

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

WILLIAM H. WHITE,

Appellant,

v.

TOWN OF PLYMOUTH,

Respondent

Docket Number:

G1-23-231

Appearance for Appellant:

James W. Gilden, Esq.

173 North Main Street

Sharon, MA 02067

Appearance for Respondent:

Jared M. Collins, Esq.

KP Law, P.C.

101 Arch St., 12th Floor

Boston, MA 02110

Commissioner:

Shawn C. Dooley¹

SUMMARY OF DECISION

The Commission reversed the bypass of a candidate for original appointment as a police officer in the Plymouth Police Department based on its finding that the Town of Plymouth could not establish a reasonable justification to bypass the Appellant after only a brief interview that did not adhere to the Department's standard procedure; the Town Manager would not be able to make an informed, fair and impartial assessment of the candidate's ability to service as a police officer based thereon.

¹ The Commission acknowledges the assistance of Law Clerk Camryn Given with the preparation of this decision.

DECISION

On November 7, 2023, the Appellant, William H. White (Appellant), pursuant to the provisions of G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from a decision by the Town of Plymouth (Town) to bypass him for original appointment to the position of police officer in the Plymouth Police Department (Department).²

On December 12, 2023, the Commission held a remote pre-hearing conference via the Webex platform. On April 2, 2024, I held a full hearing at the offices of the Commission. The hearing was recorded via Webex, and copies of the hearing were provided to the parties.³ Both parties filed Proposed Decisions. For the reasons set forth below, the Appellant's appeal is allowed.

FINDINGS OF FACT

The Appellant entered two exhibits (App. Exhibits 1-2) and the Respondent entered nine exhibits (Resp. Exhibits 1-9) into evidence. Based on the documents submitted and the testimony of the following witnesses:

Called by the Town:

- Chief Dana Flynn, Chief of Police, Plymouth Police Department
- Captain James LeBretton, Captain of Operations, Plymouth Police Department

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, et seq., apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

³ A link to the audio/video recording was provided to the parties. 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 they wish 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 provided to the parties should be used to transcribe the hearing.

- Lieutenant Marc Manfredi, Lieutenant of Operations, Plymouth Police Department

Called by the Appellant:

- William White, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from other credible evidence, a preponderance of evidence establishes the following findings of fact:

Appellant's Background

1. The Appellant was raised in Plymouth, Massachusetts. (*Testimony of Appellant*)
2. The Appellant is 40 years old. (*Testimony of Appellant*)
3. After receiving his bachelor's degree in accounting, the Appellant obtained a law degree from New England Law in Boston. (*Resp. Exhibit 2; Testimony of Appellant*)
4. He currently resides in Plymouth. (*Resp. Exhibit 4; Testimony of Appellant*)
5. The Appellant owns a law practice where he works alongside his siblings. (*Testimony of Appellant; Resp. Exhibit 2*)
6. The Appellant's father was a police officer with the Plymouth Police Department. Several other members of his family also worked in local law enforcement. (*Testimony of Appellant*)
7. The Appellant's father and Chief Flynn's father, Andrew Flynn, had a dispute when the Appellant was young. Andrew Flynn was the Chief of the Fire Department until 1985. The underlying issue related to fire alarms in commercial buildings owned by the Appellant's father. (*Testimony of Appellant*)
8. On March 16, 2022, the Appellant took and passed the civil service examination. (*Stipulated Facts; Testimony of Appellant*)

9. On July 1, 2022, the state's Human Resources Division (HRD) established the eligible list for police officer. (*Stipulated Facts*)
10. On August 4, 2023, HRD issued Certification No. 09413 to the Town, upon which the Appellant was ranked 8th out of the 19 candidates willing to accept appointment. (*Stipulated Facts*)
11. The Department's Appointing Authority is the Town's Manager. (*Testimony of Chief Flynn; Resp. Exhibit 1*)
12. The Chief of Police is the Head of the Department and accordingly reports to the Town Manager. (*Testimony of Chief Flynn*)
13. On October 3, 2023, the Appointing Authority sent the Appellant a letter informing him of the decision to bypass him for appointment as a police officer for the Department. (*Stipulated Facts; Resp. Exhibit 1*)
14. On November 7, 2023, the Appellant filed a timely appeal with the Commission. (*Stipulated Facts*)

The Appellant's Application

15. Once the Department receives a list of eligible candidates, the candidates who notify the Department that they are interested are instructed to pick up two different application packets from the Department. (*Testimony of Chief Flynn*)
16. One application packet is for the Town of Plymouth and the other is for the Plymouth Police Department. (*Testimony of Chief Flynn; Resp. Exhibits 2 and 4*)
17. The applicants are given a window of time to complete the applications and turn them back in. (*Testimony of Chief Flynn*)

18. The Appellant completed his applications by hand. Some of the Appellant's writing is not clearly legible. (*Resp. Exhibits 1, 2, and 4*)
19. On the Appellant's application for the Town of Plymouth, he failed to answer some questions. The Appellant did not indicate which position he was applying for. He did not list his four previous employment positions but only listed the most previous one. The Appellant also did not list his business references. (*Resp. Exhibit 1 and 2*)
20. On the Appellant's application for the Plymouth Police Department, he also left out information. He was asked to list his home addresses for the past 15 years, including his present address. The Appellant listed only his second most recent address. He also did not list his address on the consent form for a CORI check. (*Resp. Exhibit 1 and 4*)
21. Some, but not all, of the missing information from one application was found in the other. For example, the Appellant gave his full employment history on the Department application after leaving it off the Town application. (*Testimony of Appellant; Resp. Exhibit 4*)

Background Investigation

22. After a candidate turns in both applications to the Department, an assigned detective conducts a background investigation into the candidate. (*Testimony of Chief Flynn*)
23. Upon completion of the investigation, the detective assembles the findings into a binder. The binder includes information found during reviews of the applicant's criminal background, social media, driving history, credit history, and references from neighbors and employers. (*Testimony of Chief Flynn*)
24. Typically, on the first page of the binder, the detective will flag potential concerns about the applicant in a summary of the findings. (*Resp. Exhibit 5; Testimony of Chief Flynn*)

25. Detective Webber was assigned to conduct a background investigation for the Appellant.⁴

(Testimony of Appellant and Chief Flynn; Resp. Exhibit 5)

26. Detective Webber assembled a binder on the Appellant. On the first page, the Detective noted that both of the Appellant's applications were missing information. He also indicated that the Appellant had 17 total entries on his driving record. *(Resp. Exhibit 5)*

27. Within the past ten years, the Appellant has had three surchargeable accidents, including two in 2016 and one in 2022. During that same period, the Appellant was issued four *warnings*, including for an alleged lane violation in 2019; alleged speeding in 2019 and 2021 and for an alleged unregistered vehicle in 2021. *(Resp. Exhibit 5)*

28. The Appellant's binder listed all entries on his entire driving record. *(Resp. Exhibit 5)*

Interview with the Department

29. After the detective completes the background check and screens the applicant, the Department schedules an interview. *(Testimony of Chief Flynn)*

30. Interviews are conducted by a three-member panel comprised of the Chief and two other members of the command staff. The Chief has participated in approximately 100 interviews arranged by the Department. *(Testimony of Chief Flynn)*

31. Typically, the day prior to the interviews, Chief Flynn will look through each applicant's binder and note potential concerns. *(Testimony of Chief Flynn)*

32. When the applicant first arrives for the interview, they are asked to complete a written exercise. The written response prompt is as follows:

“Please describe in as much detail as possible:

⁴ Detective Webber did not testify at the hearing.

- Your understanding of the duties and responsibilities of a Police Officer for the Town of Plymouth.
- Include any specific challenges that you believe a Plymouth Police Officer might deal with considering the size of the community, 36 miles of shorefront, a hospital, courthouse, airport and 2 prisons. Also consider the impact during the summer season from tourism.”

(Resp. Exhibit 8; Testimony of Chief Flynn)

33. When the applicant completes the exercise, their written response is taken to the interviewing panel. The panel has a short period of time to look over the applicant’s answer. *(Testimony of Chief Flynn and Capt. LeBretton)*
34. The two other members of the panel will discuss the applicant’s background with the Chief directly prior to the interview. *(Testimony of Lt. Manfredi)*
35. The Chief informs the other panelists if there are any concerns with a candidate’s application. *(Testimony of Capt. LeBretton)*
36. Then, the candidate is brought into the conference room for the interview. The members of the panel typically do not meet the candidate until then. *(Testimony of Lt. Manfredi and Chief Flynn)*
37. During the interview, the two panelists other than the Chief ask the candidate predetermined questions. The Chief primarily observes and will occasionally ask follow-up questions. *(Testimony of Chief Flynn and Capt. LeBretton)*
38. It is also common practice for the panel to ask questions about flagged issues from the binder. *(Testimony of Chief Flynn)*

39. The Chief sometimes finds it easier to address these concerns at the beginning of the interview, to determine if the interview should continue. (*Testimony of Chief Flynn*)
40. The Chief gave two examples of situations in which he addressed concerns at the beginning of the interview: when an applicant had not paid a vehicle excise tax at the time of the interview and when an applicant had excessive parking tickets that left their vehicle registration suspended. In those cases, the Chief asked the candidate to explain why they had not paid the tax/fine. He also gave the applicant an opportunity to withdraw the application until the taxes/fines were paid. (*Testimony of Chief Flynn*)
41. On average, the interviews last about thirty minutes. (*Testimony of Chief Flynn*)
42. On October 2, 2023, the Appellant interviewed with the Department. (*Resp. Exhibit 9; Testimony of Appellant*)
43. First, the Appellant completed the writing exercise. He sat in a separate room to do so. The Appellant wrote his answers in a bulleted list format. (*Resp. Exhibit 8; Testimony of Appellant*)
44. When the Appellant completed the exercise, an employee took the sheet to the interviewers. Shortly after, he was escorted into a conference room to be interviewed by Chief Flynn, Captain LeBretton, and Lieutenant Manfredi. (*Testimony of Appellant; Resp. Exhibit 8*)
45. Lt. Manfredi planned to ask the Appellant six questions and Capt. LeBretton planned to ask six more during the Appellant's interview. These questions were the Department's standard interview questions that have been used for several years. (*Resp. Exhibit 9; Testimony of Capt. LeBretton and Chief Flynn*)
46. The Appellant came into the room, greeted the officers, and sat down across from them. (*Testimony of Chief Flynn and Appellant*)

47. The interview began with Chief Flynn addressing the missing information on the Appellant's application. (*Testimony of Capt. LeBretton and Appellant*)
48. Chief Flynn said "I am going to cut to the chase with you" to the Appellant. (Testimony of Appellant)
49. Chief Flynn then asked the Appellant about his driving record. (*Testimony of Chief Flynn and the Appellant*) In reply to the Chief, the Appellant did not provide an explanation of his driving record or demonstrate remorse. He pointed out that several of the infractions on his record were only warnings. The Appellant stated that his right to due process was being violated because a warning cannot be appealed. (*Testimony of Chief Flynn; Resp. Exhibit 9*)
50. The members of the panel found the Appellant's responses to be argumentative and combative. The Chief stated he felt like he was being "cross-examined." (*Testimony of Chief Flynn, Testimony of Capt. LeBretton, and Testimony of Lt. Manfredi*)
51. The Chief next inquired about the Appellant's response to the written exercise. The panel had concerns that it was written in bullet point format as opposed to full sentence narrative. (*Testimony of Appellant, Testimony of Chief Flynn, and Testimony of Lt. Manfredi*)
52. Normally, applicants complete the writing exercise by writing in a narrative format, and the Appellant wrote in bullet points. (*Testimony of Chief Flynn; Resp. Exhibit 5 and App. Exhibit 2*)
53. This was the first time that the Chief had ever seen the exercise completed in bulleted format. (*Testimony of Chief Flynn*)
54. The Appellant responded by addressing the assignment's instructions and that his work was technically correct since the instructions did not specify to respond in with a narrative. (*Testimony of Appellant*)

55. Chief Flynn and Captain LeBretton found the Appellant's response was again argumentative and combative. (*Testimony of Chief Flynn and Capt. LeBretton*)

56. The writing exercise responses of other applicants who did receive an offer of employment also were not written in complete sentences. (*App. Exhibit 2*)

57. The answers of other applicants (who were offered employment) were comparable to the Appellant in both overall content and specifics to the Town of Plymouth. (*App. Exhibit 2; Testimony of Capt. LeBretton*)

58. After inquiring about the issues raised during the background investigation, the Chief ended the interview. The Appellant was not given the opportunity to answer the traditional interview questions that Capt. LeBretton and Lt. Manfredi planned to ask. Chief Flynn told the Appellant he had the option to either withdraw his application or to be bypassed. The Appellant told Chief Flynn that he would not withdraw his application. (*Testimony of Chief Flynn and Appellant*)

59. Captain LeBretton's notes during the interview were as follows:

- Immediately challenged and became confrontational when confronted w/ driving record.
- Argued due process w/ written warnings/ took no responsibility.
- Argued (*indecipherable*) too much discretion roadside.
- Very confrontational regarding written exercise when told he did not do what was expected.
- Concerned about how quickly he became defensive and argumentative
- Offered withdraw, but refused. Wanted Bypass!

(*Resp. Exhibit 9; Testimony of Capt. LeBretton*)

60. The notes taken by Lt. Manfred during the interview were as follows:

Candidate had a little bit of an attitude and was argumentative when confronted with his driving history. When given the option to withdraw he asked to be bypassed.

(*Resp. Exhibit 9; Testimony of Lt. Manfredi*)

61. Chief Flynn found the Appellant's responses in the interview were unlike any he had seen before. The Chief had concerns about how the Appellant would handle interactions with others as a police officer. (*Testimony of Chief Flynn*)
62. Capt. LeBretton stated that he had never seen an individual become so argumentative with the interview panel. He believed that the Appellant could have responded more respectfully. The Captain emphasized the importance of de-escalation and how the Appellant's responses made him concerned about the Appellant being able to do so as an officer. (*Testimony of Capt. LeBretton*)
63. Lt. Manfredi was "kind of floored" by the Appellant's responses. The Lieutenant had concerns about how the Appellant would react to questions from the public based on his answers. (*Testimony of Lt. Manfredi*)
64. There was conflicting testimony as to whether the Appellant raised his voice during the interview.⁵ (*Testimony of Appellant, Capt. LeBretton, and Chief Flynn; Resp. Exhibit 1*)

Decision to Bypass

65. Neither the Appellant's driving record nor his written response would have been enough on their own to bypass the Appellant. The decision mainly rested on the Appellant's responses during the interview. (*Testimony of Chief Flynn*)
66. On October 3, 2023, the Appellant received the bypass letter from the Town. The letter pointed to several reasons for the decision: missing information on the Appellant's

⁵ The Appellant stated that he did not raise his voice during the interview. Capt. LeBretton stated the Appellant did raise his voice. The bypass letter to the Appellant claimed that the Appellant did raise his voice. When Chief Flynn was asked if the Appellant raised his voice, the Chief responded, "He didn't, He didn't yell." (*Testimony of Appellant, Cpt. LeBretton, and Chief Flynn; Resp. Exhibit 1*)

applications, seventeen entries on his driving record, his inadequate response to the written exercise, and his argumentative conduct during the interview. (*Resp. Exhibit 1*)

67. The bypass letter included the following statement about the Appellant's response to the writing exercise:

"Prior to you entering the interview room the interviewers were given an opportunity to review your written exercise. Each was concerned with the bulleted responses and your apparent lack of comprehension of the instructions. The interviewers felt your response to the written exercise lacked the clarity and details the instructions required."

(*Resp. Exhibit 1*)

68. The letter made the following statement about the interview:

"Chief Flynn informed you of the viability of you continuing in the hiring process due to the concerns raised by Detective Webber in his summary as set out above as well as issues raised by the interviewers regarding your written exercise. When the topic of your driving history was raised, you immediately raised your voice and became argumentative and confrontational.

Instead of accepting responsibility for your actions you argued due to an officer's discretion in giving you written warning, instead of a citation, you were denied your due process as written warnings cannot be appealed. Once you were finished arguing about your driving record Chief Flynn began to discuss the written exercise. Again, you immediately became argumentative and confrontational.

At this point Chief Flynn ended the interview and offered you 2 options, voluntarily withdraw from the process or be officially bypassed. You were informed that the gaps in your application, leaving out essential information, your driving record and, though not stated but certainly, your demeanor during the interview process were grounds for bypass. You opted, if not outright demanded a bypass."

(*Resp. Exhibit 1*)

APPLICABLE CIVIL SERVICE LAW

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases, by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. This statute provides:

No person shall be deemed to be aggrieved . . . unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm’n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has "reasonable justification" for the bypass after an "impartial and reasonably thorough review" of the relevant background and qualifications bearing on the candidate's present fitness to perform the duties of the position. *Boston Police Dep't v. Civil Service Comm'n*, 483 Mass. 461, 474-78 (2019); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Service Comm'n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

"Reasonable justification . . . means 'done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law'". *Brackett v. Civil Service Comm'n*, 447 Mass. 233, 243 (2006); *Commissioners of Civil Service v. Municipal Ct.*, 359 Mass. 211, 214 (1971) and cases cited. See also, *Mayor of Revere v. Civil Service Comm'n*, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons "more probably than not sound and sufficient"). The commission ". . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority" but, when there are "overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission." *Id.* (emphasis added). See also *Town of Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission's jurisdiction to enforce basic merit principles under civil service law).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. See, e.g., *Falmouth v. Civil Service Comm'n.*, 61 Mass. App. Ct. 796, 801 (2004), citing *City of Cambridge v. Civil Service Comm'n*, 43 Mass. App. Ct. 300, 303-

305, rev. den., 428 Mass. 1102 (1997); *Police Comm'r v. Civil Service Comm'n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

ANALYSIS

After a thorough assessment of the Department's reasoning, I find the Department did not establish a reasonable justification to bypass the Appellant for appointment as a police officer. This conclusion is primarily based on the Plymouth Police Department's deviation from their standard procedure during the Appellant's interview and a subjective view of the Appellant's demeanor during the non-standard interview.

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 [30 MCSR 439] (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 fact, the Commission recently upheld a bypass based on an applicant's poor interview performance. See *Tivins v. City of Somerville*, 34 MCSR 162 (2021). In that matter, the Appellant was afforded a two hour and three-minute interview to discuss his entire application in depth. *Id.* at 164. The Appointing Authority was able to point to several concerning answers provided by the Appellant. *Id.* at 164-67. The interview was recorded, and the interview panel met after the interview to review the candidate, after which they made a unanimous decision. *Id.* at 164. In another similar matter, a

candidate was bypassed for reasons very similar to the Appellant: a poor driving record and evasive interview responses. *Couture v. Town of Chelmsford*, 28 MCSR 25 (2015). However, there is one crucial difference: In that matter “the Respondent consistently applied its process,” providing the Appellant with an interview lasting over two hours. *Id.*, 28 MCSR at 30. When an appointing authority adheres to procedure and provides the applicant with an appropriate assessment under the circumstances, concerning behavior during an interview may form reasonable grounds for bypass.

Unfortunately, the discrepancies between the Department’s standard interview process and the Appellant’s interview raise doubts about the Department’s decision to bypass the Appellant. The Appellant was the only candidate who was asked unique questions as opposed to the pre-determined, standard questions. During a typical interview with the Department, two panelists, other than the Chief, take turns asking the applicant common interview questions. The Chief will then ask follow-up questions and listen to the applicant’s responses. It is not the usual practice for the Chief to inquire about concerns at the beginning of the interview. And although it has happened before, these circumstances are different. The Chief implied he breaks the protocol and asks questions at the beginning of the interview only when there is a significant issue to address. When the Chief gave examples, he mentioned applicants with unpaid taxes and excessive unpaid parking tickets. The Chief asked the Appellant about issues that did not rise to this level of importance, such as warnings the Appellant had received in the past.

At the beginning of the Appellant’s interview, the Chief first addressed the Appellant’s driving history. The Appellant’s driving record was made up of four warnings, six accidents (without citations attached), one violation where he was found not responsible, and four speeding citations, (only one of which the Appellant was found responsible). The Town cited to all 17

entries on the Appellant's driving record. The Commission, regarding bypass appeals based on driving histories, generally limits the review to the Appellant's driving history within the past ten (10) years prior to his / her name appearing on a Certification, with greater weight given to the most recent five (5) years. See, e.g., *Rodriquez v. Massachusetts Parole Board*, 2019 MCSR 116 (2019). In this case, that only leaves four warnings and three surchargeable accidents up for review by the Department. Therefore, I give the Appellant's driving record much less significance in the overall balance. The Commission has no additional information surrounding the accidents since no citations were attached to these instances. Furthermore, the Chief stated that the Department would not have made the decision to bypass the Appellant on his driving record alone. Therefore, it is difficult to understand why his driving record would be brought up at the start of the interview if it were not a basis for an immediate bypass. The Chief gave past examples of breaking protocol to address a candidate's unpaid taxes and fines because of the severity of those issues, but it is less clear why he would do so over a driving history that the Chief stated would not be a disqualifier. It does not appear that this questioning adhered to the Department's normal practice. If the Chief pre-empted the standard questioning to get to the bottom of a possible automatic qualifier, that would make sense. But to single out the Appellant and veer from standard interview protocol over a non-disqualifying issue, does not make sense and certainly does not justify bypassing someone considering basic merit principles (which embrace a concept of fairness, *see* G.L. c. 31, § 1).

The Chief also addressed the Appellant's written exercise. The Appellant completed it by writing his answer in a bullet point format. The only direction provided to the candidates was: "Please describe in as much detail as possible" The Appellant's bypass letter stated that "each [interviewer] was concerned with the bulleted responses and your apparent lack of

comprehension of the instructions.” The interviewers’ strong concerns over the written exercise do not appear to be reasonable or justified. The prompt did not specify that the exercise needed to be completed in any specific format. It is not reasonable to hold the Appellant to a standard that was not clearly communicated to him. Furthermore, two other applicants, who received offers of employment, did not write in complete sentences. Although their responses were written with capital letters and periods, the sentences themselves were not grammatically correct and read much more like bulleted line items. Neither of these applicants received comments or questions on how they answered the prompt. Further, I find the Appellant’s responses to be equally thorough and cover all the pertinent points touched upon in the selected candidates’ written response exercises. Therefore, I fail to see the concern over the Appellant’s written exercise, especially the format. I find it interesting that in Captain LeBretton’s interview notes regarding the Appellant, he also used a bullet point style to list his observations while critiquing the same style used by the Appellant. It appeared that the Chief was being overly critical of (possibly confrontational towards) the Appellant by asking him these questions at the start of his interview. Without a recording of this interview, it is not possible to ascertain tone and demeanor of either the Chief or the Appellant and whether any other issues factored into this approach. As noted, some subjectivity is expected in the interview process, but the Appellant’s experience was so different from all other candidates that it cannot be reasonably relied upon for bypass.

The Appellant’s interview experience also varied from the normal practice because he was not asked the preplanned questions. Every other applicant on the day of the Appellant’s interview was asked those questions. In fact, it was stated that that process is the Department’s clear protocol for interviews and has been for some time. I give significant weight to the fact that the Appellant was not asked any of the predetermined questions during his interview. Instead, the

Appellant's interview ended after two non-standard questions. While it was unclear how long the Appellant's interview took, I would assume it was not close to the 30 minutes that other candidates typically had, given those interviews usually include 12 questions. The Department's break from its protocol and the brief interview raises significant concerns that the panel was not able to fully assess the Appellant as a potential candidate.

In addition to issues about deviation from procedure, I have concerns about the procedure in general. I find it concerning that the Captain and Lieutenant did not appear to have any influence over the decision to bypass the Appellant. The Chief made the decision at his sole discretion after hearing the Appellant's reply to his inquiries. Although the Captain and Lieutenant clearly shared the opinion of Chief Flynn in their notes regarding the hearing, one cannot know if these notes were taken as the Appellant was responding or after the Chief made his declaration that the Appellant was not going forward and would be bypassed. Further, Chief Flynn did not discuss the Appellant, his application, or his responses with either of these men before he informed the Appellant that he would be bypassed. One must assume that the interview has a panel of three members to ensure that the process is fair, objective, and factors in multiple opinions on whether to grant an applicant an offer of employment. It seems odd, given the makeup of this panel, that the Chief made the decision both while the interview was still occurring and without first discussing it with the two other command officers present.

I am also concerned about the fact that the Chief did not appear to take notes during the interview. While both of the other officers did take notes, there were no quantifiable metrics or point system in place to score the responses. In addition, the other officers were not provided with a real opportunity to go over the applicant's materials. While the Chief typically goes over the binder assembled for each applicant, the other officers only see that information minutes

prior to the interview. It is regrettable that the Department does not record these interviews, especially when the primary reason for bypass they are citing is tone and demeanor. All of these elements taken together highlight a lack of protective measures in place to prohibit unduly subjective decisions from being made.

While the overall demeanor and attitude of a candidate can certainly be taken into account when making a hiring decision, hiring officials must do all they can to make sure that everyone is being treated fairly. Given the fact that the Chief did not follow the Department's standard protocol, we are left only with a highly subjective reason for bypass. Since the Chief strayed from normal procedure, it opens up the possibility that there was a pre-conceived bias against the Appellant. Since the Chief immediately began questioning the Appellant on issues that were being proposed as flaws in the Appellant's candidacy, one can understand how the Appellant might have taken on a defensive posture. In this matter, the Appellant might have believed he needed to defend himself rather than explain based on the context. Recognizing that the Appellant has practiced law for several years, it does appear that the Appellant was answering these questions as an attorney. Instead of apologizing and admitting fault, the Appellant made the case for why these issues should not be held against him. While this response may have not been fully appropriate during an interview with a future potential superior, it does not appear to be grounds for bypass. One should not expect a civilian to fully understand and follow the hierarchy and corresponding protocols of respect and deference required in a para-military organization. As it happens, if the Appellant *is* ultimately hired, he would still need to attend a police academy and serve a one-year probationary period during which he could be separated from service if indeed he has a tendency to be overly argumentative or bridle at authority.

Additionally, I find it concerning that there were discrepancies between the Appellant's bypass letter and the opinions of the interviewing officers. The letter stated that "the interviewers felt [the Appellant's] response to the written exercise lacked the clarity and details the instructions required." At the hearing, each officer testified that their concerns were not with the Appellant's content but rather the style. This discrepancy between the testimony of the officers and the bypass letter raises concerns over the appointing authority's true justification for bypass.

The bypass letter also cited the Appellant's applications as reason for bypass. I agree that there were issues with the applications. Several questions were left blank or not filled out properly, and some of the Appellant's writing was less than easily legible. Although this is certainly troubling, the Appellant was not given an opportunity to discuss his application with the panel because of the early end to his interview. Furthermore, a less-than-perfect application would not be a reasonable justification for bypass on its own without a proper chance to address deficiencies in the interview. If omissions truly were a disqualifier, one would assume that the Appellant would not be moved forward in the hiring process without first addressing these missing items. Consistent with how other applicants have been treated, the Appellant merited an opportunity to amend his application forms to ensure that they were filled out in their entirety. If the omissions were a legitimate concern, it seems reasonable that either the investigator or someone from Human Resources would have addressed the matter with the Appellant prior to advancing him to the interview stage and certainly before citing it as a reason for bypass. Therefore, I do not feel this reason is sufficiently weighty to justify a bypass in this matter.

Two other issues raise more concerns of subjectivity during the process. In the bypass letter, the Appointing Authority stated that the Appellant "opted, if not outright demanded a bypass." The phrasing of this statement seems to criticize the Appellant's decision to accept an

appealable bypass rather than voluntarily withdraw his application. The same sentiment is reflected in Captain LeBretton's interview notes—even though no actual interview took place. While the statement may have been referring to the manner in which the Appellant phrased his response, the tone of the letter, the corresponding notes, and the testimony before the Commission makes it appear that the Plymouth Police Department and the Town of Plymouth viewed the Appellant's request to be bypassed, in order to exercise his right to appeal, as an unduly confrontational act. Moreover, because of the Appellant's age, he would not be able to apply to the Department again if he withdrew his application. The Town of Plymouth does not hire officers over 40 and the Appellant was nearing that threshold at the time of the interview. Pursuing a bypass appeal appears to have been the only option available for the Appellant to remain eligible to be hired by the Department, and he should not be penalized for wanting to exercise his due process rights. The Chief's repeated suggestion that the Appellant withdraw his application seems to suggest an ulterior agenda as the Chief would have known that this action would have ended any opportunity for the Appellant to be considered for employment.

I also find it of possible significance that the Appellant's father and the Chief's father had a negative history together. While only the Appellant spoke about it at the hearing and it may not have played a significant role in the decision to bypass the Appellant, it raises additional concerns about the brevity and possible lack of objectivity in the Appellant's interview.

Further, in the Town's bypass letter to the Appellant, there was no indication of the right to appeal to the Commission. The Town should promptly take steps to ensure that future bypassed candidates are aware of this right.

Because of the Department's break from their established hiring procedure or protocol, in which they did not ask the Appellant the standard interview questions, began his interview in an

unconventional manner, and ended his interview abruptly (all without recording the interaction), the Town has not established a reasonable justification to bypass the Appellant.

CONCLUSION

For all of the above reasons, the appeal of William H. White, filed under Docket No. G1-23-231, is hereby *allowed*. Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

- HRD shall place the name of the Appellant at the top of any current or future certification for the position of permanent full-time police officer in the Plymouth Police Department until he is given one additional consideration for appointment. If the Appellant is interviewed as part of that selection process, the interview shall be recorded.
- If the Appellant is appointed as a Plymouth Police Officer, he shall receive the same civil service seniority date as the candidate appointed from Certification No. 09413. This date is for civil service purposes only and is not intended to provide the Appellant with any additional compensation or benefits, including creditable service toward retirement.
- Once the Appellant has been provided with the relief ordered above, the Department shall notify the Commission, with a copy to the Appellant, that said relief has been provided. After verifying that the relief has been provided, the Commission will notify HRD that the Appellant's name should no longer appear at the top of future certifications.

Civil Service Commission

/s/ Shawn C. Dooley
Shawn C. Dooley
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, and McConney, Commissioners [Stein - absent]) on August 22, 2024.

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 to:

James Gilden, Esq. (for Appellant)

Jared Collins, Esq. (for Respondent)