

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

DANIEL A. BRUNO,
Appellant

v.

G2-11-115

TOWN OF EAST LONGMEADOW,
Respondent

Appellant's Attorney:

Thomas J. Rooke, Esq.
73 Chestnut Street
Springfield, MA 01103

Respondent's Attorney:

James R. Channing, Esq.
Sullivan, Hayes & Quinn
One Monarch Place: Suite 1200
Springfield, MA 01144

Commissioner:

Christopher C. Bowman

DECISION

The Appellant, Daniel A. Bruno (hereinafter “Bruno” or “Appellant”), pursuant to the provisions of G.L. c. 31, § 2(b), contests the decision of the Town of East Longmeadow (hereinafter, “Town” or “Appointing Authority”), to bypass him for promotional appointment to the position of Sergeant in the East Longmeadow Police Department (hereinafter “Department”). A pre-hearing conference was held on April 27, 2011 at the State Office Building in Springfield, Massachusetts. A full hearing was held over two (2) days on July 13, 2011 and August 10, 2011 at the State Office Building in Springfield, Massachusetts. With the exception of the Appellant, all witnesses were sequestered.

The full hearing was digitally recorded and copies of the recordings were provided to both parties. Both parties submitted post-hearing proposed decisions.

FINDINGS OF FACT

Nineteen (19) exhibits were entered into evidence by the Appellant on July 13, 2011. Nine (9) joint exhibits were also entered into evidence by the Appointing Authority and the Appellant on July 13, 2011. In addition, a CD of the Board of Selectmen's meeting on February 8, 2011 was previously entered into evidence at the pre-hearing conference conducted on April 27, 2011 and marked as Exhibit 10. Finally, I kept the record open for the Town to submit additional documents, which were received and marked as Joint Exhibits 11 – 14. Based upon the documents and testimony of:

Called by the Appointing Authority:

- James Driscoll, Chairman, East Longmeadow Board of Selectmen;
- Enrico John Villamaino, III, Member, East Longmeadow Board of Selectmen;

Called by the Appellant:

- Paul L. Federici, Member, East Longmeadow Board of Selectmen;
- Nick Breault, Town Administrator, Town of East Longmeadow;
- Daniel A. Bruno, Appellant

I make the following findings of facts:

1. The Town of East Longmeadow is a community of approximately 15,720 residents.
2. The East Longmeadow Police Department (Police Department) has approximately twenty-five (25) employees including: one (1) Police Chief (Douglas Mellis); six (6) Sergeants; and eighteen (18) police officers.
3. A part-time, 3-member Board of Selectmen serves as the Appointing Authority for all appointments and promotions in the Police Department. At the time the sergeant vacancy

in question first arose, Paul Federici was serving as the Board's Chairman. The Appellant was one of two (2) candidates on Certification No. 290576 for promotion to the position of Police Sergeant in the Town's Police Department. (Stipulated Fact)

4. The Appellant was first on the Certification based upon an "Agreement" between the Appellant and the Town concerning a prior bypass for promotion to Sergeant on August 15, 2006. This "Agreement" was endorsed and approved by the Civil Service Commission in a "Decision on Joint Motion for Relief under Chapter 310 of the Acts of 1993" (Appellant Exhibits 1, 1A and 1B.)
5. The Appellant is a tenured civil service employee who has been employed as a police officer with the Town since 1998. He possesses a Master of Science degree in Criminal Justice from Western New England College (2001) and has been an adjunct faculty instructor in Criminal Justice at Western New England College since 2007. (Appellant's Exhibit 3 and Testimony of Appellant.)
6. Steven Manning, the second ranked candidate, who was ultimately selected for promotion over the Appellant, was appointed as a police officer on the same day as the Appellant and also has a Master of Science degree in Criminal Justice from Western New England College. (Joint Exhibit 14)
7. On February 8, 2011, the Board of Selectmen conducted promotional interviews for Police Sergeant. (Joint Exhibit 10.)
8. Prior to the interviews, all three members of the Board of Selectmen were contacted by Dr. Anthony S. Caprio, President of Western New England College on behalf of the Appellant. (Testimony of Driscoll, Federici and Villamaino)

9. Both Bruno and Manning were asked the identical sixteen (16) questions which were prepared in advance by an outside consulting firm with input from the Chief of Police and two senior sergeants. (Testimony of Driscoll and Villamaino.)
10. The three (3) selectmen and Chief Mellis took turns asking questions off of the prepared sixteen questions. Each of the selectmen had the prepared sixteen type-written questions and made notations after each questions on the candidates answers; however, there was no standardized scoring procedure in place for the selectmen. (Appellant Exhibit 13 and Joint Exhibit 10, Testimony of all three selectmen.)The interview of the Appellant by the Board of Selectmen/Chief of Police lasted forty (40) minutes. The interview of Officer Manning by the Board of Selectmen/Chief of Police lasted twenty-six (26) minutes. (Joint Exhibit 10, Testimony of Driscoll, Federici and Villamaino.)
11. I reviewed the entirety of the two interviews contained on a CD marked as Joint Exhibit 10.
12. At the conclusion of the interview process and after preliminary discussion on the qualifications of both candidates, Chief Mellis provided to the members of the Board of Selectmen the resumes of both candidates and letters from their personnel files. Chief Mellis then stated, “both great police officers, it is a tough decision, I can work with either one of these two officers.” Selectman Driscoll replied, “Absolutely, both outstanding individuals.” (Joint Exhibit 10.)
13. At no time during the interview process, subsequent discussion, or during the deliberation after a motion was made to promote Mr. Manning, did any member of the Board of Selectmen discuss any concerns of the Appellant’s judgment and leadership qualities reflected by the answers provided during the interview session. Furthermore, no member

of the Board of Selectmen made any comment that the Appellant's answers to interview questions included negative and critical comments about the police department and fellow police officers, nor did any member of the Board of Selectmen comment that the Appellant's answers to the interview questions raise concerns over his ability to be an effective police sergeant in the Town of East Longmeadow. Finally, no member of the Board of Selectmen stated that the Appellant should be bypassed based upon his responses to interview questions. (Joint Exhibit 10, Testimony of Driscoll, Federici and Villamaino.)

14. By a 2-1 vote, the Board of Selectmen voted to promote Mr. Manning, with then-Chairman Federisi voting no, as he supported the promotion of the Appellant.

15. On February 9, 2011, the Board of Selectmen sent a letter to the Appellant advising him, "I regret to inform you that the Board of Selectmen did not promote you to the position of Sergeant for the Town of East Longmeadow Police Department. The Board of Selectmen appreciates your interest in the position and thanks you for your participation in the process." (Appellant Exhibit 14.)

16. The Appellant filed a timely appeal of his bypass pursuant to G.L. c. 31, § 2(b). (Testimony of Appellant; Stipulated Fact.)

17. On April 20, 2011, the Appellant received a letter from the Board of Selectmen indicating that, "...there may have been a procedural oversight during the appointing process of Police Sergeant on February 8, 2011. Based upon a pending appeal before the Civil Service Commission, the Board of Selectmen will address the process at a meeting. The meeting may result in a reopening of the selection process and/or revote on the appointment of Police Sergeant. The meeting will take place on Monday, April 25, 2011

at 4:45 P.M. ...in the Hearing Room at the East Longmeadow Town Hall. You are encouraged to attend.” (Appellant Exhibit 15.)

18. On April 25, 2011, the Appellant appeared before the Board of Selectmen for their meeting at 4:45 P.M. James Driscoll, who was now serving as the Board’s new Chairman after its annual reorganization, called the meeting to order at 4:50 P.M. and advised that the purpose of the meeting was “...due to being notified of a Civil Service snafu” concerning the appointment of police sergeant. Selectman Villamaino made a motion to appoint Manning as Sergeant and Chairman Driscoll seconded the motion with Selectman Federici opposed. The motion carried 2 – 1. The meeting adjourned at 4:51 P.M. (Appellant Exhibit 16, Testimony of Driscoll, Federici and Villamaino.)
19. At no time during the Board of Selectmen meeting on April 25, 2011, did the members of the Board of Selectmen discuss any reasons for selecting Manning for promotion to sergeant, nor did they discuss any reasons for bypassing the Appellant for promotion to sergeant. (Appellant Exhibit 16, Testimony of Driscoll, Federici and Villamaino.)
20. On April 26, 2011, the day immediately following the special meeting of the Board of Selectmen to discuss the “Civil Service snafu,” Chairman James Driscoll sent a letter to Town Administrator Nick Breault, in his capacity as delegated Personnel Administrator, citing in specific detail the reasons for the Appellant’s bypass to the position of police sergeant. Chairman Driscoll’s letter cited Bruno’s interview performance and the Board of Selectmen’s concerns of his judgment and leadership qualities reflected by the answers provided during the interview. Chairman Driscoll’s letter further cited specific answers the Appellant gave during the interview, which they claim included negative and critical comments about the police department and fellow police officers. Chairman Driscoll

further cited a specific incident involving an investigation with the assistance of other officers that Officer Bruno explained was a lack of communication and a lack of initiative by other officers involved. Chairman Driscoll further stated that the Appellant indicated that the police department is in need of more professionalism. Chairman Driscoll further stated that the Appellant described his belief in treating subordinate officers differently depending upon their experience with the police department. Furthermore, Chairman Driscoll stated Officer Bruno stated he would have an “aggressive” style of leadership. Finally, Chairman Driscoll stated that the Appellant’s performance during the interview and his answers to the interview questions raised concerns over his ability to be an effective police sergeant in the Town of East Longmeadow. (Appellant Exhibit 18.)

21. Chairman Driscoll’s April 26, 2011 letter also cited positive reasons related to the selection of Mr. Manning including his strong performance during the interview, his unblemished record, his invaluable experience in law enforcement and his training and experience, including the Appellant’s certification as a school resource officer, a certified rape and sexual assault investigator and his completion of course work dealing with Internet crimes involving children. Chairman Driscoll also recognized the numerous letters of commendation in Officer Manning’s personnel file. Chairman Driscoll further stated the Board of Selectmen was impressed by his answers to the sixteen questions posed during the interview process. Chairman Driscoll stated that Manning’s composure was notable and his answers were well thought out. Chairman Driscoll further cited Manning’s emphasis on the importance of open communication in its role in the sergeant’s position as well as acknowledging the significant responsibilities of a sergeant as the person accountable for everything that occurs during the shift. Chairman Driscoll

further cited Officer Manning's response to questions regarding the importance of communication, conflict resolution, approachability and acknowledgment of the considerable responsibility of a police sergeant. Finally, Chairman Driscoll concludes that Manning was offered the position of police sergeant based upon the result of his interview, knowledge of the law, broad range of training, commitment to the force and experience in the school system. (Appellant Exhibit 19.) The Town Administrator, in his delegated capacity, approved the selection and non-selection reasons. (Appellant Exhibit 18[3] and 19[2].)

22. Chairman Driscoll testified before the Commission that he (Chairman Driscoll) and Villamaino were responsible for the content (reasons) in the letters of April 26, 2011 to Nick Breault stating the specific reasons for bypassing the Appellant and promoting Manning to the position of police sergeant. (Testimony of Driscoll.)
23. Driscoll testified that he and Mr. Villamaino, as two members of the three-member Board of Selectmen for the Town of East Longmeadow, either met in Nick Breault's office or spoke via telephone to draft the April 26, 2011 letters justifying the bypass of the Appellant and promotion of Manning. (Testimony of Driscoll.)
24. Selectman Villamaino testified that he did not have a conversation with Mr. Driscoll concerning the reasons for the appointment/promotion of Manning or the reasons for the bypass of the Appellant cited in Joint Exhibits 8 and 9. (Testimony of Villamaino.)
25. Driscoll stated that he has a scoring mechanism for rating the answers on a scale of 1 to 4, 4 being the highest score. After conducting the interviews, he tallied the scores and Manning scored an average of 3.4 and Appellant scored an average of 3.2 on Driscoll's scale. (Testimony of Driscoll.)

26. Driscoll stated that Manning had a superb interview and had additional training, including Student Resource Officer training and Internet Harassment training. These reasons were significant to Driscoll in voting for Manning to be promoted to Sergeant. (Testimony of Driscoll.)
27. When asked to further explain Officer Manning's "broad range of training" as cited in the April 26, 2011 letter (Joint Exhibit 9), Driscoll cited the Student Resource Officer training and Internet Harassment training. (Testimony of Driscoll.)
28. Appellant Exhibits 6 & 6A show that the Appellant, since his appointment, has completed 226 training courses for a total of 2,655 hours. Mr. Manning, since his appointment on the same date, has completed 226 training courses for 2,494 hours. Mr. Driscoll was unaware of this virtually indistinguishable record or that Mr. Manning had had only served a total of seventy-two hours as a School Resource Officer, working eighteen four-hour shifts over the previous three years, (Testimony of Driscoll.)
29. Selectman Villamaino made notes during the interview process (Appellant Exhibit 13, pages 178, 179 and 180), but he did not have a standard scoring process to rate the answers provided by the candidates similar to Driscoll. (Testimony of Villamaino)
30. Mr. Villamaino cited the primary reasons for selecting Manning for promotion as his training and experience, being a School Resource Officer and a Domestic and Sexual Abuse Officer. (Testimony of Villamaino.)
31. Villamaino distinguished Manning's training as being a School Resource Officer and a Sexual Assault/Abuse Investigator and Internet Crimes Concerning Children. Mr. Villamaino, like Mr. Driscoll, did not know the number of hours of training that Manning received in each of the above areas or that Mr. Manning was assigned the

responsibilities of a School Resource Officer for only seventy-two hours (eighteen four-hour shifts) over the prior three years. (Testimony of Villamaino.)

32. Mr. Villamaino testified that he did not agree with the Chief of Police's assessment that "both candidates did a great job and that he could work with either candidate" or with Federici's opinion that the Appellant "hit it out of the park" with regard to his interview. (Testimony of Villamaino.)

33. Villamaino was unable to give specific answers to support the conclusion in the April 26, 2011 letter that "...the Selectmen had concerns of his judgment and leadership qualities...Officer Bruno's performance during the interview and his answers to the interview questions raised concerns over his ability to be an effective police sergeant in the Town of East Longmeadow..." (Testimony of Villamaino.)

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, § 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 role of the Civil Service Commission is to determine “whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge at 304. Reasonable justification means the Appointing Authority’s actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

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). The Commission owes “substantial deference” to the

appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. Beverly citing Cambridge at 305, and cases cited.

CONCLUSION

There is something seriously amiss here. Two distinguished East Longmeadow police officers were competing for a promotional appointment to the position of sergeant, a highly sought after command position in a police department that has no captains or lieutenants.

Consistent with years of precedent-setting judicial decisions, including some cited above, the Town is granted significant latitude in determining which eligible candidate should receive this promotion. Here, the Town appears to have taken the admirable step of working with a consultant to develop relevant, job-related questions which were asked of both candidates during interviews that were broadcast live on the local access channel.

I reviewed the entirety of those interviews. Fully cognizant that evaluating interview performances is an inherently subjective process and that the Commission may not substitute its judgment for that of the appointing authority, it is still beyond all reason to conclude that the Appellant did not perform well during the interview. Not surprisingly, the Board's then-Chairman stated that the Appellant "knocked it out of the park" and the Police Chief commended both candidates for performing well. Neither Selectman Driscoll or Selectman Villamaino offered any public statements to contradict those assessments.

After making a passing reference to Mr. Manning's training, Selectman Driscoll and Villamaino voted to bypass the Appellant and promote Mr. Manning by a 2-1 vote of the Board.

In violation of civil service law and rules (which both Selectmen Driscoll and Villamaino were aware of due to a prior bypass of the Appellant several years ago), the Town then failed to provide the Appellant with written reasons justifying his bypass. After the Appellant filed an appeal with the Commission, the Board of Selectmen reconvened purportedly for the purpose of correcting this oversight. However, during this public meeting, neither Selectman Driscoll or Selectman Villamaino offered any reasons for bypassing the Appellant.

Sometime after this second meeting, the Appellant received a letter listing the reasons for his bypass. Mr. Driscoll and Mr. Villamaino offered conflicting testimony about how these reasons were developed. Mr. Driscoll stated that both men jointly discussed the reasons for bypass while Mr. Villamaino stated that he never had a conversation with Mr. Driscoll about the reasons.

Regardless of how these reasons came about, the Town argues that both of these Selectmen, independently reached the conclusion that the Appellant's answers to interview questions:

- “ ... included negative and critical comments about the police department and fellow police officers”;
- “ raised concerns over his ability to be an effective Police Sergeant ...”; and that:
- “Officer Bruno was not appointed Police Sergeant based on his responses to interview questions including his acknowledgment that he would treat officers differently depending on their tenure and his self-described ‘aggressive’ style of leadership.”

It is not probable or plausible that Mr. Villamaino or Mr. Driscoll drew these conclusions, let alone that they reached them independently.

It is probable, however, and I hereby conclude, that Mr. Villamaino and Mr. Driscoll engaged in a post-hoc effort to create non-selection reasons that did not exist. They appear to have grossly mischaracterized responses from the Appellant during the interview and taken

words out of context to create a grossly unfair and inaccurate picture of a police officer who is allegedly willing to disparage his department and his fellow officers. In doing so, they have impugned the integrity of a veteran police officer with a stellar record of performance. In terms of equity and good conscience, they owe the Appellant a public apology.

In regard to civil service law and rules, the Town has failed to provide valid reasons for the bypass and intervention by the Commission is warranted. The rejection of the reasons related to the interview are discussed above. Given the candidates' virtually identical training and experience records, the Town also failed to show that the selected candidate's training was a valid reason for bypassing the Appellant.

In reaching this conclusion, I did consider the troubling decision by the Appellant to try and tilt the scales in his favor by having the President of Western New England College make personal phone calls on his behalf to members of the Board of Selectman. This was an error in judgment that should not be repeated. That does not change my conclusion, however, that the Town did not offer valid reasons for bypassing the Appellant and he was not given fair and impartial treatment. Finally, for all the reasons cited above, including the fact that this is the second time that the Appellant was bypassed by the same two (2) members of the Board of Selectmen, it is unlikely that the Appellant will receive fair and impartial treatment if the Commission's relief is limited only to granting him one additional consideration for promotion, as it previously did.

For all of these reasons, the Commission, pursuant to Chapter 310 of the Acts of 1993, hereby orders the following:

1. The state's Human Resources Division (HRD), or the Town of East Longmeadow in its delegated capacity, shall place the name of the Appellant at the top of the next

certification for the position of police sergeant in the Town of East Longmeadow until such time as he receives at least one additional consideration.

2. Until such time as the Appellant has received at least one additional consideration for police sergeant: a) candidate interviews for police sergeant must be conducted by a panel to be selected and arranged by an independent outside individual or firm that has experience in the review and selection of public safety and/or senior public sector personnel in Massachusetts; (b) the candidates will be provided, reasonably in advance of the interview, a description of the criteria by which their credentials and their interview performance will be evaluated; (c) the evaluation criteria shall be established by the independent individual or firm selected to arrange the interviews, and shall contain such procedures and criteria that the outside individual or firm deems appropriate in consideration of a candidate for police sergeant, provided that the Police Chief may contribute his input to the independent individual or firm as to any aspect of the interview process, including evaluation criteria, as he deems appropriate; (d) the interview panel shall render a written report of the interviews to the Board of Selectmen; (e) the written report shall include a specific rating of each candidate's performance in each component or question during the interview, an overall ranking of the candidates, and a description of any unique positive and/or negative qualities or experience noted about any of the candidates; (f) prior to making the promotional appointment, the Board of Selectmen shall submit any reasons for bypass, if a bypass has occurred to the Civil Service Commission for review.
3. The Commission retains jurisdiction over Case No. G2-11-115 until such time as all of the above-referenced orders have been complied with.

This decision shall become effective as of March 9, 2012. Until such time, the parties may engage in settlement discussions regarding an alternative remedy that foregoes the need for the above-referenced orders. Absent notification that such a settlement has been reached, this decision shall become effective March 9, 2012.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, and Stein, Commissioners [Marquis – Absent]) on February 9, 2012.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the effective date 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 the effective date 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.

Notice:

Thomas J. Rooke, Esq. (for Appellant)
James R. Channing, Esq. (for Respondent)
John Marra, Esq. (HRD)