

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

MARK ZIELINSKI,
Appellant

v.

Docket No. G2-04-133

CITY OF EVERETT,
HUMAN RESOURCES DIVISION,
Respondents

Appellant's Representative:

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Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to G.L. c. 31, § 2(b), on January 12, 2004, the Appellant, Mark Zielinski, (hereinafter "Zielinski" or "Appellant"), appealed the decision of the Respondent, the City of Everett (hereinafter "the City") as Appointing Authority, to bypass him for

promotional appointment to the position of police sergeant. The appeal was timely filed. Following a pre-hearing conference with the Commission, the Appellant moved to amend his complaint on September 10, 2004 to also request an investigation into the promotions of two (2) sergeants made by the City of Everett on October 25, 2003. On September 17, 2004, the Human Resources Division, (hereinafter “HRD”) moved to dismiss all counts of the Appellant’s appeal, asserting that he was not an aggrieved person pursuant to Section 2(a) or 2(b). On May 25, 2005, the Appellant’s motion to amend the appeal was allowed and a G.L. c. 31, § 2(a) investigation into the Appellant’s allegations concerning the October 2003 appointments of the two sergeants by the City. The investigation was conducted on December 13, 2005 as a hearing at the offices of the Civil Service Commission (hereinafter “Commission”). Two (2) audiotapes were made of the hearing.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Joint Exhibits 1 – 6) and the testimony of the Mayor of the City of Everett David Ragucci (“the Mayor”), City of Everett Chief of Police Steven Mazzie, Sergeant Neil Burke, Sergeant Stephen A. Bova III (the Appellant’s Motion to Sequester Burke and Bova was allowed) and the Appellant, I make the following findings of fact:

1. The Appellant has been employed by the City as a Police Officer since approximately 2000. He has a B.S in political science from Framingham State College and received a Master’s Degree in criminal justice from Western New England College in 2001. (Testimony of Appellant)

2. In 2003, David Ragucci was the Mayor of the City of Everett and the Appointing Authority for the Everett Police Department. Steven Mazzie was the Everett Chief of Police. (Testimony of the Mayor and Mazzie)
3. The HRD administered a promotional examination for individuals interested in becoming police sergeants in the municipal service. The Appellant took the examination and received a score of 76%. (Exhibit 1)
4. On September 9, 2003, the City sought from the HRD a certification list for candidates passing the examination to fill two full-time sergeant positions. (Exhibit 3)
5. An eligible list dated September 19, 2003, certification number 230869, was returned to the City by the HRD. The names of the individuals on the certification list appeared in order of their respective scores, from highest to lowest, and contained the following five names, in order with their scores: [REDACTED] (86); [REDACTED] (83); [REDACTED] (80); [REDACTED] (76) and Zielinski (76). [REDACTED] and the Appellant's names were placed in alphabetical order within the score subset of 76. All five candidates signed the list indicating they would accept the promotion to sergeant. (Exhibit 1)
6. On October 9, 2003, the City filed another requisition with the HRD seeking to amend the selection from two (2) to four (4) positions. (Exhibit 4)
7. Chief Mazzie testified that he meets with the Mayor at least once a week to discuss police matters. He stated that during 2003, he requested more police officers in general and more supervisory officers in particular, stating he told the Mayor he "would take all the sergeants he could get." Both the Mayor and the

Chief credibly testified that “front-line” supervisors (sergeants) have been priorities for the Police Department since the “King Arthur’s” incident many years ago.¹ Chief Mazzie also stated that he was “under budget” in terms of department expenditures. The Mayor stated that savings from overtime, court costs and other line-items provided enough money for two extra sergeants. (Testimony of Mayor and Mazzie)

8. The Appellant testified that he received no notice of an interview or the opportunity to present a resume for consideration for a promotion to sergeant. He was not given a written statement of reasons for his non-selection. (Testimony of Appellant)
9. Chief Mazzie stated that he generally does not conduct formal interviews. Rather, the eligible list ranking provides the order for selection of police officers. Chief Mazzie testified that in the three years he had been Chief, the City has gone “right by the list”, selecting employees strictly in the order in which they appear on the Certification List. (Testimony of Mazzie)
10. The Mayor testified that he gets oral input from the Chief and makes decisions but does not get involved with paperwork such as requisition forms and relies on the Chief and department heads to attend to staffing needs. (Testimony of Mayor)
11. A Committee to Re-Elect Mayor David Ragucci Contribution Summary shows that Burke and Bova each contributed \$500 to the Mayor’s re-election campaign. Their contributions have a date listed as October 9, 2003 – the date of the City’s

¹ A July 23, 1982 police raid on the King Arthur’s Motel and Lounge in Chelsea, near the Everett border, by Chelsea and Everett officers resulted in one civilian death and several injuries among officers and civilians. The raid was reportedly in revenge for a previous brawl whereby an off-duty police officer was beaten. Two More Officers Charged in Massachusetts Brawl, Associated Press, *New York Times*, (August 27, 1982). The raid also resulted in the criminal convictions of some participants, including police officers.

- second requisition to HRD for the two added sergeant positions - but there was no evidence whether this was the date the checks were written or the date the checks were received. The Mayor stated that he had held a fundraiser around that time. (Exhibits 4 & 5 and Testimony of Mayor)
12. Bova testified that he has played a very active role in all of the Mayor's campaigns and that his long time support of the Mayor included leafleting and monetary contributions. He denied that his financial contribution to the Mayor's campaign was in any way related to, or in exchange for, the promotion to sergeant. (Testimony of Bova)
13. Burke testified that he had not worked politically for the Mayor or contributed to his campaign prior to the fall of 2003. He denied that his financial contribution to the Mayor's campaign was in any way related to, or in exchange for, the promotion to sergeant. (Testimony of Burke)
14. The City appointed four individuals from the certification list to permanent full-time sergeant positions, Jedry and Vetrano, effective September 19, 2003 and Burke and Bova, effective October 25, 2003. (Exhibit 2)
15. The Appellant learned that his Masters degree was not considered with regard to his ranking but did not become aware that his degree had not been considered until after the statutory time period for appealing scoring to the HRD had passed. (Testimony of Zielinski)
16. On November 20, 2003, the HRD approved a standard Form 14, authorizing the appointment of the four sergeants. (Exhibit 2)

17. Because the City did not believe it had bypassed the Appellant, the City did not submit any statement to the HRD relating to the Appellant's non-selection and the HRD did not require the City to submit such statements. (Administrative Notice)
18. On October 18, 2005, the Appellant took the Sergeant's examination. He received an 86% and was made Acting Sergeant in October 2005. (Testimony of Appellant)
19. At the Commission's investigative hearing, Mayor Ragucci vigorously denied that [REDACTED] or [REDACTED] campaign contribution had anything to do with the selection process for sergeant. His testimony was very credible and straightforward. The Mayor became animated and somewhat agitated when he stated that it was "insulting to all involved to believe that [he] would take money for making an appointment." The Mayor stated that, when the Chief asks to improve the Department, he tells the Chief to do what is needed. He testified that he had no documentation dealing with appointments or political contributions and his being subpoenaed to testify at the Commission hearing was "bullshit!" After the Mayor became less animated, he stated that he "just wanted to get that off his chest." I find that the Mayor sincerely expressed his feelings about this matter in defense of his integrity. His overall testimony was genuine and unambiguous. (Testimony and Demeanor of Mayor)
20. Bova was also a very credible witness, also offering straightforward testimony relating to his long time support of Mayor Ragucci. Burke's testimony was credible as well. While neither man could produce a cancelled check or receipt as proof, each testified that he had given a financial contribution to the Mayor's

campaign Committee. Neither man tried to “spin” his testimony regarding the contribution in an attempt to offer this information in a better light. The Appellant also provided creditable testimony as to how he viewed the timing of the events in this matter as suspicious.

CONCLUSION:

INVESTIGATION

As the basis for amending his pleading, the Appellant argued that he is an aggrieved person because his placement on the certification entitled him to equal consideration with the other two candidates, but that he received no notice of interview or an opportunity to present a resume for consideration for the sergeants’ positions. He further contends that factors at odds with basic civil service merit principles and improper considerations caused the Mayor, as Appointing Authority, to select the other two candidates for sergeant. Specifically, the Appellant alleges that Bova and Burke were selected for promotion to Sergeant, while he was not, because each were recorded as having made a \$500 contribution to the Mayor’s re-election campaign on October 9, 2003 - the same day the requisition list was expanded from two sergeants to four sergeants.

The Commission’s investigation revealed that the Appellant did not substantiate his contention that the contributions of Burke and Bova were a factor in the selection of the Everett police sergeants in 2003 or that improper considerations caused the Mayor to select the other two candidates. On the contrary, credible testimony by the Mayor and

Chief as to general cost savings allowing enough extra funding to expand the list from two to four appointments and to the method by which they conducted the selection process showed that the City “went by the list” for legitimate reasons and in accord with its usual practice. The fact that Burke and Bova contributed to the Mayor’s campaign does not violate G.L. c. 31; the evidence has not shown their political contributions were a factor in their selection as sergeants.

RESPONDENT HRD’S MOTION TO DISMISS

Respondent HRD objected to the Appellant’s Motion to Amend his complaint to request an investigation, maintaining that the Appellant does not have standing as he is not an aggrieved individual under the statute under either Section 2(b) or Section 2(a). The HRD asked the Commission to dismiss the Appellant’s appeal on the grounds that he has not established a case for which the Commission may provide a remedy.

The Personnel Administration Rules (“PAR”), which were issued pursuant to G.L. c. 31, sections 3(d) and 5, define a bypass as “the selection of a person or persons *whose name or names...appear lower* on a certification than a person or persons who are not appointed and whose names appear higher on said certification. PAR.02. (Emphasis added).

In the present case, none of the individuals selected by the City for appointment received lower scores than the Appellant and one of the individuals selected for appointment, Bova, received the same score as the Appellant. Prior Commission

decisions have established that appointment or promotion from amongst a group of candidates with tied scores is not considered to be a bypass situation over which the Commission has jurisdiction. See Kallas v. Franklin School Department, 11 MCSR 73, 73 (1998).

Moreover, on July 15, 2004, the Commission issued a ruling in Fasano v. City of Quincy, G1-03-421 which involved a tie score. The Commission held, “If the applicants’ all demonstrated that they were equally qualified to fill the position based upon their test scores (there is no evidence that any other criteria were evaluated), then Human Resources was acting within the scope of its statutory authority by placing the applicants on the list in alphabetical order, because a qualified individual was certain to receive the appointment. When such a situation presents itself, it would appear that any of the candidates would be appointed to the position.” Accordingly, when the Appointing Authority selects between or from among candidates whose scores are tied, it need not submit a statement of bypass reasons to HRD for those individuals in the tied-score subset who were not selected.

For all of the aforementioned reasons, we find that there was no bypass of the Appellant for the promotions to sergeant. Further, the Commission concludes its investigation, pursuant to c. 31, § 2(a), by finding that there was no evidence of impropriety involving monetary campaign contributions given to then-Mayor Ragucci by the successful candidates for the sergeant’s positions. Had the applicants not scored as well as they did, thereby qualifying them for the position, the campaign contributions

may have merited more attention. However, the campaign contributions could not have altered their scores. Therefore, the Respondent HRD's Motion to Dismiss is allowed and the Appellant's appeal filed under Docket G2-04-133 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Guerin and Marquis, Commissioners) [Taylor, Commissioner absent] on April 5, 2007.

A True copy. Attest:

Commissioner

A motion for reconsideration may be filed by either party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL c. 30A s. 14(1) for the purpose of tolling the time of appeal.

Pursuant to MGL c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under MGL c. 30A s. 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:

F. Robert Houlihan, Esq.
John M. Carey, Esq.
Michele M. Heffernan, Esq.
John Marra, Esq.

