

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

**MICHAEL MICCICHE,
MICHAEL FRATUS ,
LEOUNARD GRAF IV,**
Appellants

**G1-17-154 (Micciche)
G1-17-156 (Fratus)
G1-17-170 (Graf)**

v.

**CITY OF BROCKTON
and HUMAN RESOURCES DIVISION**
Respondents

Appearances for Appellants:

Pro Se

Appearance for City of Brockton::

Karen A. Fischer, Esq.
City of Brockton Law Department
45 School Street
Brockton, MA 02301

Appearance for HRD:

Michael Downey, Esq.
Human Resource Division
One Ashburton Place
Boston, MA 02108

Commissioner:

Paul M. Stein

DECISION

The Appellants, Michael Micciche, Michael Fratus and Leonard Graf (the Appellants), each appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31, §2(b), contesting their non-selection by the City of Brockton (Brockton) for appointment as a police officer with the Brockton Police Department (BPD).¹ The three appeals were consolidated for pre-hearing

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §1.01, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

purposes and the Massachusetts Human Resources Division (HRD) was added as a Respondent, as the three appeals presented common issues of fact and law in which HRD had an interest.

The gravamen of these appeals concerns the effect of the federal court “Consent Decree” entered in the cases of NAACP v. Beecher and Castro v. Beecher, which requires certain municipalities to use a modified form of certification when filling certain civil service public safety positions, intended to rectify a past pattern of discrimination in hiring certain minorities (Black and Hispanic) that the federal court had determined to have existed in those communities. Brockton is one of these “Consent Decree Communities” that remains under the terms of the federal court Consent Decree.

Until recently, the Consent Decree required that, in issuing a certification for hiring candidates for positions subject to the Consent Decree, HRD was required to follow a “3-1 formula” (placing the highest scoring minority candidate at the top of the certification, followed by the three highest ranking nonminority candidates, followed by the next highest scoring minority candidate, then the three next highest scoring non-minorities, etc.). If a minority candidate did not sign willing to accept appointment, the next highest scoring minority would be moved up into that minority slot, so that the “2n+1” civil service formula for hiring prescribed by HRD would always have a 3-1 ratio to the extent possible.

In September 2017, on motion of the parties in the federal court action, the Consent Decree was modified to provide that HRD had the option to continue to apply the “3-1 formula” or to use the regular, unmodified “rank order” from the civil service eligible list, whichever HRD determined was “more advantageous” to minority candidates. The reason for this modification was a determination that, in some municipalities, application of the original 3-1 certification ratios, at times, had the unintended effect of moving some qualified minority candidates down,

rather than up, putting them below their place on the list based on their “rank order” scores, i.e., due to the 3-1 mandate, some minority candidates who had actually received higher scores than some non-minority candidates would up below those lower scoring non-minority candidates.

In March 2017, Brockton began the process for hiring 11 permanent full-time police officers, and HRD issued a certification to Brockton, applying the “rank order” method of compliance with the Consent Decree, determining that the rank order method was more advantageous to minorities than the 3-1 formula method. Using the certification provided by HRD, Brockton proceeded to hire 11 candidates, 10 of which were minorities. By moving up minority candidates into slots originally filled by other minorities whenever a minority did not sign willing to accept, non-minority candidates with higher scores were correspondingly bumped lower on the certification. Thus, this process allowed minority candidates with a lower “rank order” score to move ahead of a higher “rank order” scoring non-minority candidate.

As a result of the modified process, each of the Appellants, whose “rank order” score was higher than some of the hired minority candidates, would have been considered “bypassed” under the traditional interpretation of the “rank order” system. Under the modified Consent Decree approach used by HRD, however, they, found themselves out of contention and, technically, were deemed by HRD and Brockton not to have been “bypassed”, because of the way that HRD had modified the “rank order” list to comply with what it understood the Consent Decree required. They each claimed to be aggrieved by the modified method used to appoint 11 Brockton police officers and that their non-selection was a bypass under civil service law.

The Commission held a series of pre-hearing conferences on August 25, 2017, September 12, 2017 and October 13, 2017, at which time the Commission explored the issues at length with the Appellants, Brockton and HRD. As the principal tension between the Consent Decree

requirements and traditional civil service law and rules appeared to be a matter, at least initially, for consideration by the parties in the federal court proceedings, which HRD represented was on-going, a further status conference was scheduled and, eventually, continued until November 16, 2017.

On November 10, 2017, Brockton informed the Commission that it had given conditional offers of employment to all three Appellants, each of them had passed the pre-academy screenings, and all three have been accepted into the police academy scheduled this upcoming January 2018 in Plymouth. Based on this development, the November 16, 2017 status conference was cancelled.

As a result of the action taken by Brockton, there is no further relief that could be granted to the Appellants that has not already been provided to them. Accordingly, the Appellants' appeals have become moot and, acting pursuant to 801 C.M.R. 1.01(7)(g), the appeals of Michael Micciche (G1-17-154), Michael Fratus (G1-17-156) and Leonard Graf (G1-17-170) are hereby *dismissed*.

Civil Service Commission
/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on December 7, 2017.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision. 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 Micciche (Appellant)

Michael Fratus (Appellant)

Leonard Graf IV (Appellant)

Karen A. Fischer, Esq. (for City of Brockton)

Michael Downey Esq. (for HRD)