness since the panel had to go through the scenario multiple times.

The final interview question that caused the City concern was Mr. Tivinis' response to the question about unconscious bias in law enforcement. Mr. Tivinis did not know what the definition of unconscious bias was. Even after the term was defined, Mr. Tivinis clearly did not know what the term meant, as evidenced by his answer. Each candidate was asked this question, and many (not all) needed to be given a definition of the term. This was not held against the candidates; however, where Mr. Tivinis differed from the selected candidates is that, once given the definition, he could not respond appropriately. In the estimation of the panel, all candidates who bypassed Mr. Tivinis were able to coherently, thoughtfully, and informatively respond to this question; most were able to expound on ways to try to combat unconscious bias, as well. Deputy Chief Carrabino testified that he felt this was the most pressing issue police officers face today. It is a reasonable concern for the City that Mr. Tivinis was unaware of the concept of unconscious bias and was unable to grasp it even after it was explained to him. It is perfectly reasonable for a police department to expect a candidate to be able to, at the very least, minimally reflect upon this issue. Mr. Tivinis was wholly unable to discuss this issue.

Police departments and other public safety agencies are properly entitled to, 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. Connor v. Andover Police Department, Case Number G2-16-159 (2017), citing, 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.” Flynn v. Civil Service Comm’n, 15 Mass.App.Ct. 206, rev.den., 388 Mass.1105 (1983).

In his brief, the Appellant argues that the interview process failed to provide the necessary level of protection against arbitrary action and undue subjectivity that the Commission requires, further claiming that the decision was predetermined. The Appellant argues that the choice of the interview panelists, alone, raises substantial doubt as to the City’s concern for creating a truly objective process. I disagree. The first interview panelist is a twenty (20) year veteran of the Somerville Police Department and has been the Deputy Chief of the Department for six (6) years. He has held many position in the Department, including but not limited to patrol officer, detective, head of the domestic violence and gang units, liaison to the Mayor, commander, and Captain in charge of half the patrol operations in the City. He has taken part in previous hiring interview panels in previous hiring cycles. He is well versed in the hiring process. His experience in the field, his leadership roles, and his rise to Deputy Chief makes him a reasonable choice to judge an applicant for the role of police officer for the City he serves. Nancy Bacci, the Deputy Director of Health and Human Services for the City, was the second interview panelist. Although she did not testify at the hearing of this matter, she had been involved in prior interviews and prior hiring cycles several times in the past. She works closely with the police department in her role with the City; and based on the multitude of interviews reviewed, Ms. Bacci had command of the process and subject matter and came across as an impartial, informed interviewer.

Additionally, Skye Stewart, the final interview panelist, is a reasonable choice to sit for the interview panel and judge the viability of a candidate for the position of police officer. Although she has never been a law enforcement officer, she worked in the City’s SomerStat office from 2011-2016, first as an analyst, then as the budget manager, and finally as its Director in 2014.

She has vast experience in senior level hiring for directors of various Departments, other City employees, and her own staff. She had been the Chief of Staff to the Mayor of Somerville from 2016-2019, and in this role as senior advisor to the Mayor, she was the direct liaison for different department heads including, among others, the public safety department and the HR director, with whom she had worked closely with on hiring and collective bargaining issues. She was the supervisor of the Chief of Police.¹² Ms. Stewart wrote the bypass letters for this hiring round and provided those letters to the current-Chief of Staff for the Mayor. Those letters were presented by the Chief of Staff to the Mayor for his review. Ms. Stewart was notified the following day that the Mayor supported the letters and she was told to proceed.

Every interview was audio recorded. The Appellant was afforded a two hour and three minute (2.03) interview, and all of the finalist interviews have been reviewed in their entirety. The Appellant was asked multiple times if he needed to take a break, to use the restroom, or to have some water. The interviewers also acknowledged to the Appellant more than once how stressful the situation can be, sitting in front of three people asking questions and taking notes. The interviewers did not score each individual question, or rank the candidates; however, every candidate was asked the same exact questions. Each candidate was given the opportunity to go through every page of their applications as well as well as partake in a lengthy discussion about what their background investigation revealed. Within the application, the interviewers pointed out when information was incomplete or missing with every candidate. Most candidates had

¹² Appellant argues that Ms. Stewart would only look to the Deputy Chief as her point of reference with regards to police procedure questions during the interviews, most specifically, the school shooter question. In her role as Chief of Staff, she had been involved in many discussions with the Department's command staff regarding the protocols for school lockdown drills and was well aware of the City's policies on the matter. The Deputy Chief, in the interview, was not her only point of reference.

some part of their application that was incomplete or missing key information, although some candidates were praised for the work they did on the application.

The interview panelists concluded that the Appellant's answers to many interview questions, taken on their own but most especially taken as a whole, showed a distinct lack of maturity, a lack of life experience, and a lack of awareness of current police issues necessary for the role of police officer, as compared to the other seven (7) candidates to whom chose to make a conditional offer. Here, the evidence does not show any impermissible motivations by the decision-makers; the Appointing Authority maintains the discretion to assess how much weight is given to problematic answers by candidates.

In his brief, the Appellant lists certain items from various candidates' applications, without giving context to the information. From the evidence presented, the City compiled a lengthy application from every candidate, has undertaken a background investigation on each candidate, and has afforded each candidate a lengthy interview to discuss it all. The panel then discussed each candidate at length and came to a conclusion, either giving a candidate a conditional offer or bypassing the candidate. For instance, the Appellant claims that Candidate #17 on the Certification "lacked any employment after high school graduation for five years," likely in an effort to compare him to Mr. Tivinis. Although the candidate did not list all of the jobs he has held on the *application*, the *interview* of Candidate 17 revealed that he failed to list employment at four prior jobs – one such job began immediately after graduating from high school in 2000, which he held for four years, from 2000-2004, at Aldo Shoes. The panel was concerned that he did not list all employment history. The candidate explained that he did not think it was relevant to his career because it was so long ago and part time. This candidate was thirty- eight (38) years old at the time of the interview and was a divorced father of an eleven-year old girl. He had

worked since high school has been employed as a branch manager for the same company for years, working fifty (50) hours per week on average, often travelling to and from Canada as part of his work responsibilities. After a review of all of the comprehensive information relative to this candidate, I do not find Candidate 17's work experience or life experience to be comparable to the Appellants.

The Appellant also points to Candidate #31 on the certification as evidence of bias in the hiring process, noting that this candidate is twenty-one (21) years old, is friendly with Candidate 27, still lived at home with his parents while he currently attends college, and had little work experience. In reviewing this candidate's lengthy application, his background investigation, and his interview, the City determined that this candidate was a better choice for the position than the Appellant, even given the age gap. This candidate attends college and is majoring in criminal justice. He has held a part-time job as a supervisor with Somerville Recreation and a desk job at a gym. In his interview, he was able to articulate what unconscious bias is and opined on ways to combat it. He was decisive in his decision to enter the school with his supervisor in the hypothetical school shooting. He was well spoken and had a firm grasp on the questions that were asked of him and was able to articulate his experiences at work in a supervisory role and his experiences as a leader in athletics. Additionally, he better handled the questions relative to (1) a confrontation he was involved in and how he remedied the situation and (2) a time where he had to gain the cooperation of a group he had no authority over.

The Appellant also points to one part of Candidate 31's answer to a question about two current issues facing law enforcement. Candidate 31 indicated that (1) excessive use of force and (2) racial profiling are two current issues. The Appellant argued that Candidate 31 stated that excessive force is just a "misunderstanding by the community." That, however, was not the end

of Candidate 31's response. When asked about this answer on cross-examination, Skye Stewart noted that "the tape better explains it than my notes" and "listen to the tape – it's not necessarily what he is saying." Based on a review of Candidate 31's full interview, within that response about excessive use of force, Candidate 31 stated that it is "more just a misunderstanding by the community.... but there's definitely cases where it is blatantly clear that it is an excessive use of force" This response is more appropriate and nuanced than argued by the Appellant. Candidate 31 did not appear to be advocating for excessive use of force, acknowledging that there are blatantly clear cases of excessive force.

In summary, the Appellant is a good person who performed poorly during a lengthy interview, particularly on some questions the interview panelists gave great weight to. Ultimately, his poor performance throughout many facets of the interview caused the interview panel to conclude that the City would be taking too much of a risk in granting him a conditional offer of employment at time. Nothing in this decision, however, should be construed as permanently disqualifying the Appellant from consideration as a Somerville police officer. The Appellant has ample time to improve this interview skills, learn more about the challenges facing the modern police force and show the City that he has the maturity and steadfastness to be issued a badge and all of the responsibilities that go with that. I would encourage him to do so.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. G1-20-045 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on May 6, 2021.

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:

Leah Marie Barrault, Esq./ for the Appellant

Hannah Pappenheim, Esq./ for the Respondent