

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JOHN VITALE
Appellant

CASE NO: G2-10-273

v.

CITY OF BEVERLY
Respondent

Attorney for the Appellant:

John Vitale, *pro se*

Attorney for the Respondent:

Robert A. Munroe, Esq.
Assistant City Solicitor
191 Cabot Street
Beverly, MA 01915

Commissioner:

Paul M. Stein¹

DECISION

The Appellant, John Vitale (Appellant or Sgt. Vitale), acting pursuant to G.L. c.31, §2(b), duly appealed a decision of the City of Beverly Police Department (BPD) to bypass him for a promotion to the position of Lieutenant. A full hearing was held on February 17 and February 18, 2011 at the offices of the Civil Service Commission (Commission). The BPD called three witnesses and the Appellant testified on his own behalf. The witnesses were sequestered. The hearing was digitally recorded, CDs were provided to the parties, and a copy is retained by the Commission. Twenty four exhibits were marked, seventeen were entered into evidence. The Commission received a post-hearing brief from BPD on April 12th, 2011.

¹ The Commission acknowledges the assistance of Law Clerk William Davis in the drafting of this decision.

Findings of Fact

Giving appropriate weight to the exhibits, the testimony of the witnesses (the Appellant, Chief Mark Ray, Captain John DiVincenzo, and Lieutenant William Terry) and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

The Appellant

1. John Vitale, the Appellant, has been a tenured civil service employee and a full-time permanent police officer in the BPD since 1998. He became a sergeant in 2001.

(Testimony of the Appellant)

2. Sgt. Vitale passed the civil service examination for Lieutenant in October 2008. His name was placed on the current eligible list established from that examination.

(Exhibit 12)

Beverly's Selection Process for Police Lieutenant's Position

3. On or about May 2010, the City of Beverly (City) requested a civil service certification list for the selection of one full-time Lieutenant. On June 7, 2010, the City duly procured Requisition No. 280356 from the current eligible list of candidates for selection of one full-time Police Lieutenant. Sgt. Vitale was ranked second among four candidates on the Certification who signed that they were willing to accept the promotion to Lieutenant. Sergeant Russell Rollins was ranked first, Sergeant Joseph Shairs (Sgt. Shairs) and William Page were tied for third. *(Exhibit 1; Testimony of Chief Ray)*

4. The Chief of Police, Mark Ray, is the Appointing Authority for the BPD. He has been a police officer since 1985, and Chief since August 2007. *(Testimony of Chief Ray)*

5. On July 13, 2010, Chief Ray verbally informed Sgt. Vitale of his bypass for selection for the lieutenant position.

6. At the time Sgt. Vitale was informed of the bypass, he requested from Chief Ray written reasons for his bypass for the position. (*Testimony of the Appellant; Exhibit 24*)

7. On August 31, 2010, Chief Ray gave written positive reasons for selecting Sgt. Shairs to Sgt. Vitale. (*Joint Exhibits 2 and 3*)

8. In his tenure as Chief, he has made appointments and promotions on at least seven different occasions. (*Testimony of Chief Ray*)

9. In the selection process, the Chief used an assessment center for the first time. The assessment center consisted of a series of assessments, conducted by third parties which tested the skills that are necessary to be a successful lieutenant. (*Testimony of Chief Ray*)

10. Each candidate's score was the result of an allocation of 40% to the written civil service examination score, 20% to training and experience, and 40% to the assessment center score. (*Testimony of Chief Ray and Joint Exhibit 12 and 13*)

11. Sgt. Shairs had a weighted score of 83.00, having scored 78.00 on the written examination, 89.4 on prior training and experience, and scoring 85.29 on the assessment center test. (*Joint Exhibit 13*)

12. Sgt. Vitale had a cumulative score of 85.00, having scored 86.00 on the written examination, 91.5 on prior training and experience, and 80.33 on the assessment center. (*Joint Exhibit 12*)

13. Chief Ray also organized internal departmental interviews of each candidate. Chief Ray did not know the candidates' written exam scores, assessment center scores or

composite exam scores at the time of the interviews. (*Testimony of Chief Ray*)

14. The interviews were conducted by Chief Ray, Captain John DiVincenzo (Cpt. DiVincenzo), and Lieutenant William Terry (Lt. Terry). (*Testimony of Chief Ray*)

15. The interview consisted of two fifteen minute segments. In the first segment each interviewee gave a presentation on the reasons why they would be a good fit for the position. In the second part of the interview, the panel asked the same set of questions to each of the candidates. (*Testimony of Chief Ray, Cpt. DiVincenzo, and Lt. Terry*)

16. The interviewers took handwritten notes on the interview responses and after the interview, they would take a few minutes to confer with the other members of the panel to come up with an overall score (from a low of 1 to a high of 5) for the interviewee. (*Exhibits 6, 7, 10, 11, 14, 15 and Testimony of Chief Ray, Cpt. DiVincenzo, and Lt. Terry*)

17. In the conferences after the interviews, the panel would discuss the responses for each prepared question in order to arrive at a score. The interviewers then decided unanimously on an overall score. (*Testimony of Chief Ray*)

18. The three interviewers determined that Sgt. Vitale deserved the lowest overall consensus score of a 2.5 out of five possible points. (*Testimony of Chief Ray, Cpt. DiVincenzo, and Lt. Terry*)

19. The three interviewers determined that Sgt. Shairs had the best overall interview performance and gave his interview and consensus score of 5 out of a possible five points. (*Testimony of Chief Ray, Cpt. DiVincenzo, and Lt. Terry*)

Chief Ray's Interview Evaluation

20. In the first part of the interview, in which candidates gave the reasons why they should be selected, Chief Ray found that Sgt. Vitale's presentation was very short. His

presentation lacked the “big picture view” of a leader, and focused instead on minor details. Chief Ray testified that organization is a very important trait for a Lieutenant and that there was a lack of organization in Sgt. Vitale’s presentation. (*Testimony of Chief Ray*)

21. Sgt. Vitale gave each interviewer a packet containing a cover letter, two letters of recommendation, a certificate of attendance at the “Executive Command Leadership Workshop,” a letter describing a leadership award he had received during the “Executive Command Leadership Workshop,” an email exchange between him and Chief Ray about a grant that he had implemented, five letters from various members of the community (including Chief Ray) commending Vitale on excellent service to the community, and numerous other documents showing his involvement with the police department. (*Exhibit 4*)

22. Chief Ray noted that Sgt. Vitale’s packet was so disorganized that it made the substance difficult to absorb and he also testified that he did not read through the entire packet. (*Testimony of Chief Ray; Exhibit 4*)]

23. Chief Ray’s second question was, “What skills, qualities, and abilities make you the best-suited to be the next Officer in Charge?” Sgt. Vitale responded that he leads in a democratic way. Chief Ray was not pleased with that answer because the police department is not a democratic operation. (*Testimony of Chief Ray; Exhibit 6*)

24. Chief Ray found that Sgt. Vitale’s interview was the least satisfactory of the four candidates while Sgt. Shairs’ gave the best interview. (*Testimony of Chief Ray*)

25. Chief Ray testified that in the first part of the interview Sgt. Shairs highlighted his work experience, education, and personal characteristics, all the qualities that made

him the most highly qualified of the candidates. Sgt. Shairs presented the interview panel with a highly organized packet that highlighted his accomplishments and leadership traits. (*Testimony of Chief Ray; Exhibit 8*)

26. Chief Ray scored Sgt. Shairs' answers with above average scores, and an overall score of 5 out of 5 possible points. (*Testimony of Chief Ray; Exhibit 7*)

Captain DiVincenzo's Interview Evaluation

27. Cpt. DiVincenzo noted that during the first fifteen minute portion of the interview, that Sgt. Vitale did not perform well and that Sgt. Vitale's submitted materials were poorly organized. The packet's poor organization made it hard to follow and Cpt. DiVincenzo did not read its entirety. He also testified that Sgt. Vitale did not use all fifteen minutes allotted to him and presented his information in a disorganized manner. (*Testimony of Cpt. DiVincenzo; Exhibit 4*)

28. Cpt. DiVincenzo also noted that Sgt. Vitale's response to question two, "what skills, qualities, and abilities make you the best-suited to be the next Officer in Charge?" was that he spoke of leading in a democratic way. The Captain also noted that the police department is not a democratic enterprise. (*Testimony of Chief Ray*)

29. Cpt. DiVincenzo also noted that at times Sgt. Vitale did not seem to answer the questions, but instead gave inappropriate replies. One example is that Sgt. Vitale responded that the main duty of the Lieutenant was to make sure the shift was running smoothly, which is not the duty of the Lieutenant. (*Testimony of Cpt. DiVincenzo*)

30. Before discussing the interview with the other members of the panel, Cpt. DiVincenzo found that Sgt. Vitale's interview was the weakest amongst the four candidates. (*Testimony of Cpt. DiVincenzo*)

31. Cpt. DiVincenzo noted that Sgt. Shairs performed best, performing extremely well in the “sell yourself” portion of the interview and presenting the information in a highly organized manner. He also presented many initiatives, including granting writing for programs initiated by Shairs. (*Testimony of Cpt. DiVincenz; Exhibit 11*)

32. Cpt. DiVincenzo gave Sgt. Shairs an above average score on each question, and found that he performed very well in the directed question portion of the interview. (*Testimony of Cpt. DiVincenzo; Exhibit 11*)

33. Cpt. DiVincenzo also stated that his office is located next to Sergeant Shairs and often works with him and goes to him for advice. (*Testimony of Cpt. DiVincenzo*)

Lt. Terry’s Interview Evaluation

34. Lt. Terry noted that Sgt. Vitale’s interview was the weakest amongst the four candidates. He also testified that Sgt. Vitale’s presentation was very unorganized and did not use the full fifteen minutes. He also stated that the packet presented by Sgt. Vitale was hard to follow and that he did not read it in its entirety. (*Testimony of Lt. Terry; Exhibit 4; Exhibit 14*)

35. Lt. Terry also noted that Sgt. Vitale’s answer to question 2, which was where he described himself as a democratic leader, was odd because the police department is not a democratic enterprise. (*Testimony of Lt. Terry; Exhibit 14*)

36. Lt. Terry gave Sgt. Shairs above an average grade for each prepared question he answered. (*Testimony of Lt. Terry; Exhibit 15*)

37. Lt. Terry also noted that Sgt. Shairs’ performance in the first portion of the interview was highly organized and highlighted his qualities that make him a good fit for the job. (*Testimony of Lt. Terry; Exhibit 8*)

The Appellant's Evidence

38. None of the members of the interview panel had received formal training on how to conduct a promotional interview. (*Testimony of Chief Ray, Cpt. DiVincenzo, and Lt. Terry*)

39. The Appellant introduced documents discussing the biases that are often present in interview ratings. This evidence, however, did not rise to the level of establishing any basis on which to infer that, in this particular case, Chief Ray, or any of the other interviewers, harbored any actual undue animus against him, or that the decision-making in this case was based on any factors other than the good faith professional judgment of the evaluators. (*Exhibit 18*)

40. The Appellant brought light to a passage from a police leadership book that discusses the importance and usefulness of democratic leadership in the police force. (*Exhibit 21*)

Conclusion

This appeal involves a bypass for promotional appointment to a permanent civil service position. This process is governed by G.L. c.31, § 27, which provides:

“If an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file . . . a written statement of his reasons for appointing the person whose name was not the highest.”

Rule PAR.08(3) of the Personnel Administration Rules, promulgated by HRD to implement this statutory requirement, provides:

“A bypass will not be permitted . . . [without] a “complete statement...that shall indicate all reasons for selection or bypass ... No reasons ... that have not been disclosed . . .] shall later be admissible as

reason for selection or bypass in any proceedings before . . . the Civil Service Commission. . . .”

Ordinarily, candidates are considered in the order of their place on the certification, which creates a ranking based on their scores on the competitive qualifying examination administered by HRD, along with certain statutory preferences. In order to deviate from this paradigm, an appointing authority must show specific reasons – either positive or negative, or both, consistent with basic merit principles, that affirmatively justify picking a lower ranked candidate. G.L. c.31, §§1, 27. See, e.g., Commissioners of Civil Serv. v. Municipal Ct., 359 Mass. 211, 214 (1971), *citing* Selectment of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Mayor of Revere v. Civil Serv. Comm’n, 31 Mass. App. Ct. 315, 321 n.11, 326 (1991). See also MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996) (personnel administrator [then, Department of Personnel Administration, now the state’s Human Resources Division] (and Commission oversight) in bypass means not only “formally to receive bypass reasons” but to evaluate them “in accordance with [all] basic merit principles”).

Candidates are entitled to be adequately, fairly, and equivalently considered. Evidence of undue political influence is one relevant factor, but it is not the only measure of unjustified decision-making by an appointing authority. The Commission has construed its obligation to prohibit the bypass of an appellant where it finds that “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1998). See Tuohey v. MBTA, 19

MCSR 53 (2006) (“An Appointing Authority must proffer objectively legitimate reasons for the bypass”).

The task of the Commission hearing a bypass appeal is “to determine ... whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority...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.’” E.g. Brackett v. Civil Serv. Comm’n, 447 Mass. 533, 543 (2006) and cases cited. In performing this function:

“The commission does not view a snapshot of what was before the appointing authority...the commission hears evidence and finds facts anew ... [after conducting] ‘a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer’ ... For the commission, the question is ‘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.’”

Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003) (affirming Commission’s decision to reject appointing authority’s proof of appellant’s failed polygraph test and prior domestic abuse orders and crediting appellant’s exculpatory testimony rebutting that evidence) (*emphasis added*). C.f. Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (inconsequential differences in facts found were insufficient to find appointing authority’s justification unreasonable); Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (same). See generally Villare v. North Reading, 8 MCSR 44, reconsidered, 8 MCSR 53 (1995) (discussing need

for ne novo fact finding before a “disinterested” Commissioner in context of procedural due process); Bielawski v. Personnel Admin’r., 422 Mass. 459, 466 (1996) (same).

The “preponderance of the evidence test” requires the Commission to conclude that an appointing authority established, through substantial, credible evidence presented to the Commission, that the reasons assigned for the bypass of an appellant were “more probably than not sound and sufficient.” Mayor of Revere v. Civil Serv. Comm’n, 31 Mass. App. Ct. 315, 321 (1991); Selectmen of Wakefield v. Judge of First District Court, 262 Mass. 477, 482 (1928) (*emphasis added*) The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. See e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-265 (2001).

Especially when it comes to an applicant for a sensitive public safety position, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown...Absent proof that the [appointing authority’s] exercise of its judgment” that “it was unwilling to bear the risk” of placing the candidate in such a sensitive position. City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189 190-191 (2010). See also Reading v. Civil Serv. Com’n., 78 Mass. App. Ct. 1106 (2010) (Rule 1:28 opinion); Burlington v. McCarthy, 60 Mass. App. Ct. 914 (2004) (rescript opinion); Cambridge v. Civil Serv. Comm’n, 43 Mass.Att.Ct. 300, 303-305 (1997); Massachusetts Dept. of Corrections v. Anderson, Suffolk Sup. Ct., No. 2009-0290 (February 10, 2010), reversing Anderson v. Department of Corrections, 21 MCSR 647, 688 (2008). This principle is particularly apt

when the applicant is under consideration for a promotion to a senior level command staff position.

It is the purview of the hearing officer to determine the credibility of the testimony presented through the witnesses who appear before the commission. “The assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g. Leominster v. Stratton, 58 Mass. App. Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Department of Social Services, 439 Mass. 766, 787 (2003) (In cases where live witnesses giving different version do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing).

Applying these principles to the facts of the present appeal, the City proved by a preponderance of the evidence that it had reasonable justification to bypass Sergeant Vitale for the position of BPD Police Lieutenant in favor of another candidate found more qualified and suitable for promotion to the position.

Interview Process

Chief Ray clearly gave considerable attention to the organization of the interview process. He prepared a written script to be followed in each interview. The interviews consisted of two fifteen minute parts. Interviewers took independent notes throughout the process. The first part of the interview provided the candidate an opportunity to offer his own reasons for why he should be selected. The second half consisted of written questions that were asked of all the candidates. The each member of the interview panel

was provided a rating sheet to record each candidate's score (from a low of 1 to a high of 5). Following the interview, the panel discussed the candidate's overall performance and assigned a mutually agreeable overall "consensus" score, which appears to have been the more important indicator of the candidate's ultimate ranking.

Subjectivity is inherent and permissible in any interview procedure, so long as care is taken to preserve a "level playing field" and "protect candidates from arbitrary action and undue subjectivity on the part of the interviewers," which is the lynch-pin to the basic merit principle of the Civil Service Law. E.g. Flynn v. Civil Serv. Comm'n, 15 Mass. App. Ct. 206, rev. den., 388 Mass. 1105 (1983). The Commission's decisions have commented on a wide range of interview plans, some which are mostly acceptable and some more seriously problematic. Examples of the former: Monagle v. City of Medford, 23 MCSR 269 (2010); Anthony v. Springfield, 32 MCSR 201 (2010); Gagnon v. Springfield, 23 MCSR 128 (2010); Boardman v. Beverly Fire Dep't., 11 MCSR 179 (1998). Examples of the latter: Mainini v. Whitman, 20 MCSR 647, 651 (2007); Belanger v. Ludlow, 20 MCSR 285 (2007); Horvath v. Pembroke, 18 MCSR 212 (2005); Fairbanks v. Oxford, 18 MCSR 167 (2005); Saborin v. Natick, 18 MCSR 79 (2005); Sihpol v. Beverly Fire Dep't., 12 MCSR 72 (1999); Bannish v. Westfield Fire Dep't., 11 MCSR 157 (1998); Roberts v. Lynn Fire Dep't., 10 MCSR 133 (1997).

Although the process was not without blemish, I find that the evidence demonstrates that the BPD's interview process was appropriate for the selection of a candidate for promotion, finding that it was established in good faith and without any attempt to tip the scales in favor or against any particular candidate or group of candidates. .

The use of a “consensus” scoring system arrived at after a panel discussion does raise concern. While I find no specific indication in this record that the joint discussions were unduly influenced by the personal preferences of Chief Ray (or any other interview panel member), it does present the occasion for creating the appearance of such influence. The process has a degree of subjectivity in that the panel consists of the department’s chief, and two lower level officers. This process creates an added pressure on the lower officers to agree with the Chief’s impression of the candidate and therefore gives the Chief’s assessment a potential for more weight. This tends to undermine the entire premise of Chief Ray’s use of the interviews as a means of giving assurance that their interview performance will be evaluated by three independent panel members and will not reflect the bias of any one individual member.

In order to minimize this appearance and maximize the objectivity of the interview process, it would be preferable for each panel member to have made an independent score to each question and then the total scores used to compare each candidates results. In the present situation, however, it does not appear that use of a more objective scoring method would have made a material difference in the overall ranking of Sgt. Vitale and Sgt. Shairs. Moreover, as discussed below, the consistency of the interview panel results with the assessment center scores for the candidates tends to validate the judgment of the interview panel establishing Sgt. Shairs as the clearly more accomplished, hands-on candidate.

The assessment center made up 40% of the overall score and tested many of the traits and characteristics that the interview panel was looking for during the interview. Also, unlike the internal interview panel, whose members had professional and personal

relationships with the candidates, the assessment center, which is conducted by a third-party group, is less subject to the claims of predisposition. The assessment center also tests the candidates in ways that are intended to evaluate the relative abilities of each candidate in “on the job” situations as well as how they perform in a highly structured and formal interview.

The Commission is aware that, due to the procedures used to administer the promotional examinations, in general, and the assessment centers, in particular, the City did not have the benefit of the assessment center and overall scores of the candidates. Had that information been shared with the City, it could well have lead Chief Ray to conclude that relatively small (2 percent) difference in the overall scores and the significantly greater disparity in the assessment center scores (5 percent), alone, justified selection of Sgt. Shairs for promotion to a command staff position. The assessment center is a considerable expense that is borne by the City. In the future, it may behoove the City to persuade the Massachusetts Human Resources Division to change its policy and share these scores with the Appointing Authority (who paid for the assessment center) as being good public policy and in the best interest of all parties. The Commission intends to monitor this process in the future for possible further comment and/or appropriate action.

In sum, although there is room for improvement in the interview process as it was applied here, overall, that process did provide for a fair and unbiased selection of the clearly superior candidate.

Sgt. Shair’s Interview Performance

All three interviewers testified that Sgt. Shairs was the best interviewee. They cited his preparation, organization, and prior accomplishments as to why he performed very

well on the “sell yourself” portion of the interview. They also noted that during the directed questioning, he answered with the professionalism and foresight that the department looks for when promoting sergeants to lieutenants. Chief Ray was also impressed with the higher level thinking that Shairs presented in the interview, showing he had the leadership abilities necessary to be a successful Lieutenant in the police department.

The Appellant’s Interview Performance

All three interviewers noted that they believed that Sgt. Vitale’s interview was the least satisfactory of the candidates for lieutenant. They stated that his “sell yourself” portion failed to utilize the full fifteen minutes and that its overall presentation was disorganized, which is a trait that a Lieutenant should possess. The interviewers felt that the sell yourself portion was a very important opportunity for the candidates to showcase their abilities and that Vitale simply didn’t deliver to the same level as Sgt. Shairs. In addition, Chief Ray stated that Vitale’s accomplishments, which were noted in the sell yourself portion, showed an ability to take initiative but lacked the higher level leadership that the chief was looking for. The interviewers also noted that Vitale did not stand out during the directed questioning. They stated that he gave short-sighted answers and often answered as though he did not thoroughly think through the question. Vitale often answered the interviewer’s questions with the term communication, without much further explanation, which appeared to the interviewers as him simply throwing out a buzz word.

The interviewers stated that Sgt. Vitale described himself as a democratic leader, which they said is not the style of leadership best suited for the position. In response to the interviewers, Sgt. Vitale introduced a page from a police leadership book which states

that democratic leadership is appropriate in certain situations. While the Commission is persuaded that democratic leadership has its strengths and may be one useful tool in building team spirit and morale, the Chief of Police is vested with considerable discretion in running the Beverly Police Department under the management style he deems effective. In Chief Ray's situation, he prefers Lieutenants to be leaders that can make difficult, sometimes contentious decisions based primarily on their own judgment and experiences rather than through a consensus of the opinions of their subordinates. The Commission is in no position to direct the Beverley Police Chief in the selection of the leadership qualities of his higher ranking officers that best fit the needs of his department.

Accordingly, for the reasons stated above, the appeal of the Appellant, John Vitale, is hereby *dismissed*.

Civil Service Commission

Paul M. Stein,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on June 30, 2011.

A true record. Attest:

Commissioner

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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. As provided by 801 C.M.R. 1.01(7)(l), a motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L.c.30A, §14(1) for the purposes of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

John Vitale (*Appellant*)

Robert A. Munroe, Esq. (*for Respondent*)