

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

CIVIL SERVICE COMMISSION

One Ashburton Place
Room 503
Boston, MA 02108

MATTHEW O'BRIEN,
Appellant

v.

G-01-283

TOWN OF NORWOOD,
Appointing Authority

Appellant's Attorney:

Paul L. Nevins, Esq.
47 Church Street
Wellesley, MA 02482

Respondent's Attorney:

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Commissioner

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant, Matthew O'Brien, is appealing the decision of the Appointing Authority, Town of Norwood, to bypass him for an original appointment to the position of police officer. The appeal was timely filed. Prior to the scheduled hearing in November 2002, the Appellant and the Town of Norwood agreed to settle this appeal as follows: in consideration of the Appellant withdrawing his appeal with prejudice, the Town of Norwood and the Appellant would jointly request that the Human Resources Division ("HRD") place the Appellant's name

at the top of the then-currently effective certified list of eligible candidates for the position of police officer in the Town of Norwood, and that the Appellant's name would remain at the top of said list until a new civil service examination was scheduled and a resulting new list was created. However, due to unfortunate administrative and procedural errors in this matter at various points along the way, the appeal was administratively closed at the Commission and HRD was not ordered to place the Appellant on the top of the certification list. Subsequently, the Appellant sought to re-open his appeal and the Appellant and the Appointing Authority submitted a joint request to grant the Appellant Chapter 310 relief to redress this situation. In addition, the Appellant submitted to the Commission various documents and the underlying settlement agreement. In light of the foregoing, I hereby find as follows:

FINDINGS OF FACT:

- 1) On November 30, 2000, the Town of Norwood filed a requisition for one vacancy for the position of Permanent Police Officer.
- 2) In response, the Town of Norwood received Certified List #201375 (hereinafter "Certification" or "List") from the HRD, dated December 6, 2000. This List contained the names of five (5) eligible individuals.
- 3) As the Appellant's name was not contained on the December 6, 2000 List, he was not eligible for consideration for the position of police officer at that time.
- 4) However, only one (1) of the five (5) individuals named on the List signed an acknowledgement that he or she wished to be considered for the position.

Consequently, the Town of Norwood filed a request for additional names from HRD.
- 5) Thereafter, on January 4, 2001, HRD issued additional names to the List. .

- 6) When the two Certified Lists (dated December 6, 2000 and January 4, 2001, respectively) were merged, the HRD's eligible candidates were ranked as follows: James Shannon (1st); Appellant (2nd); Mario Costa (tied for 3rd); Leslie McQuiston (tied for 3rd); Maryellen O'Brien (tied for 3rd); Michael Riley (tied for 3rd); and Joseph Simpson (tied for 3rd).
- 7) After consideration of all certified candidates, the Town of Norwood chose the third-ranked candidate, Mario Costa.
- 8) On February 12, 2001, pursuant to G.L. c. 31, §27, the Town of Norwood filed an Authorization of Employment form and the Statutory Notice required under G.L. c. 31, §27 with the HRD that set forth the Town's reasons for having bypassed Mr. Shannon and Mr. O'Brien and for having selected Mr. Costa instead.
- 9) On February 23, 2001, the HRD approved the submitted bypass reasons.
- 10) On February 20, 2001, the Appellant timely filed a bypass appeal challenging the Town of Norwood's bypass of him and its selection of Mario Costa.¹
- 11) In April 2001, a Civil Service Exam was administered at which time the Appellant's appeal was pending. The Appellant received a score of 98.
- 12) The Commission scheduled a hearing for November 2002.
- 13) Shortly before the scheduled hearing, the parties negotiated a settlement wherein it was agreed that the Appellant and the Town of Norwood would jointly ask the HRD to place the Appellant's name at the top of the then-current list of eligible candidates for the position of Permanent Police Officer within the Town of Norwood. In consideration of the settlement, the Appellant agreed to withdraw his appeal. The

¹ It appears that the Appellant was aware of the bypass on this date. Mr. Shannon, the other candidate bypassed by the Town of Norwood in favor of Mr. Costa, did not file an appeal.

settlement was memorialized in a written agreement executed by the parties and was forwarded to the Commission.

- 14) Thereafter, the parties, under the mistaken impression that the HRD had the authority on its own to administratively place Appellant at the top of the certified list², asked HRD to approve the agreement and place the Appellant at the top of the then-current certified list.
- 15) Simultaneously, while the parties were pursuing their remedy at the HRD, the Commission, believing the matter settled, administratively closed the case.
- 16) On December 20, 2002, the Town of Norwood filed a requisition for one vacancy for the position of Permanent Police Officer.
- 17) On January 8, 2003, HRD issued Certification List #221391. However, the Appellant's name was not included on the January 8, 2003 Certification.
- 18) Thereafter, the parties filed a joint motion with the Commission to vacate the dismissal (which was based on the Appellant's withdrawal) and re-open the appeal for the limited purpose of the Commission accepting the settlement agreement and directing HRD to place the Appellant at the top of the then-current certified list and afford the Appellant relief pursuant to Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts of 1993.
- 19) The motion was granted and a hearing was scheduled for October 3, 2003.
- 20) On October 3, 2003, a conference was held at the Commission and the parties were directed to submit either separate briefs or a joint brief requesting Chapter 310 relief.

² In fact, it is the Commission (and not HRD) which has the requisite authority pursuant to Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts of 1993.

- 21) On November 5, 2003, the Appellant submitted a Petition and Memorandum for Relief and Supporting Affidavit. No brief was received from the Town of Norwood.
- 22) As a result of the various errors or oversights, while the motion to vacate the dismissal was granted by the Commission, no action was taken with respect to affording the Appellant the agreed-upon relief pursuant to Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts of 1993.

CONCLUSION

In light of the foregoing, the Commission, pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976, as amended by Chapter 310 of the Acts of 1993, hereby directs HRD to place the name of the Appellant, Matthew O'Brien, at the top of the current certification list in effect for Permanent Police Officer in the Town of Norwood, and, in the event Appellant is not offered a position as a Permanent Police Officer by the Town of Norwood prior to expiration of the current certification list, HRD is further directed to place the name of the Appellant at the top of the next certification list for Permanent Police Officer in the Town of Norwood issued thereafter.

John E. Taylor
Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Taylor, Bowman, Guerin and Marquis, Commissioners) on January 25, 2007.

Attest:

Commissioner

Either Party may file a motion for reconsideration 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 M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Paul L. Nevins, Esq.

Joseph T. Bartulis, Esq.