

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

SCOTT MARTINI,  
*Appellant*

v.

G2-15-75

CITY OF LEOMINSTER,  
*Respondent*

Appearance for Appellant:

Nelson Carneiro,  
Massachusetts Laborers' District Council  
7 Laborers Way  
Hopkinton, Massachusetts 01748

Joseph McArdle,  
LIUNA  
7 Laborers Way  
Hopkinton, Massachusetts 01748

Appearance for Respondent:

Brian M. Maser, Esq.  
Kopelman & Paige, PC  
101 Arch St  
Boston, MA 02110

Commissioner:

Cynthia Ittleman<sup>1</sup>

**DECISION**

On February 1, 2015, the Appellant, Scott Martini (Mr. Martini), pursuant to G.L.c. 31, §2(b), filed this appeal with the Civil Service Commission (Commission), contesting the City of Leominster's (City) decision not to promote him to the labor service position of Heavy Motor Equipment Operator (HMEO), and instead select an external candidate from a roster for original appointment.

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

A prehearing conference was held at the offices of the Commission on May 19, 2015 and a full hearing was held at the same location on June 19, 2015.<sup>2</sup> The hearing was digitally recorded and both parties were provided with a CD of the hearing.<sup>3</sup> The parties submitted post-hearing briefs.

## **FINDINGS OF FACT:**

Twenty (20) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

*Called by the City:*

- David Smith, Department of Public Works, Highway Superintendent, City of Leominster

*Called by the Appellant:*

- Scott Martini, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, case law, and reasonable inferences from the credible evidence, a preponderance of credible evidence establishes the following facts:

1. Scott Martini (Mr. Martini) is currently a Laborer<sup>4</sup> at the City's Department of Public Works (DPW) Highway Division and he has worked in that capacity for approximately eight (8) years. (Testimony of Mr. Martini)
2. The general duties and responsibilities of a Laborer in the DPW Highway Division include operating hand-tools, gathering materials for the work site, transporting equipment to the

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<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.

<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.

<sup>4</sup> The Commonwealth Of Massachusetts, Human Resources Division, Civil Service Unit, Delegation of Municipal Labor Service, Administrative Manual, which guides municipalities in the correct procedure for promotional appointments, states in Section I that positions requiring no prior experience, such as Laborer, are "Class I Laborer" positions, while "Class II and III Laborer" positions have experiential requirements.

work site, working in the trench at the site, mixing concrete, and shoveling. Laborers are required to have a commercial driver's license (CDL) with an airbrake endorsement. Mr. Martini meets these requirements to be a Laborer. (Testimony of Mr. Smith and Mr. Martini)

3. Since 2004, Mr. Martini has been in the Massachusetts Army National Guard as a military police officer (MPO) and heavy truck operator. He has been deployed to Afghanistan twice: once for three (3) months between 2002-2003 and again for thirteen (13) months between 2011-2012 (Exhibit 2)
4. During his thirteen (13)-month deployment, Mr. Martini worked as an MPO and operated a backhoe, digging a trench for fiber optics cables. Improvised explosive devices (IEDs) and rocket fire presented potential hazards while Mr. Martini operated. Mr. Martini did not operate a backhoe during his three (3)-month deployment (Testimony of Mr. Martini)
5. Mr. Martini took a six (6)-week leave of absence from the City DPW to attend a Heavy Construction Academy between 2012 and 2013. At the academy, Mr. Martini received 1.5 weeks of classroom experience and 4.5 weeks of hands-on experience in operating heavy motor equipment vehicles from Monday through Friday. (Testimony of Mr. Martini and Exhibit 4)
6. During the hands-on portion of the academy, Mr. Martini learned how to operate several heavy motor vehicles. He and other persons completing the program worked with one vehicle per day. (Testimony of Mr. Martini)
7. Mr. Martini used a backhoe during the academy but he did not operate it around active utilities or an active roadway. (Testimony of Mr. Martini)
8. Mr. Martini has not gained additional experience operating a backhoe since completing the academy. (Testimony of Mr. Martini)

9. David Smith (Mr. Smith) is the DPW Highway Superintendent for the City. He has been employed with the city for four (4) years, working three (3) years as a foreman until he was appointed Superintendent on December 22, 2013. (Testimony of Mr. Smith)
10. Mr. Smith maintains a list of “incidents,” to keep track of workers whom he perceives as “repeat offenders” – workers whom he believes often violate procedure and cause damage to equipment. This list is unsigned, only sporadically contains the date that the event allegedly occurred, and is comprised of alleged events that were not always recorded contemporaneously with their alleged occurrence. (Testimony of Mr. Smith)
11. In part, Mr. Smith maintains this list of “incidents” as a means to justify denying workers access to DPW machines for having done prior damage to them. (Testimony of Mr. Smith)
12. Mr. Smith maintains his own files on each of the employees that he supervises, which includes resumes, signed job postings, “incidents” involving employees, and “anything that’s related that goes through [Mr. Smith’s] office.” According to Mr. Smith, these files that Mr. Smith maintains are *not* the employees’ personnel files which are kept at the Human Resources office. Mr. Smith has created these files on his own initiative. (Testimony of Mr. Smith)
13. Mr. Martini was not told about the “non-Human Resources file” that Mr. Smith was maintaining regarding his work history and “incidents” until he filed a grievance with the City contesting the decision not to promote him. (Testimony of Mr. Smith)
14. Raymond Racine (Mr. Racine) is the director of the DPW and he supervises Mr. Smith. Mr. Racine reports to the mayor of the City, Dean Mazarella (Mayor), who is the appointing authority. (Testimony of Mr. Smith)

15. In late 2014, Mr. Racine decided to create a job posting for the position of HMEO. Mr.

Racine collaborated with Mr. Smith to formulate the qualifications for the job posting. They used the same job requirements which have been used in prior postings for the position.

(Testimony of Mr. Smith)

16. On November 7, 2014, an internal job posting was posted at five (5) locations, four (4)

within the DPW building and one (1) at the cemetery property. The job posting stated, in part, the following:

Qualifications: CDL License, and Hydraulic License with Air Brakes Endorsement. At least 2-3 years experience\* digging with a backhoe, water, sewer and drain pipe installation is necessary... \*May be waived at the discretion of the director.

(Exhibit 1)

17. The Munclass Manual is a classification plan for public sector employees in Massachusetts

municipalities. The Munclass Manual was created in 1974 and there is limited information available indicating that it has been updated. The Munclass Manual states that HMEOs

“Operates trucks with a rated capacity of more than 3 tons and up through 9 tons... No equipment will be included in this class where the operation requires other than a Class 2 or 3 license from the Registry of Motor Vehicles.” (Munclass Manual)

18. Between November 7 and November 21, 2014, Mr. Martini and one (1) other applicant, Mr.

R.H., signed their names to one of the five (5) job postings. (Exhibit 1 and Testimony of Mr. Smith)

19. Mr. Smith gathered the job postings after they had been posted for two weeks and turned

them in to Mr. Racine, who then contacted the Director of Human Resources for the City, John Harmon (Mr. Harmon). (Testimony of Mr. Smith)

20. Mr. Racine, Mr. Smith, and Mr. Harmon scheduled the interviews for the position. The three (3) of them, and Kevin Iannacone, a union foreman for the DPW, interviewed the applicants. (Testimony of Mr. Smith)
21. The interviewers asked the applicants a list of questions formulated by Mr. Harmon and Mr. Smith. Some of the questions had been used before, while others were modified to reflect the specific needs and duties of the vacant HMEO position. (Testimony of Mr. Smith)
22. Each interview lasted fifteen to twenty minutes and all of the interviewers took turns asking questions. (Testimony of Mr. Smith)
23. The third (3) question on the second page of interview questions asked the following: “What is your experience operating a backhoe around live gas lines, electrical lines, and water main. Do you feel that you have enough experience to hit the ground running and have no safety concerns from the guys in your crew?” (Exhibit 6)
24. Mr. Smith found the third (3) question on the second page of interview questions especially important since HMEOs operate backhoes around the utilities on a regular basis. The City DPW services water, sewer, drainage, and occasionally electric utilities. However, HMEOs must also be weary of the other utilities they encounter on a daily basis while digging (gas, power, etc.). (Testimony of Mr. Smith)
25. Damage to utilities at dig sites are reduced, but not eliminated, by following Dig Safe laws (G.L.c. 82, §40), which require utility companies to mark where utilities are located and the level of danger they pose, prior to any digging. These marks made by the utility companies are only accurate to within a few feet. (Testimony of Mr. Smith and Mr. Martini)

26. In response to the third (3) question on the second page of the interview questions (see Fact 23), Mr. Smith's notes indicate that Mr. Martini responded that he had "no experience" but that he "had enough experience to keep the men safe." (Exhibit 6)
27. Mr. Smith believed that Mr. Martini's answer indicating that he had "no experience" meant that he did not meet the minimum qualifications of the position. He found Mr. Martini's statement that he had enough experience to keep the labors at the site safe "contradicted" his statement that he had no experience. (Testimony of Mr. Smith)
28. In response to the third (3) question on the second page, Mr. R.H. indicated that he had some experience using a backhoe around utilities but not two (2) to three (3) years of experience. (Testimony of Mr. Smith)
29. At the conclusion of the interviews, the interviewers discussed the applicants and determined that none of them met the minimum qualifications for the position and that the interviewers would not waive the two (2) to three (3) years of experience required. However, they did not post anything indicating that they found no qualified internal candidate. (Testimony of Mr. Smith)
30. After determining that there were no qualified applicants within the DPW, Mr. Harmon decided to request a certified list of outside applicants to fill the vacant HMEO position. (Testimony of Mr. Smith)
31. Approximately thirty (30) days after the interviews, it was found that Mr. Racine was related to Mr. R.H., presenting a possible conflict of interest. (Testimony of Mr. Smith)
32. In light of the potential conflict of interest, the interview panel decided that the internal applicants would be re-interviewed along with the interviews for external applicants from the

register, and that Mr. Racine would not participate in interview panel. (Testimony of Mr. Smith)

33. For an applicant not currently employed with the City to indicate their interest in being employed by the DPW, they must sign their names and list their qualifications on a non-job-specific listing within the DPW. Listings are not divided into each departmental unit within the DPW. When there are vacant positions within the DPW for which outside applicants on the list may apply, those outside applicants are notified. (Testimony of Mr. Smith and Exhibit 14)
34. The names of Mr. C. and Mr. B.H. appeared on the certified list of outside applicants created from the roster. They were subsequently interviewed. (Testimony of Mr. Smith)
35. Mr. Martini, Mr. R.H., Mr. C., and Mr. B.H. were all interviewed in the second round of interviews on March 12, 2015. (Testimony of Mr. Smith and Exhibit 14)
36. The interview panel for the second interview included: Mr. Ricker, Mr. Roseberry, Mr. Smith, and Mr. Harmon. (Testimony of Mr. Smith)
37. Stephen Ricker (Mr. Ricker) is a union foreman for the DPW and John Roseberry (Mr. Roseberry) is a non-union engineer for the City. (Testimony of Mr. Smith)
38. In the second round of interviews, the interviewers did not ask the same questions as they did in the first round but there were many similar questions. (Testimony of Mr. Smith)
39. When the panel of interviewers arrived at the interview room, they added three questions: questions eighteen (18), nineteen (19), and twenty (20)(as numbered on exhibit 8)<sup>5</sup>. (Exhibit 8)

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<sup>5</sup> Question nineteen (19) is listed as question 1 (1) on Mr. C's and Mr. R.H.'s interview question sheet. Question twenty (20) on Mr. Martini's interview is the same as question two (2) on Mr. R.H.'s and Mr. C.'s interview. (Exhibit 8, 9, 10, and Testimony of Mr. Smith)



40. Question nineteen (19) asked: “How much time/experience do you have digging in an active roadway?” (Exhibit 8)
41. Mr. Smith’s notes indicate that Mr. Martini stated he had “no experience.” (Exhibit 8)
42. Mr. Smith’s notes indicate that Mr. R.H. responded “not much” and that he was “not a seasoned pro operator” with “maybe 1 year on/off” (Exhibit 9)
43. Mr. R.H. had more experience with a bobcat and loader than with a backhoe. (Testimony of Mr. Smith)
44. Mr. Smith’s notes indicate that Mr. C. stated he had “a lot” of experience operating a backhoe in an active roadway for several construction companies. (Exhibit 10)
45. Question twenty (20) was included at the request of Mr. Smith. (Testimony of Mr. Smith)
- This question asked: “How much equipment have you broken or damaged in the last five (5) years? If so, why?” (Ex. 8) The question was an important indication of the amount of experience an applicant had since people with less experience may cause more vehicle damage. Knowing the damage a candidate may have caused was important to know because it may indicate how much the City could expect to spend on repairs. (Testimony of Mr. Smith)
46. Mr. Smith’s notes indicate that Mr. Marini responded to question twenty (20) by stating that there had been “plow bolts rusted” on the equipment that he had used which led to the “plow [falling] off,” but “none other than that.” (Exhibit 8)
47. Mr. Smith’s notes indicate that Mr. R.H. had incurred damage when he was involved in a car accident when a “teenage driver that was texting” hit him while he was operating a heavy motor vehicle. (Exhibit 9)

48. Mr. Smith's notes indicate that Mr. C. responded that he had not had any equipment damage in the last five (5) years. (Exhibit 10)
49. After the conclusion of the interviews at City Hall, the members of the panel decided that they wanted to hire Mr. C. for the HMEO position. In the event that Mr. C. rejected the offer, the members of the panel agreed they wanted to hire Mr. B.H. (Testimony of Mr. Smith)
50. Mr. C. accepted the position. (Testimony of Mr. Smith)
51. After receiving a verbal notification that he was not selected for HMEO position, Mr. Martini filed a grievance form with the Director of Personnel in March 2015. (Exhibit 15)
52. A grievance hearing was held on May 12, 2015. (Exhibit 16)
53. Mr. Smith brought his file on Mr. Martini, including the "incident" list, to the grievance hearing, which contained the list of "incidents" that he attributed to Mr. Martini. (Testimony of Mr. Smith and Exhibit 18)
54. Some of the "incidents" Mr. Smith attributed to Mr. Martini were dated while others were not. Mr. Smith began keeping a written record of Mr. Martini's "incidents" after a snow plow (an attachment on the truck) was destroyed while Mr. Martini was operating it approximately 3.5 years ago. "Incidents" that occurred before the snow plow damage Mr. Smith recalled from memory when he created the list. The list of "incidents" was not signed and appeared on plain printer paper. (Testimony of Mr. Smith and Exhibit 18)
55. Mr. Martini was not informed of this "incident" list until after he was not selected for the HMEO position. (Testimony of Mr. Martini)
56. Of the "incidents" he recorded, prior to the grievance hearing, Mr. Smith only directly spoke to Mr. Martini about the event that occurred on May 5, 2014 involving the use of an integrated tool (IT) loader with a flat tire. To address the other issues he attributed to Mr.

Martini, Mr. Smith spoke to the workers Mr. Smith supervises as a group about the correct protocol that they should all follow when using the vehicles. (Testimony of Mr. Smith)

57. Mr. Martini acknowledges that some of the “incidents” that Mr. Smith recorded actually occurred, although he disputes his responsibility for many of them. (Testimony of Mr. Martini and Exhibit 20)

58. None of the “incidents” that are recorded in Mr. Smith’s file on Mr. Martini are recorded in Mr. Martini’s Human Resources personnel file. Mr. Martini has never been instructed to file an incident report for any of the “incidents” that Mr. Smith attributes to his actions. Mr. Martini has never been denied the use of a vehicle by Mr. Smith based on alleged prior misuse. (Testimony of Mr. Smith)

59. Mr. Martini received a letter from the City’s Mayor denying Mr. Martini’s grievance, stating that the interview panel correctly determined that Mr. Martini was not qualified for the HMEO position. The letter states in part: “The job requirement for the position is 2-3 years experience digging with a backhoe, water, sewer, and drain pipe installation. Neither your resume nor the interview notes state that you have this experience. During the hearing, the interview team brought up their concern for safety. *After reviewing the equipment damage list attributed to your actions as an employee, I find their concerns to be legitimate.*”

(emphasis added) (Exhibit 16)

60. Mr. Martini filed this appeal with the Commission on April 10, 2015, contesting the City’s decision not to promote him and instead hire an outside candidate.

#### Applicable Law

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.

Labor service positions are those jobs for which applicants do not have to take a competitive examination and appointments are made on the basis of priority of registration. G.L. c. 31, sections 1, 28-29. Section 28 states, in part:

...the names of persons who apply for employment in the labor service... of the cities and towns shall be registered and placed, in the order of the dates on which they file their applications, on the registers for the titles for which they apply and qualify. The name of any such persons shall remain on such register for not more than five years. Id.

Section 19 of the Personnel Administration Rules (PAR.19), promulgated by HRD and approved by the Commission, contains the rules that apply to all labor service employees in the cities and towns covered by the civil service law.

The Commonwealth Of Massachusetts, Human Resources Division, Civil Service Unit, Delegation of Municipal Labor Service, Administrative Manual, which guides municipalities in the correct procedure for promotional appointments states, in the relevant part of Section IV(A)(Step 11):

Requisitions received for Labor Service position titles in Class II and/or Class III must first be filled by promotional procedures provided in Section 29 of Chapter 31 and PAR.19.5... If the required promotional bulletin has been posted and as a result of the posting no employees of the same or lower class are qualified and willing to accept the

position, the Labor Service Director may certify from the eligible list established for the particular position. Id.

PAR.19(5)(a), which pertains to promotional labor service appointments, states, in part, that these promotions:

...shall be made from among the same number of persons with the greatest length of service as the number specified in making appointments under PAR.09, *provided that such persons possess the required qualifications* and serve in eligible titles, as determined by the administrator. If there are less than the requisite number of persons, selection may be made from the lesser number. Id. (Emphasis added).

Assuming that no persons possess the required qualifications for a PAR.19(5) promotion, an external candidate may be hired through a departmental roster under PAR.19(2), which addresses original appointments for labor service positions. PAR.19(2) states, in relevant part:

When positions are to be filled on a permanent or temporary basis in the labor service, the appointing authority shall make requisition to the administrator ... [who] shall establish and maintain rosters for *each departmental unit*<sup>6</sup> and by appropriate class containing the names, position titles and effective dates of employment of persons appointed to ... labor service positions ... in the service of a ... municipality after certification from labor service registers. Id. (Emphasis added).

Additionally, PAR.19(2)(f) states that “the administrator may establish minimum requirements, including experience requirements, in addition to those imposed by statute for Class II and Class III positions.” Id.

PAR.19(2) also requires that “selection and original appointments shall be made as provided in PAR.09.” PAR.09 contains the “2n+1” formula which requires that appointing authorities may appoint only from among the first 2n+1 persons named in the “certification” willing to accept appointment, where the number of appointments is “n.” Applied to appointments in the labor service, appointing authorities can only appoint from among the first 2n+1 qualified persons on the labor service register.

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<sup>6</sup> PAR.02 defines departmental unit as “a board, commission, department, or any division, institutional component, or other component of a department where established by law, ordinance, or bylaw.” The DPW’s Highway Division is therefore a departmental unit.

### The Parties' Arguments

The City contends that it complied with all relevant laws and procedure and that it was impartial in determining that Mr. Martini did not meet the minimum qualifications for the HMEO vacancy, allowing them to hire a qualified external candidate from a roster. The City argues that it had sound and sufficient reasons to determine that Mr. Martini was not qualified for the position, that Mr. C. was qualified, and that it followed the correct procedures.

Mr. Martini contends that he was qualified for the HMEO position according to the internal posting at the DPW, requiring a minimum of two (2) to three (3) years of backhoe experience that could be waived. He argues that the City improperly tried to increase the minimum requirements of the position in the job posting by exceeding the job description of the Munciclass Manual. He further avers that the City improperly increased the job requirements beyond what was on the job posting by requiring that the backhoe experience had to include operation of the vehicle near either active roadways or utility lines. Mr. Martini argues that because he met the original requirements of the job posting as an internal candidate, the City was not permitted to appoint an external candidate to fill the vacancy. He further argues that the City improperly relied upon Mr. Smith's list of "incidents" of which he had no notice. He argues that this partially-dated, unsigned, list of alleged incidents of which he did not have any prior notice should not have been the basis for determining that he was unqualified.

### Analysis

The City has established by a preponderance of the evidence that it had sound and sufficient reasons to determine that Mr. Martini was unqualified for the HMEO position because his work experience does not meet the minimum qualifications for the position. Therefore, the City acted within its authority to hire the qualified outside candidate for the position.

Mr. Martini is correct that Mr. Smith's file on him should not be used to deny him a promotion since he had no notice of the issues in Mr. Smith's "incidents" document. G.L. c. 31, § 6 provides for the performance evaluation of civil service employees, providing for the appropriate measurement of performance based on merit principles that employees can contest in the event that they disagree with the evaluation. The City's separate, unrevealed "incident" list and file about Mr. Martini subverts G.L. c. 31, § 6 and violates the tenets of basic merit principles. The City cannot base its non-selection of the Appellant for promotion on information about which he had no notice. See Piersiak v. Town of Needham, 21 MCSR 605, 628 (2008)(promotion process flawed for when relying on issues that had never been mentioned to the appellant nor were in appellant's personnel file); see also Gallagher v. City of Leominster, 22 MCSR 118, 142 (2009)(flawed selection process where appointing authority relied on subjective information rather than DPW personnel file).

The City avers that it did not use the "incident" list on Mr. Martini to decide whether it would promote him to HMEO. However, it is clear that this list was at least part of the reason that a question was added to the list of interview questions specifically asking what vehicle damage the applicant may have caused. In addition, the list of "incidents" itself is highly suspect. On one hand, Mr. Smith said the purpose of the list was to deny use of vehicles to employees whom he had determined had caused damage to one of the DPW vehicles and yet he never used the list to deny Mr. Martini the use of a vehicle. In fact, Mr. Smith spoke to Mr. Martini on only *one* (1) occasion about an alleged "incident" and never gave Mr. Martini the opportunity to respond to all of the "incidents" on Mr. Smith's list. Further, Mr. Smith acknowledges that some "incidents" were not recorded contemporaneously with the alleged events, undermining their accuracy. Also, while the Commission cannot address whether the

sudden appearance of the list at Mr. Martini's grievance hearing without notice to Mr. Martini was or was not appropriate under the pertinent collective bargaining agreement, its reflection in the question about damages that was added to the list of interview questions at Mr. Smith's request was wrong under civil service law. It is true that the question was asked of all candidates but there can be no doubt that the question's origin was Mr. Smith's "incident" list on Mr. Martini and targeted him in violation of basis merit principles.

Furthermore, while the City revisited the process upon learning about an apparent conflict of interest regarding one candidate, its City's hiring process was also flawed since it does not maintain certification lists for each departmental unit as required by PAR.20(6) and PAR.19(2) for original appointments. Instead, the City concedes that it has only one (1) certification list for the entire DPW. The City must comply with PAR.20(6) and PAR.19(2) going forward.

Notwithstanding the foregoing, Mr. Martini's appeal does not succeed for several reasons. First, a preponderance of the evidence shows that Mr. Martini did not mention his backhoe experience as an MPO during his interview.<sup>7</sup> Mr. Martini's failure to bring up this important information during his interview gave the City a reason to conclude that he was not qualified.

Second, even assuming that Mr. Martini mentioned his backhoe experience during the interview, he does not meet the stated minimum qualifications of the job posting even without the requirement that the experience had to have been performed near active roadways or utilities. Mr. Martini's experience with a backhoe is confined to his thirteen (13) month deployment in Afghanistan as an MPO and his 4.5 weeks of hands-on experience at the Heavy Construction

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<sup>7</sup> Mr. Martini did not recall whether he mentioned his experience in the military digging with a backhoe during his interview. Mr. Smith stated affirmatively that Mr. Martini did not mention this experience.



Academy. Mr. Martini testified that his hands-on experience at the Heavy Construction Academy was divided among many vehicles. Thus, at most, Mr. Martini has less than fourteen (14) months of experience, whereas the job posting requires twenty-four (24) to thirty-six (36) months of experience. Mr. Martini correctly notes that this requirement could be waived at the discretion of the City. However, the City was not obliged to waive it.

Third, the City may consider the relevance of someone's purported experience operating a vehicle at least when safety is a concern. While we have no reason to doubt that operating a backhoe in the midst of a war while he was on active duty in Afghanistan was highly challenging, such experience is not analogous to digging on an active roadways or utilities. See Poske v. City of Worcester, 25 MCSR 502, 510 (2012)(outdated work experience in same field did not make candidate qualified). The City determined that Mr. Martini did not meet the qualifications for the position. Mr. Martini's lack of experience in the environment related to the job presented the risk of serious injury or death to Mr. Martini and the laborers working with him, as well as the general public.

Mr. Martini correctly noted that the job description for HMEO listed in the Munclass Manual does not match the description listed in the job posting. The HMEO licensing requirements in the Munclass Manual reference licenses which are no longer in use, however. Additionally, Mr. Martini's licensing qualifications were not a factor in the City's determination that he was unqualified. The vehicle type and weight allotment for the HMEO description in the Munclass Manual are comparable to the weight of backhoes. Experiential requirements, such as the two (2) to three (3) years of experience indicated on the job posting, are not prohibited by the Munclass Manual, provided that those requirements relate to the vehicles in the job description. Furthermore, PAR.19(2)(f) states that "the administrator may establish minimum requirements,

including experience requirements, in addition to those imposed by statute for Class II and Class III positions” for original appointment. Certain of the HRD Administrator’s duties are delegated to appropriate municipal authorities in civil service communities pursuant to PAR.20. It would be illogical and inconsistent to determine that the same does not apply to promotional appointments when there are legitimate safety concerns.

### Conclusion

For these reasons, Mr. Martini’s appeal under Docket No. G2-15-75 is hereby *denied*.

Civil Service Commission

*/s/ Cynthia A. Ittleman*

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*Cynthia A. Ittleman, Esq.*  
*Commissioner*

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on August 20, 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:

Nelson Carneiro & Joseph McArdle (for Appellant)  
Brian M. Maser, Esq. (for Respondent)