

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

MICHAEL PHILLIPS,  
*Appellant*

v.

G1-15-45

CITY OF METHUEN,  
*Respondent*

Appearance for Appellant:

*Pro se*  
Michael Phillips

Appearance for Respondent:

Anne Randazzo, Esq.  
Office of the City Solicitor  
41 Pleasant St  
Room 311  
Methuen, MA 01844

Commissioner:

Christopher C. Bowman<sup>1</sup>

**DECISION**

On February 27, 2015, the Appellant, Michael Phillips (Mr. Phillips), pursuant to G.L.c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the City of Methuen (City) to bypass him for original appointment as a reserve police officer.

A pre-hearing conference was held at the offices of the Commission on March 24, 2015 and a full hearing was held at the same location on June 4, 2015.<sup>2</sup> The hearing was digitally recorded

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Evan A. Johnson in the drafting of this decision.

<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

and both parties were provided with a CD of the hearing.<sup>3</sup> At my request, the parties made closing arguments in lieu of post-hearing briefs.

## **FINDINGS OF FACT**

Seven (7) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

*Called by the City:*

- Jill Stackelin, Human Resources and Workers Compensation Agent, City of Methuen
- Joseph Solomon, Chief of Police, City of Methuen;
- Stephen Smith, Police Sergeant, City of Methuen;
- Randy Haggar, Police Captain, City of Methuen;
- Michael Pappalardo, Police Lieutenant, City of Methuen;

*Called by Mr. Phillips:*

- Michael Phillips, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence; I find the following:

1. Mr. Phillips is a 26 year-old male who resides in Methuen, Massachusetts He has a six-year old child. (Testimony of Mr. Phillips)
2. Mr. Phillips graduated from Everett High School in 2006 and briefly attended The New England School of Arts. (Testimony of Mr. Phillips)
3. Mr. Phillips is currently employed at Dunbar Armored, Inc. in Lowell, where he has worked since 2012. Additionally, Mr. Phillips is currently employed as an auxiliary police officer

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<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

with the City of Lawrence. He also owns and operates a small entertainment company and has volunteered for the Alzheimers Association and the local community access television station. (Testimony of Mr. Phillips and Exhibit 2)

4. On June, 15 2013, Mr. Phillips took the civil service examination for police officer and received a score of 95. (Stipulated Fact)
5. On March 3, 2014, Mr. Phillips's name appeared on Certification No. 01595 from which the City ultimately appointed twenty-five (25) permanent, reserve police officers, eight (8) of whom were ranked below Mr. Phillips, who was ranked 23<sup>rd</sup> on the Certification. (Exhibit 4)
6. Among the candidates on the Certification that ultimately received conditional offers of employment and/or were appointed are:
  - **Joseph Aeillo**, the son of a Methuen Police Officer (Ranked 10<sup>th</sup>);
  - **Mark Parolisi**, the step brother-in law of a Methuen Police Captain (Captain Kris McCarthy) (Ranked 21<sup>st</sup>);
  - **Michael Harvey**, the son of a Methuen Police Sergeant (Ranked 22<sup>nd</sup>);
  - **Justin Antoon**, the son of a City employee who works in community development (Ranked 23<sup>rd</sup>);
  - **Joseph Alaimo**, the son of the City's Former Deputy Police Chief, whose mother also works for the Police Department (Ranked 24<sup>th</sup>).<sup>4</sup>
  - **Patrick Fleming**, the son of a Methuen Police Officer (Ranked 27<sup>th</sup>)(Exhibit 4 and Testimony of Chief Solomon)
7. Joseph Solomon (Chief Solomon) is the Chief of Police for the City. He has held that position since September 2002. He reports to the City's Mayor, who is the Appointing Authority under civil service for police officers. (Testimony of Chief Solomon)

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<sup>4</sup> In 2010, the Commission overturned the City's decision to terminate Chief Solomon as Police Chief. During the multi-day hearing regarding that appeal, then-Deputy Police Chief Joseph Alaimo, the father of Joseph Alaimo, stated that he would "walk through a wall for Joe Solomon" (See Solomon v. Methuen, 23 MSCR 441 (2010))

8. Chief Solomon has a personal friendship with the fathers of two (2) of the selected candidates: Joseph Aeillo and Joseph Alaimo. He has attended family events at their respective homes, including holiday parties, birthday parties and a high school graduation celebration. (Testimony of Chief Solomon)
9. Each candidate seeking appointment was required to undergo a background investigation. Candidates' applications were initially referred to Captain Kris McCarthy, whose step son was appointed as a reserve police officer during this hiring cycle, for background investigations. Captain McCarthy did not conduct any of the background investigations and assigned Sgt. Stephen Smith to "oversee" the background investigations. Sgt. Smith assigned background investigations to individual detectives in the Department. (Testimony of Chief Solomon)
10. The purpose of the background investigation was to "weed out" certain candidates for such things as negative CORI reports, negative credit reports, etc. Those candidates who are "weeded out" do not receive an interview. (Testimony of Chief Solomon)
11. Mr. Phillips' background investigation showed that he has no criminal record, no driving citations and a positive credit report. All of his references and neighbors provided positive feedback about Mr. Phillips. (Exhibit 2)
12. All candidates who successfully completed the background investigation, including Mr. Phillips, were interviewed by a panel of the following Methuen police officials appointed by Chief Solomon: Captain Randy Haggar; Lt. Michael Pappalardo; Lt. Kevin Mahoney; and Officer Tom McMenamon. (Testimony of Chief Solomon and Exhibit 7)

13. Chief Solomon informed the panel members that after the interviews were completed they would meet with him to decide which candidates would be recommended for appointment.  
(Testimony of Chief Solomon)
14. Chief Solomon chose an old questionnaire that the Police Department had previously used for interviews, making minor changes. He instructed the panelists to ask each applicant the same questions appearing on the questionnaire with the caveat that they could ask applicants follow-up questions to responses, as well as ask about information revealed in the background investigations. (Testimony of Chief Solomon)
15. The panelists scored each answer on a scale of 1-5 (a “1” denoted that the question was “answered poorly,” a “3” denoted that the answer was “average,” and a “5” denoted that the applicant “nailed it”). (Testimony of Chief Solomon and Exhibit 3)
16. The panel was not required to ask every question, if they felt that the applicant had answered the question with a previous answer.<sup>5</sup> (Testimony of Chief Solomon and Exhibit 3)
17. The scores associated with the answers provided in the interviews served as a “basic guide that were used over the totality of the entire process” for ranking applicants. (Testimony of Captain Haggar)
18. After the interviews were completed, panel members met with Chief Solomon to discuss the applicants and determine who would be recommended for appointment to the Mayor.
19. The Mayor’s bypass letter to Mr. Phillips stated the following for his non-selection: “Mr. Phillips showed a lack of discretion in his response to the drunk driving scenario question. He stated he would arrest his mother and father. This answer appears insincere and sounds like Mr. Phillips is trying to respond in the way he thinks the panel wants him to respond.”

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<sup>5</sup> The Commission notes that a more equal application process could have easily be obtained if all applicants were asked the same questions.

“He knew very little about the Methuen Police Department.” “When asked about himself, he stated that he does not like being involved with conflict and problems.” (Exhibit 1)

20. Scenario question number three (3) (referenced in the non-selection letter as the drunk driving scenario question) stated the following:

“You are on duty and are called to a motor vehicle crash on Howe Street. You arrive to find a single vehicle off the road into the culvert. You exit your police vehicle and walk up to the vehicle, the operator is standing outside of the vehicle. You observe that he smells of alcohol and is uneasy on his feet. You can tell he has had too much to drink. How would you handle this situation. (Follow UP: Same scenario, the operator is an officer from the neighboring town of Salem NH who you know) (or the Operator is your Uncle)” (Exhibit 5)

21. Panelists first asked the applicants the initial question preceding the parentheses. After receiving a response, panelists altered the scenario so the driver was a police officer from New Hampshire. Subsequent to the applicant’s second response, the panelists altered the scenario so the driver was a family member. In the final question variation, some applicants were asked what they would do if it were their uncle, while others were asked what they would do if it were their mother or father.<sup>6</sup> (Testimony of Captain Haggar and Exhibit 3)

22. When asked how he scored applicants’ answers to scenario question three(3), Captain Haggar stated that he was looking for applicants who: “justified their decision” whether or not to make an arrest or use discretion, as well as applicants who “stay[ed] the ground in making the arrest or not making the arrest” when the panelists “put pressure on the applicant” about their decision.” “The question wasn’t about whether you would arrest your friends.” (Testimony of Captain Haggar)

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<sup>6</sup> G.L. c. 268A, § 19(a) prohibits municipal officers from “participat[ing] as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee... has a financial interest.” G.L. c. 268A, § 1 (k) defines “particular matter” as including any “claim, controversy, charge, accusation, arrest, decision, determination, finding.” G.L. c. 268A, § 1 (e) defines “immediate family” as “the employee and his spouse, and their parents, children, brothers and sisters.”

23. Captain Haggar agreed that Mr. Phillips stuck with his answer to all variations of the question. (Testimony of Captain Haggar)
24. When asked what would be an ideal answer to scenario question three (3), Lieutenant Pappalardo stated: “I’m looking for some bearing, some honesty, and how quickly the person can think on their feet.” “I am not looking for a yes or no I’d arrest, I’m looking for how are you going to explain and how you are going to justify it and why, and how are you going to react cause I’m [going to] counter-question you and why you made that choice.” (Lieutenant Pappalardo)
25. When asked whether he would believe someone who said they would arrest family or friends without hesitation in the scenario question three (3), Lieutenant Pappalardo stated “to be quite frank, I just don’t believe them.” (Lieutenant Pappalardo)
26. When asked whether an applicant responding “I would contact a supervisor because it would be a conflict of interest” would be a strong answer or a weak answer for the variation of scenario question three (3) involving the applicants mother or father, Lieutenant Pappalardo stated: “Myself personally, I think that’s a cop-out answer – you don’t want to make a decision.” (Lieutenant Pappalardo)
27. All of the panelists’ notes after scenario question three (3) and its variations focused on whether or not the applicant would make an arrest. Only a few notes out of the thirty-six (36) interview questionnaires supplied made any indication whether or not the applicant seemed truthful, how well-reasoned the answer was, or whether they changed their answer when pressured by the interviewers. (Exhibit 3 and Exhibit 7)
28. Of the eight (8) candidates who were ranked below Mr. Phillips, six (6) clearly indicated that they would arrest the driver in the first version of scenario question three (3), but would not

arrest a police officer they knew or a family member in the question variations. Of the two (2) other applicants, the documentation is ambiguous whether one (1) of the applicants said that they would arrest both the officer and the family member. The documentation relating to the other applicant clearly indicated that he or she would arrest both the officer and the family member of the question. (Exhibit 3)

29. The applicants ranked below Mr. Phillips who indicated that they would not arrest either the officer and the family member scored an average of 3.93 out of 5. The applicant bypassing Mr. Phillips who clearly expressed that he or she would make the arrest in all three variations of the question scored a 3 by all three (3) panelists conducting the interview. Mr. Phillips, who indicated he would arrest in all variations of the question, received an average of 1.75 from the four (4) panelists scoring him. (Exhibit 3)

30. A commonly made note under scenario question three (3) was “knows discretion.” Of the applicants below Mr. Phillips, only those who clearly indicated that they would neither arrest the officer nor the family member received the “knows discretion” note, with five of the six candidates receiving the comment (the other candidate received an average score of 4.125 for the question). (Exhibit 3 and Exhibit 7)

31. In the first (non-scenario) question section, question number three (3) stated the following:

“Tell us about the City of Methuen and the Methuen Police Department.” (Exhibit 3)

32. Members of the interview panel rated Mr. Phillips between a 2 and 3.5 on question three (3) of the interview questionnaire, which tested Mr. Phillips regarding his knowledge of the City and the police department. (Testimony of Captain Haggar and Exhibit 3)

33. Mr. Phillips acknowledges that he was nervous at that time of the interview and had difficulty remembering information about the City and its police department. (Testimony of Mr. Phillips)
34. Two (2) of the four (4) panelists recorded in their notes at the end of questionnaire that Mr. Phillips did not like conflict, and that this was a concern. (Exhibit 3)
35. Mr. Phillips told the interview panel he did not like conflict in his personal life, not that he wanted to avoid conflict in the workplace. (Testimony of Mr. Phillips)
36. Mr. Phillips was not appointed as a reserve police officer for the City. (Stipulated Fact)
37. He received a bypass letter from the appointing authority listing the reasons why he was bypassed on 1/5/15. (Stipulated Fact)
38. Mr. Phillips filed an appeal with the Civil Service Commission on February 27, 2015 (Stipulated Fact)
39. At the pre-hearing conference, Mr. Phillips expressed concern that personal bias may have played a part in the decision to bypass him in favor of other candidates.
40. Subsequent to the pre-hearing conference, Sergeant Smith was instructed by Chief Solomon to inquire into Mr. Phillips's personnel file at the Lawrence Police Department after receiving information alleging the Mr. Phillips had been involved in a questionable incident. (Affidavit Signed by Sergeant Smith on June 9, 2015)
41. The City of Methuen Police Department contacted the City of Lawrence Police Department and requested Mr. Phillips's personnel file which contained generic information. The Lawrence Auxiliary Police spoke highly of Mr. Phillips. (Affidavit Signed by Sergeant Smith on June 9, 2015)

*Legal Standard:*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv. Comm'n., 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was

“reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington, 60 Mass. App. Ct. 914, 915 (2004).

### *Analysis*

The City argues that it conducted a fair and impartial hiring process in which all candidates were given equal consideration. As part of that process, the City argues that it had sound and sufficient reasons to bypass Mr. Phillips due to his poor interview performance. Specifically, the City states that Mr. Phillips was not prepared for the interview, that he expressed a dislike for conflict, which is inherent with the duties and responsibilities of a police officer and that he showed a “lack of discretion” in regard to a hypothetical question regarding whether he would arrest a friend or family member for drunk driving.

Mr. Phillips questions whether the overall process was fair and impartial, given that five (5) of the candidates appointed had family members who currently or formerly worked for the City, including two (2) police officials who are personal friends of the City’s Police Chief. While he acknowledges that he was nervous during the interview and could have been better prepared, he adamantly denies that he was anything but honest in his responses to the hypothetical questions regarding whether he would arrest a friend or family member. He takes issue with the high marks given to candidates deemed to understand the concept of “discretion.” In regard to whether he is able to handle conflict, Mr. Phillips insists that, while he may have told the panelists that he doesn’t like conflict in his personal life, that does not mean that he couldn’t (and doesn’t) handle conflict well as a law enforcement officer.

I am troubled by various aspects of the hiring process here as it relates to Mr. Phillips's candidacy. First, the City's decision to obtain Mr. Phillips's personnel file from the City of Lawrence *after Mr. Phillips filed an appeal with the Civil Service Commission to contest the City's decision to bypass him for appointment* is chilling. The City had already: a) conducted a background investigation of Mr. Phillips, which found no negative issues; b) decided not to appoint him as a reserve police officer based on reasons unrelated to his background investigation; and c) notified him of these bypass reasons, upon which he based his appeal. The City's decision to re-open that background investigation, without the knowledge of Mr. Phillips, after he filed an appeal with the Commission is inappropriate and, for me, casts a shadow over the entire selection process as it related to Mr. Phillips.

Second, given the number of candidates on the Certification with personal and family connections to City and Police Department employees, including the Police Chief, I was disappointed that the City did not take additional steps to instill confidence among all candidates that they received equal consideration. Employees whose immediate family members are seeking appointment should have no role in any part of the review and selection process, including assigning the oversight of background investigations to a subordinate employee. See Investigation Re: Braintree Police Department's 2013 / 2014 Police Officer Hiring Process (I-14-145) (2015). Also, to dispel even the appearance of potential favoritism here, the City could have – and should have – sought out at least one (1) non-City employee to participate in the interview process.

Third, the City turned the interview process upside down, by awarding the highest points to candidates who indicated that they would engage in conduct unbecoming of a police officer, and potentially illegal, while giving the lowest points to candidates such as Mr. Phillips who gave

answers that were consistent with the high standard that should be expected of all police officers. Remarkably, the bypass letter to Mr. Phillips stated that he showed a “lack of discretion” when he stated that he would apply the same standard regarding a drunk driving arrest to a friend or family member than he would to a stranger. That was not a scrivener’s error. Some of the interview panelists actually heaped high praise on those candidates who stated that they would arrest a stranger but not arrest a friend or family member based on the same facts, citing their understanding of “discretion.”

I carefully listened – and re-listened – to the testimony of those interview panelists who appeared before the Commission. While they attempted to re-cast this question as an assessment of a candidate’s candor and honesty, there is simply no valid basis to award the highest points to candidates who express a willingness to apply one set of rules to strangers and another set of rules to friends and family members. See Leeman and Pagliuca v. City of Haverhill, CSC Case Nos. D-12-342 & 236 (2013). Equally disturbing was the testimony that a decision by a police officer to call a supervisor, and remove themselves from a potential conflict of interest, was a “cop-out”.

Although the interview panelists listed other ancillary reasons to justify Mr. Phillips’s purportedly poor performance during the interview, the panelists’ reaction, and assessment, of this particular response, which they actually use to question his honesty, was clearly a primary (and impermissible) reason for bypassing Mr. Phillips. Even if it wasn’t, the other reasons for bypassing Mr. Phillips for such things as not knowing the square mileage of the City seem downright silly. Further, there is nothing in the record that establishes that Mr. Phillips, an auxiliary police officer in Lawrence, cannot be trusted to handle conflict as a reserve police officer in Methuen, notwithstanding his stated aversion to conflict in his personal life.

In short, bypassing candidates for providing answers that are consistent with the law, while appointing others who would show “discretion” toward friends and family members cannot stand – and warrants intervention by the Commission.

For these reasons, Mr. Phillips’s appeal under Docket No. G1-15-45 is hereby *allowed*.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Civil Service Commission hereby orders the following:

1. The state’s Human Resources Division (HRD) shall place the name of Michael Phillips on all future Certifications for the position of Methuen Reserve Police Officer until such time as he is appointed or bypassed.
2. If Mr. Phillips is appointed as a reserve police officer in Methuen, he shall receive a civil service seniority date retroactive the same as those appointed from Certification No. 01595.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on July 9, 2015.

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:  
Michael Phillips (Appellant)  
Anne Randazzo, Esq. (for Respondent)  
John Marra, Esq. (HRD)