

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

VALERE YEPMO,

Appellant,

v.

BOSTON POLICE DEPARTMENT

Docket number:

G1-23-299

Appearance for Appellant:

Robert J. DiLibero, Esq.
30 Eastbrook Road, Suite 202
Dedham, MA 02026

Appearance for Respondent:

Joseph A. McClellan, Esq.
Boston Police Department
Office of the Legal Advisor
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Boston, MA 02120

Commissioner:

Shawn C. Dooley¹

SUMMARY OF DECISION

A majority of the Commission granted the bypass appeal of a candidate seeking appointment as a police officer for the Boston Police Department. The candidate's history of temporary *ex parte* restraining orders was not a reasonable justification for bypassing him, especially considering that each restraining order was dismissed after a full hearing.

DECISION

On October 10, 2023, the Appellant, Valere Yepmo, filed a timely appeal with the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b). This appeal challenged the

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

Boston Police Department's decision to bypass the Appellant for appointment as a permanent, full-time police officer. On November 7, 2023, the Commission held a remote pre-hearing conference. On February 27, 2024, I conducted an in-person full hearing. The hearing was recorded via the Webex videoconferencing platform, and copies were provided to both parties.² The Appellant and the Respondent both filed proposed decisions. For the reasons set forth below, the Appellant's appeal is granted.

FINDINGS OF FACT

The Appellant submitted into evidence 18 exhibits. ("A.Ex.") The Respondent submitted into evidence 7 exhibits. ("R.Ex.") Based on the documents submitted and the testimony of the following witnesses:

Called by the Respondent:

- Ms. L.D., Appellant's former domestic partner
- Detective Molwyn Shaw, Recruit Investigations Unit, Boston Police Department
- Teori Shaw-Boyce, Deputy Director of Human Resources, Boston Police Department

Called by the Appellant:

- Valere Yepmo, the Appellant

and taking administrative notice of all matters filed in this case, pertinent law and reasonable

² 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.

inferences from other credible evidence, a preponderance of the evidence establishes the following facts:

1. The Appellant, Valere Yepmo, was born in the Republic of Cameroon and emigrated to the United States in 2014 at the age of 25. The Appellant currently lives in West Roxbury. (*R.Ex. 2; Testimony of Appellant*)
2. The Appellant has shared physical and legal custody of his daughter. (*Testimony of Appellant*)
3. The Appellant received a bachelor's degree from a Boston-area university in 2021. (*Testimony of Appellant; R.Ex. 2*)
4. The Appellant currently works for a federal agency with a public security mission in Boston. (*Testimony of Appellant; R.Ex. 2*)
5. On March 17, 2022, the Appellant took the civil service examination for police officers and ranked 92nd of those willing to accept appointment with the Boston Police Department (BPD) on Certification # 08848. (*Stipulated Facts; A.Ex. 18*)
6. Of the 180 candidates selected for appointment as a Boston Police Officer, 88 of those candidates ranked below the Appellant. (*Stipulated Facts*)
7. In 2019, the Appellant fathered a child with Ms. L.D., his former domestic partner. The Appellant and Ms. L.D. lived together with their child in Boston until February 24, 2020. On that day, Ms. L.D. moved out with their child without providing advance notice to the Appellant. I conclude that Ms. L.D. left the apartment of her own accord and without interference from the Appellant.³ (*A.Ex. 2; Testimony of Appellant*)

³ There was heavily conflicting testimony between the Appellant and Ms. L.D. about the events of February 24, 2020. The Appellant asserts that he did not stop Ms. L.D. from leaving. However, Ms. L.D. made statements that the Appellant kicked her out and that he blocked her from leaving the

8. In the incident report taken by BPD at the scene, both the Appellant and Ms. L.D. stated that nothing physical occurred during this exchange. At the hearing, Ms. L.D.'s testimony significantly departed from her prior statements.⁴ (*R.Ex. 4; Testimony of Ms. L.D.; Testimony of Appellant*)
9. The following day, February 25, 2020, Ms. L.D. filed for an Abuse Prevention Order (pursuant to G.L. c. 209A) against the Appellant. Ms. L.D. alleged in her affidavit that the Appellant had been "mentally and verbally abusing me." She also stated that "[the Appellant] threatened to take me to court and because of that I don't know what he is capable of." (*R.Ex. 5*)
10. A ten-day temporary *ex parte* order was granted, to last until March 10, 2020. At the extension hearing on March 13, 2020, in which both parties were present, the Honorable Myong J. Joun vacated the order. (*A.Ex. 14*)
11. On March 5, 2020, the Appellant filed for custody of the couple's child at Suffolk County Probate and Family Court. The Court granted a temporary order on May 15, 2020, which set out a shared custody plan for the parents to follow. Ms. L.D. had not permitted the Appellant to see his child between February 24, 2020, and the court hearing in May. (*A.Ex. 1,2,3, and 4; Testimony of Appellant*).

residence while the police report stated that Ms. L.D. told officers she was in the process of moving out when the Appellant came home. (*R.Ex. 2; Testimony of Ms. L.D.; Testimony of Appellant*)

⁴ Regarding the events of February 24, 2020, the initial police report stated that both the Appellant and Ms. L.D. had asserted that nothing physical had occurred. In a later discretionary interview with Detective Shaw, Ms. L.D. stated that the Appellant "grabbed her by both arms and restrained her causing bruising." Before the Commission Ms. L.D. stated that the Appellant pushed her onto a bed and blocked her from leaving. In all four affidavits filed by Ms. L.D. to obtain restraining orders and in numerous police reports, there was no mention of physical violence by the Appellant. I find it notable that Ms. L.D. did not address the alleged violence from 2020 until 2023 despite her regular interactions with the court system and police officers during that three-year period. (*R.Ex. 2,4; Testimony of Ms. L.D.*)

12. The parenting plan approved by the court outlined a shared parenting plan whereby the Appellant would have the child every Tuesday beginning at 5 p.m. through Thursday at 6 p.m. and on weekends (Saturday from 10 a.m. until Sunday at 10 a.m.). (*A.Ex. 8*)
13. There have been numerous other disputes over child custody, parenting time, pick up / drop off, including contempt filings by both parties throughout the period in question. (*A.Ex. 6,7,8,9,10, and 11; R. Ex. 4*).
14. On June 14, 2022, there was a long disagreement through text messages regarding the Appellant's parenting time and when he was going to pick up his child from Ms. L.D. The argument revolved around the drop off of their daughter to the Appellant on Thursday as opposed to Wednesday, as set forth in the parenting plan, as well as what solution to make up the time should take place. The reason Ms. L.D. gave for not abiding by the parenting plan and dropping the child off a day later is that a DCF social worker planned a visit to Ms. L.D.'s residence on Wednesday. The Appellant strongly disagreed with this decision. Due to Ms. L.D. stating that she would drop off the child on Thursday instead of Wednesday, the Appellant objected to missing time with his daughter and stated that if her arrival were delayed, he intended to return his daughter later to account for the missed time. Ms. L.D. refused to agree to this solution and then stated that the Appellant's statement that he planned to return the child late:

"is my proof that I can have and now will be keeping ____ until Monday as I'm not going to miss time with my daughter because of you! You are the root cause of this so deal with it."

I interpret this as a statement that Ms. L.D. was not going to permit the Appellant his full allotted time with his daughter in that time period. The Appellant then wrote:

"Lol same old methods. Listen woman I'm not impressed and I also care less about anything that has to do with you. You can report whatever you want to DCF that's

fine and it's also your right.

Now dealing with me when it comes to ___ comes with rules that are very clear I repeat very clear. You can't expect to take 24 hours of my time with her and think it's ok.

I still maintain the fact that DCF is coming to check the environment in which you placed her not her and you can drop her off tomorrow after the said visit. In case you're thinking of dropping her off on Thursday, I will be dropping her off on Saturday cuz it's simply rational.

Remember that you're always free to do you but when it comes to me you're not entitled of anything and will be forced to walk straight. I challenge you to keep ___ till Monday."

(R.Ex. 5)

15. On Wednesday June 15, 2022, Ms. L.D. did not drop off the Appellant's daughter, as the parenting plan dictated, and also did not drop her off the following day; instead, Ms. L.C. kept the child for the entire weekend, including Father's Day. *(R.Ex 5)*
16. On June 22, 2022, the Appellant filed a Complaint for Contempt for Ms. L.D.'s failure to abide by the parenting plan. *(A.Ex. 8)*
17. On July 27, 2022, the Court found Ms. L.D. to be in contempt of the court-ordered parenting plan and ordered that the Appellant should receive additional time to make up for the lost time in June. *(A.Ex. 8)*
18. On June 21, 2022, Ms. L.D. filed a second complaint for an Abuse Restraining Order against the Appellant, alleging in her affidavit that the Appellant "...is constantly harassing me and sending me very aggressive messages that are now starting to become threats and mental abuse." She also stated: "[The Appellant] talks to me in a very demanding way. ... I am very scared and fearful for my life and my daughter's and am not sure of what [the Appellant] is capable of doing." *(R.Ex. 5)*

19. A temporary order was granted after an *ex parte* hearing on June 21, 2022. At the extension hearing on June 30, 2022, in which both parties were present, the Honorable Thomas S. Kaplanes vacated the order. (*R.Ex. 5; A.Ex. 15*)
20. On June 23, 2022, Ms. L.D. filed a 51A report against the Appellant claiming child neglect. The Department of Children and Families investigated and “screened out the allegation of neglect of the child by the father.” (*A. Ex. 5; R.Ex. 2*)
21. On July 5, 2022, Ms. L.D. filed a third complaint for an Abuse Restraining Order against the Appellant. Ms. L.D. alleged in her affidavit that she was “receiving threatening text messages from [the Appellant].” She also stated: “[The Appellant] has been harassing me by text saying, ‘you will learn to walk straight’, ‘I can talk to you the way I want, if you don’t like it, do something about it’, ‘you have until the end of the day’, ‘watch me put an end to all of your foolishness.’ [The Appellant] has continued to verbally and mentally abuse me and I am very scared and fearful of what he may do.”⁵ (*R.Ex. 5*)
22. The temporary order was granted after an *ex parte* hearing on July 8, 2022. At the extension hearing on July 19, 2022, in which both parties were present, the Honorable Lisa Ann Grant vacated the order. (*R.Ex. 5; A.Ex. 16*)
23. On December 25, 2022, Ms. L.D. refused to turn over her daughter to the Appellant’s sister at the Boston Police station per the parenting agreement. A police incident report was filed and Ms. L.D. was informed by an officer on duty that she was in violation of the court order, which Ms. L.D. acknowledged. Ms. L.D. left the station with her daughter. (*A.Ex.9*)
24. On December 28, 2022, the Appellant filed a complaint for contempt due to Ms. L.D.’s refusal

⁵ In the text messages themselves, the context showed that the Appellant typed these statements while requesting to speak on the phone with his child. (*R.Ex. 5*)

to abide by the parenting plan. (*A.Ex10*)

25. On January 2, 2023, Ms. L.D. was found in contempt and ordered to pay attorney fees to the Appellant. In addition, additional parenting time was given to the Appellant to make up for the time he had missed with his daughter. (*A.Ex10*)
26. In early 2023, Ms. L.D. filed for sole custody of the child she shares with the Appellant. At the hearing before me, Ms. L.D. confirmed that she is still seeking sole custody. (*R.Ex. 2; Testimony of Ms. L.D.*)
27. On February 7, 2023, Ms. L.D. filed a fourth complaint for an Abuse Restraining Order against the Appellant. In her affidavit, Ms. L.D. alleged that “[the Appellant] has continuously and has repeatedly to threaten physical harm.” She also stated: “[The Appellant] has threatened me on multiple occasions one being today 2/7/23 ‘Now remember that with you, you will walk straight by force. Sleep with one eye open tonight.’ I’m very fearful and extremely scared of [the Appellant].” (*R.Ex. 5*)
28. The temporary order was granted after an *ex parte* hearing on February 7, 2023. (*R.Ex. 5*)
29. Images of messages between the Appellant and Ms. L.D. arguing over parenting time with their daughter showed a text message from the Appellant stating: “*Lol another bogus complaint as if I have a bag of fever in my house that I feed her off every time. I took her temperature before dropping her off yesterday and she was fine. That being said I challenge you to keep her away from me. Now remember that with me, you will walk straight by force.*” There was no text message showing the other referenced message about sleeping with one eye open. (*R.Ex. 5*)
30. Ms. L.D. pointed to the allegedly threatening texts that the Appellant sent her when obtaining the various *ex parte* restraining orders. Ms. L.D. claims that she does not know what the Appellant means when he sends these texts. (*Testimony of Ms. L.D.; R.Ex. 2*)

31. The Appellant testified that he did not intend to threaten violence by sending these texts. I credit the Appellant's statement that he meant legal action: "It simply means I will report to my lawyer and take the legal route, go to the court, and have the situation be [dealt with] there."⁶ As noted, the Appellant did take legal action against Ms. L.D. in court, including filing complaints for civil contempt. (*A.Ex. 6,8; Testimony of Appellant*)
32. As part of the Appellant's application to become a Boston Police Officer, Detective Molwyn Shaw conducted a background investigation of the Appellant. Detective Shaw determined that the Appellant had never been arraigned on any criminal charges. In addition, before Det. Shaw conducted a discretionary interview with Ms. L.D., he assembled the four restraining orders that had been filed by Ms. L.D. against the Appellant up to that point in time. Detective Shaw later compiled these documents and additional information into a Privileged and Confidential Memorandum (PCM). (*R.Ex. 2; Testimony of Detective Shaw*)
33. On February 16, 2023, Detective Shaw submitted the findings from his investigation of the Appellant by sharing the PCM with Teori Shaw-Boyce of the Department's human resources office. (*Testimony of Detective Shaw; R.Ex. 2*)
34. Shaw-Boyce was a member of the Department roundtable that considered the Appellant's candidacy. This roundtable included the Deputy Director of Human Resources and the Deputy of Internal Affairs for the Boston Police Department. At the roundtable, the assigned detective, Detective Shaw, presented his findings. The roundtable then assessed the information from the

⁶ The Appellant emigrated at the age of 25 from an African country in which many languages other than English are spoken and he has lived in the United States for only about 10 years. The phrases used by the Appellant may be more nuanced in meaning than they sound to an American ear. The language appears idiomatic and seemingly could translate in a way that creates misunderstandings. (*R.Ex. 2*)

investigation and determined whether to appoint the Appellant to the Department. (*Testimony of Shaw-Boyce*)

35. Shaw-Boyce did not have much knowledge of the Abuse Prevention Order process nor did she know what an *ex parte* order was at the time of the hearing. (*Testimony of Shaw-Boyce*)

36. The Department relied substantially on the *ex parte* restraining orders when choosing to bypass the Appellant for the position of police officer. (*A.Ex. 12; R.Ex. 1; Testimony of Boyce-Shaw*)

37. The fourth Abuse Prevention Order filed by Ms. L.D. was active at the time the roundtable met. On February 21, 2023, that order was terminated by the Honorable Shelley Joseph after an extension hearing at which both parties were present. (*Testimony of Shaw-Boyce; A.Ex. 17*)⁷

38. On September 13, 2023, the Appellant was notified that he was bypassed for employment as a Police Officer with the Department. A letter signed by Shaw-Boyce stated that the Appellant's "history of restraining orders deems [him] unsuitable for employment as a Boston Police Officer." The letter also acknowledged that Ms. L.D.'s statements about physical abuse and threatening text messages were considered. (*A.Ex. 12; R.Ex. 1; Testimony of Boyce-Shaw*)

APPLICABLE CIVIL SERVICE LAW

The authority to bypass a candidate for an appointment as a police officer is governed by G.L. c. 31, § 27. Original and promotional appointments of civil service employees are made from a list of candidates, called a "certification", whose names are drawn in the order in which they appear on the applicable civil service "eligible list", using what is called the 2n+1 formula. G.L. c. 31, §§ 6

⁷ During testimony before the Commission, Ms. L. D. informed the Commission that she took out a fifth *ex parte* 209A complaint against the Appellant the day before the hearing here. This restraining order was vacated by Judge Neil Hourihan on the return date (approximately two weeks later) following a hearing at which both parties were present.

through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons (positive or negative, or both—consistent with basic merit principles) for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

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. 474, 478 (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, 543 (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 core objective of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills” while “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., Mass. 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).

ANALYSIS

The Boston Police Department has failed to meet its burden through a preponderance of credible record evidence to show a reasonable justification to bypass the Appellant. The Department based its decision on inadequate grounds, principally citing temporary restraining orders that were not extended after the initial one-sided (*ex parte*) hearing.

The reasons provided for the bypass of the candidate were not adequate under the basic merit principles of civil service law. When restraining orders have been filed *and extended*, often in addition to instances of violence or other unlawful acts, the Commission has found it to be reasonable for an appointing authority to bypass a candidate for police officer.⁸ The Commission has observed that a difference in weight should be accorded to restraining orders that are extended by the court as opposed to those that are not. Martinez v. City of Chelsea, 32 MCSR 173 (2019). In the Appellant’s case, it was primarily the temporary restraining orders that persuaded the Department to bypass him. The roundtable evidently failed to account for the difference in weight between an order issued after the court hears from one party only and an order issued upon hearing from both parties; likewise, the roundtable apparently did not recognize that *ex parte* restraining

⁸ For example, in Martinez v. City of Chelsea, the Commission found there was reasonable justification for bypassing a police officer candidate with several restraining orders taken out against him, including one that had been extended for a full year. In addition, the candidate was bypassed for instances of physical violence, several other concerning altercations, and speeding at 95-100 MPH while it was snowing. Omar Martinez v. City of Chelsea, 32 MCSR 173 (2019).

orders constitute less persuasive evidence of maltreatment if they are not extended following a hearing.

Furthermore, the Commission has previously found that temporary *ex parte* restraining orders generally are not sufficient to bypass a candidate for police officer. “Indeed, the restraining orders were all *ex parte*, where the Appellant did not appear before the Judge issuing the initial orders. These facts reduce the orders to complete hearsay and they cannot provide this Commission with the necessary evidence to support a reason for bypass.” Gallagher v. City of Leominster, 22 MCSR 118, 126 (2009).

I accord considerable weight to the fact that none of the five restraining orders filed against the Appellant by his estranged former domestic partner were extended past the initial temporary order. Each of the restraining orders were granted without the Appellant being present before a judge. In addition, all the *ex parte* orders were filed by the same person, Ms. L.D., who continues to be in an ongoing child custody dispute with the Appellant. I did not credit Ms. L.D.’s testimony and found her statements before me to be inconsistent when compared with her statements in numerous police reports, as well as her statements to the officer investigating the Appellant for employment. I find that she has attempted to take liberties with the legal process by filing frivolous restraining orders in an attempt to control custody of their daughter. Likewise, I deem it significant that five different judges, when conducting a full hearing with both Ms. L.D. and the Appellant present, vacated each of the restraining orders on the return date for each of the 209A complaints.⁹

⁹ The judges who vacated each order were Hon. Myong J. Joun, Hon. Thomas S. Kaplanes, Hon. Lisa Ann Grant, Hon. Shelley Joseph, and Hon. Neil Hourihan (chronologically listed).

The affidavits sworn out by Ms. L.D. in connection with the restraining orders repeated the same allegedly threatening text sent by the Appellant that he was going to force her to walk straight. At the hearing, the Appellant explained that “walking straight” was a term he understood to mean you will abide by the law. I note that the Appellant immigrated to the U.S. from Cameroon at age 25 and his phrasing of words is different than one would normally hear from a native American speaker. I liken this phrase with the American expression “walk the line.” US Dictionary.com states: “the idiom ‘walk the line’ means following rules or standards or balancing two opposing choices or situations. It can be used in various contexts and situations, such as work, relationships, politics, sports, etc.” I found the Appellant to be extremely credible inasmuch as he has repeatedly sought court intervention (contempt hearings) to “force” Ms. L.D. to abide by the court orders regarding custody. There has not been any suggestion of any physical confrontations in any of the papers associated with the five restraining orders filed by Ms. L.D. The Appellant further clarified that the word “force” was not meant to reference his using force or violence against Ms. L.D. He stated that it was a warning that if she did not abide by the court-ordered agreement, then the Court would “force” her to do so through legal orders.

I also give considerable weight to the District Court justices who have also heard the argument that being “forced to walk straight” was intended to be a threat of inflicting physical harm and determined that such was not the case and so vacated the underlying restraining orders.

I give credit to the Appellant’s testimony that he was stating that he was going to force her to comply with the court-ordered parenting plan as taking legal action to resolve disputes has been his consistent response throughout the time that the two have been estranged. For instance, the two parties have a court-mandated parenting plan, and the Appellant has filed several successful complaints for contempt against Ms. L.D. for denying him parenting time. Additionally, there were

no allegations of physical violence or physical threats referenced in the affidavits filed by Ms. L.D. in support of any of her 209A complaints. Based on these facts, I find the Appellant's explanation for his use of the potentially troubling phrase to be credible.

Further, the Department's bypass letter references physical violence toward Ms. L.D. in 2020 as reported by Ms. L.D. to the Detective Shaw during his background investigation. This contradicts the Boston Police Department's own incident report that officers Hassan and Calisi took at the scene when they were responded to a call of domestic violence by Ms. L.D.. That report notes: *"the victim stated that nothing physical occurred between the parties"* and further stated that Ms. L.D. called the police because *"she's in fear of the suspect taking their daughter."* Further, Ms. L.D. went to the police station immediately after speaking with the officers and filed for a restraining order. In seeking this order, Ms. L.D. again does not make any claim whatsoever of physical violence. It bears repeating that I did not credit Ms. L.D.'s testimony during the hearing and it appeared that she had a personal agenda to prevent the Appellant from getting hired as a police officer as opposed to providing honest testimony. I find that the reporting officers who were present at the scene at the time of the incident are likely to have provided the most reliable narrative of the event.

I give credit to the Appellant's testimony and found the statements he submitted as part of his application were forthcoming and honest – especially in reference to the restraining orders. The Appellant never attempted to hide the facts from the investigator. The Appellant also raised concerns that the restraining orders may have been filed to influence the Probate and Family Court in Ms. L.D.'s attempt to obtain sole custody of the child. The fact that Ms. L.D. has filed two motions for sole custody in close temporal proximity to the parenting disputes and motions for restraining orders supports the Appellant's perception of the situation. I also find significant to the

credibility of the Appellant and Ms. L.D. that Ms. L.D. was found to be in contempt of court on two separate occasions for violation of the parenting order, which formed the gravamen of the alleged conflict between the Appellant and Ms. L.D.

The investigation into the Appellant's eligibility to serve as a police officer in the Department included all the temporary restraining orders that had been filed against the Appellant at that time. The investigation by Detective Shaw stressed the importance of Ms. L.D.'s interview and the restraining orders she filed against the Appellant. In looking at the Privileged and Confidential Memorandum (PCM) prepared by Detective Shaw, the documents showed the *ex parte* restraining orders filed against the Appellant. However, none of the documents in the PCM pointed to the fact that they had all been vacated after a full hearing, except as disclosed in the Appellant's own answer to an application question.

Although the Appellant was given the opportunity to explain the restraining order procedure in his application, at least one member of the roundtable did not seem to understand the nature of these restraining orders and the fact that they were granted *ex parte*. Equally compelling is the fact that all four¹⁰ of the restraining orders when brought before a judge on the return date were dismissed. It is significant to note that, in total, five different experienced judges have heard testimony from the Appellant and Ms. L.D. and all five ultimately have ruled in favor of the Appellant. Therefore, the roundtable decision's dependency on the temporary restraining orders as the sole basis for issuing a bypass was unsound.

¹⁰ At the time of his application there had been four restraining orders filed. An additional one was filed for by Ms. LD the day before the hearing. On the return date, the Honorable Neil Hourihan vacated this restraining order. This is the fifth judge upon hearing the facts of these restraining orders have dismissed the complaint.

It is critical to understand the difference between *ex parte* restraining orders and orders that have been extended by a judge after the defendant has had the opportunity to testify on their own behalf. The round table should have taken into account the fact that the temporary restraining orders were all dismissed, and the Appellant was deemed by five different judges to be not violent or threatening towards his former partner. Innocent until proven guilty is a fundamental American right and the 5th Amendment of the Constitution guarantees due process. For the BPD to only consider the accusation and ignore the outcome of 5 different hearings, all resulting in the Appellant being legally exonerated, seems to fly in the face of this cornerstone of American jurisprudence.

Due to the fact that these restraining orders were issued *ex parte* and all stemmed from an on-going custody dispute, I find that the roundtable's basis for bypassing the Appellant does not constitute reasonable justification. Evidenced by the fact that all orders were vacated after a hearing, there are observable concerns about the credibility of the restraining order affidavit statements. To bypass the Appellant based solely on these orders ignores the crucial findings of multiple respected judges. I do not find it reasonable to bypass the Appellant based on the one-sided (*ex parte*) hearings alone. As explained above, nor do I find the Appellant's text messages to constitute any true threat.

Further, the BPD did not provide reasonable justification for discounting the positive attributes that the Appellant possessed, including the fact that he has no criminal record and was never found to have actually engaged in misconduct that might suggest he was not a suitable candidate to be given the opportunity for appointment to the BPD. I believe it is significant to note that the Appellant already holds a position of authority as a Transportation Security Officer (TSO) under the Transportation Security Administrations (TSA), a position he has held for over two years. Bob Allison, TSA Federal Security Director for Massachusetts stated, "TSOs are on the front line of

defense in securing our nation's commercial air transportation system. Each day, our officers in Massachusetts screen thousands of airline travelers ensuring they arrive at their destinations safely.” There are no claims that he has abused this position or his authority by Ms. L.D. or by anyone else for that matter.

The Commission concludes that the Boston Police Department failed to meet its burden to establish, by a preponderance of credible evidence, that their stated reason for bypassing the Appellant rested on a solid foundation.

Nothing in this Decision should be construed to imply that the Commission does not take allegations of domestic abuse very seriously; when there is credible evidence to support a reasonable inference that the misconduct did occur, in the future, the Commission will continue to uphold the decision of an appointing authority to bypass a candidate for appointment to a public safety position who has demonstrated unsuitability after engaging in such serious misconduct.

CONCLUSION

Accordingly, the appeal of Valere Yepmo filed under Docket No. G1-23-299 is hereby ***allowed***. Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

1. The state's Human Resources Division shall place the name of the Appellant at the top of any current or future certification for the position of Police Officer with the Boston Police Department until the Appellant has been appointed or bypassed.
2. If the Appellant is appointed, he/she shall receive a retroactive civil service seniority date equivalent to those individuals who were appointed from Certification No. 08848. This retroactive date is for civil service purposes only and is not intended to

provide the Appellant with any additional pay or benefits, including creditable time for retirement purposes.

Once the Boston Police Department has provided the above-referenced relief, it shall notify the Commission, copying the Appellant, so the Commission can determine whether the Appellant's name shall no longer be placed at the top of certifications issued to the Boston Police Department for the position of Police Officer.

Civil Service Commission

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

By a 3-2 vote of the Civil Service Commission (Dooley, Markey, & Stein – Yes; Bowman, McConney – No) on September 5, 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:
Robert DiLibero, Esq. (for Appellant)
Joseph McClellan, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

VALERE YEPMO,

Appellant,

v.

BOSTON POLICE DEPARTMENT

Docket number:

G1-23-299

OPINION OF COMMISSIONERS BOWMAN AND McCONNEY

We respectfully dissent. Had the BPD relied solely on the issuance of multiple restraining orders against the Appellant, all of which were dismissed shortly thereafter, to justify the bypass of the Appellant, we would have joined the majority in allowing this appeal based on the reasons stated in Commissioner Dooley's well-reasoned analysis.

The BPD, however, as part of what the administrative record shows was a reasonably thorough review, took the additional step of interviewing the individual who sought those restraining orders – the mother of the Appellant's child. After hearing her concerns, reviewing one text message in particular that was sent from the Appellant¹¹, and hearing from the Appellant, the BPD ultimately concluded that it would be too much of a risk to issue the Appellant a badge, a gun and all the responsibility that comes with serving as a Boston police officer.

We believe that the BPD's decision here was a justified, discretionary judgment call that was made after a reasonably thorough review, based on valid concerns about the Appellant and free of

¹¹ The Appellant, in a text message to the mother of this child, wrote: "You will learn to walk straight by force, I guarantee that."

any personal or political bias. We also believe that the BPD roundtable, when making the decision to bypass the Appellant, understood the judicial process related to the issuance of restraining orders.

For these reasons, we would have affirmed the BPD's decision to bypass the Appellant and, thus, voted no on allowing this appeal.

CIVIL SERVICE COMMISSION

/s/ Christopher C. Bowman

/s/ Angela C. McConney

September 5, 2024