

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

NICHOLAS MENARD,
Appellant

v.

G1-17-086

CITY OF BEVERLY,
Respondent

Appearance for Appellant:

James Hykel, Esq.
Pyle Rome Ehrenberg PC
2 Liberty Square, 10th Floor
Boston, MA 02109

Appearance for Respondent:

Jesse Dole, Esq.
Assistant City Solicitor
City of Beverly
191 Cabot Street
Beverly, MA 01915¹

Commissioner:

Cynthia A. Ittleman

DECISION

The Appellant, Nicholas Menard (hereinafter Mr. Menard or Appellant), filed a timely appeal with the Civil Service Commission (hereinafter Commission) on May 1, 2017, under G.L. c. 31, s. 2(b), appealing the decision of the City of Beverly (hereinafter City or Respondent) to bypass him for appointment to the position of permanent reserve police officer. A prehearing conference was held in this case on May 16, 2017 at which time the City's Police Chief indicated that he had commenced a new hiring cycle for permanent reserve police officer at which time the Appellant would be reconsidered. In consideration thereof, this appeal was dismissed nisi,

¹ Attorney Eitan Goldberg previously represented the Respondent.

effective August 1, 2017. The dismissal also stated that if the Appellant was not appointed as part of the next hiring cycle, the Commission would consider a Motion to Revoke the Order of Dismissal Nisi, to be filed no later than August 1, 2017 seeking to reinstate this appeal for further consideration. The Appellant was bypassed a second time and he timely moved to revoke the dismissal, which request was allowed. On September 11, 2017, another prehearing conference was held. A full hearing was held on October 13, 2017 at the Mercier Community Center in Lowell.² The hearing was digitally recorded and copies of the recording were sent to the parties.³ All witnesses, with the exception of the Appellant, were sequestered. After the hearing, the parties submitted post-hearing briefs. For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT:

A total of thirty-five (35) exhibits were entered into the record.⁴ Based on the exhibits and the testimony of the following witnesses:

Called by the Appointing Authority:

- William Terry, Capt., Beverly Police Department (BPD)
- John LeLacheur, Chief, BPD

Called by the Appellant:

- Nicholas Menard (Appellant)

and taking administrative notice of all matters filed in the case; stipulations; pertinent statutes, case law, regulations, rules, and policies; and reasonable inferences from the credible evidence; a

²The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR ss. 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31 or any Commission rules taking precedence.

³If 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 the substantial evidence, arbitrary and 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.

⁴ Respondent's Exhibits (R.Ex.) 1 – 3B, 4 through 8A and 8C – 21; Appellant's Exhibits (A.Ex.) 3C, 8B, 22 and 23; and exhibits ordered at the hearing and entered post-hearing as R.Exs. 3D (signed Certification 03797), 6E, 7F, 8D, 8E (signed Certification 04365), 11E, 13E, 14E, 15E, 24, 25 and 26. R.Exs. 24-26 are affidavits of Capt. Hegarty, Sgt. Backstrom and Officer Skerry identifying their interview notes among the Exhibits.

preponderance of the evidence establishes the following facts:

Background

1. The Appellant took and passed the 2015 civil service police officer exam. At the time of this appeal, the Appellant was a firefighter in Cambridge for approximately eight (8) years and a licensed EMT for approximately thirteen (13) years. (Testimony of Appellant)
2. Chief LeLacheur is the appointing authority for hiring police officers at the BPD. Prior to his appointment as Chief of the BPD in 2013, the Chief was a police officer in New Hampshire and a state police officer in New Hampshire. (Testimony of LeLacheur)
3. In the hiring of reserve police officers in 2016 and 2017 from the 2015 civil service police officer exam, Chief LeLacheur was interested in hiring candidates who had already received police academy training because it saves the City money and he was interested in hiring candidates who had experience in law enforcement. In addition to attending the reserve police academy, new hires receive field training, working with members of the BPD. The Chief was concerned that the number of reserve police officers in the BPD was low compared to the number that was authorized. (Testimony of LeLacheur)

Certification 03797

4. Capt. Timothy Hegarty was in charge of civil service matters in the hiring process at the BPD at pertinent times here. (Testimony of LeLacheur) Capt. Hegarty asked the state's Human Resources Division (HRD) for a certification of candidates for reserve police officer who passed the 2015 police officer exam. (Testimony of LeLacheur; R.Ex. 3D).

5. HRD issued Certification 03797 on May 12, 2016 to hire nine (9) reserve police officers, which indicated that the deadline for making appointments was August 4, 2016. Interested candidates signed Certification 03797. Among those who signed this Certification, the Appellant was ranked 14th (tied at 11). (R.Ex. 3D)
Capt. Hegarty and then-Lieut. Terry conducted the candidates' orientation. During the hiring process involving Certification 03797, candidates submitted applications and background investigations were to be completed by Capt. Hegarty, Officer Boccuzzi and Det. Barror. However, Capt. Hegarty was then replaced by Capt. Terry in the hiring process involving Certification 03797. Investigators met with candidates to conduct Initial Candidate Interviews and completed the related form, checked the candidates' personal and professional references, questioned the candidates' neighbors, and checked, among other things, the candidates' employment, credit, criminal and driver records. Det. Barror conducted the Appellant's background investigation. (Testimony of Terry and LeLacheur)
6. As indicated in the Appellant's application, the Appellant,
 - attended college;
 - is a certified paramedic;
 - has been an EMT instructor;
 - has been a Cambridge firefighter for approximately a decade;
 - is a Rescue Diver;
 - is a boat operator for a Fire Department Marine unit,
 - is a hazmat technician;
 - is studying for an M.A. in Human Resource Management for Emergency Services;
 - has very positive references, including a positive reference from a Sgt. in the Cambridge Police Department Bomb Squad with whom the Appellant works;
 - has had no incidents on his adult driver's record for approximately twenty (20) years;

was charged with being a minor in possession of alcohol more than twenty (20) years ago;
lives in Beverly with his wife and children; and
has a fair to poor credit history.
(Exs. 6A – 6E)

In addition, the Appellant works with the State Police on hazmat cases, addressing related chain of custody matters. The hazmat training is six (6) weeks long. The Appellant has also attended a number of training sessions with the State Police lab. He attends semi-annual training to work with the police bomb squad. The Appellant has also taken training courses for firefighters to use police equipment. Further, the Appellant is licensed to carry a gun and is the Cambridge Police Department SWAT medic, which requires that he be able to carry a gun. He writes fire reports and has testified in court three (3) times in connection with his work. In connection with his diver certification, the Appellant has trained with the environmental police. In addition, the Appellant administers NARCAN to people who have overdosed and has taught others how to use it. Finally, the Appellant has also worked with Massport. (Testimony of Appellant)

7. Question 19B of the application asks if the candidates have any experience as a police officer or firefighter, or in law enforcement more generally, whether as an intern, volunteer or a member of such a department, and whether the candidates have attended any police academy, providing a section for candidates to explain. (R.Ex. 6A) The Appellant checked “no” for each of these questions even though the Appellant indicated elsewhere in his application that he is a firefighter with experience working with police. (Id.; Administrative Notice)
8. After conducting background investigations, the Respondent also conducted formal interviews of candidates in relation to Certification 03797. Chief LeLacheur decided that

the candidates' performance at the formal interview would account for 75% of the candidates' final score and their rank on the signed Certification would account for 25% of their score. The interviews involved nine (9) questions, the responses to which each interviewer was to grade the candidates from 1 to 5 (with 5 being the highest score) and rankings for appearance, presentation and preparation (each of which were graded from 1 to 10). In October 2016, the following members of the BPD interviewed certain candidates, including the Appellant: Det. William Barror, Capt. William Terry (then-Lieutenant), and Officer Michael Boccuzzi. (Testimony of LeLacheur) Capt. Terry is the third generation of his family serving in the BPD. (Testimony of Terry) The three (3) interviewers collectively scored each candidate's answer to each question. Each interviewer also wrote a few words about the candidates' answers to the questions.

(R.Exs. 6D, 9, 11D, 13D, 14D, 15D and 16)

9. Capt. Terry testified that Menard did not have an impressive interview, that the Appellant's answers were not well thought out and were not applicable, without stating how they were inapplicable. (Testimony of Terry)
10. The interviewers also interviewed Candidate A. (Testimony of Terry) Candidate A's name appears four (4) names below the Appellant on Certification 03797. (Administrative Notice; *see also* R.Exs. 3B, 3D, 3E and 8E; A.Ex. 3C)
11. In response to the interview question about the primary duties of a reserve officer, the Appellant stated that it involves keeping the community safe and protecting patrol officers, for which he received a below average score, and the City alleged that the Appellant did not provide details. (R.Ex. 6D) Candidate A answered the same question referencing a complement patrol, working lots of hours and being prepared, lacking

detail, and, yet, Candidate A received an above-average score. When asked about meeting training requirements, both Candidate A and the Appellant answered that they work full time but the Appellant suggested that his work schedule could be flexible to accommodate the training. For his response, the Appellant received an average score and Candidate A received an above average score. When they were asked if there was anything to disclose, both the Appellant and Candidate A said there was nothing but the Appellant received a 4 and Candidate A received a 5. With respect to 30 points available in the interview for “general impression”, Candidate A received a score of 30 and the Appellant received a score of only 21. (R.Exs. 6D, 7D, 4, 9 and 16) However, there is no indication on the interview form what criteria were to be used in scoring the candidates’ in this regard. (Administrative Notice) Capt. Terry testified that Candidate A had an impressive interview. (Testimony of Terry)

12. The interviewers each gave the Appellant a score of 48 out of a possible 75 points, giving him one of the lowest interview scores of candidates who were interviewed in connection with Certification 03797. (R.Ex. 4)
13. The Respondent hired nine (9) candidates in connection with Certification 03797, not including the Appellant. All but one of the selected candidates had higher interview scores than the Appellant. One selected candidate, Candidate B, ranked above the Appellant on the Certification but had the same interview score as the Appellant. (R.Exs. 3A, 3D, 4, and 8C)
14. Candidate A received an interview score of 68 out of 75, the second highest interview score. There is no indication in the record how Candidate A was dressed for his interview. Only two (2) members of the BPD interviewed Candidate A: Capt. Terry and

Det. Barror. (R.Ex. 7D) As Candidate A indicated in his application, his uncle is BPD Capt. Timothy Hegarty and Candidate A's cousin is an officer at the BPD. In response to the application essay question about why the candidate wants to be a police officer, Candidate A wrote that, while growing up, he was inspired by his uncle, Capt. Hegarty. (R.Ex. 7A) Capt. Hegarty is listed as the BPD contact for HRD on Certification 03797, as well as on subsequent Certification 06435. He gave the orientation presentation to the candidates who signed Certification 03797 and he participated in the hiring process related to Certification 04635 by interviewing other candidates and attending a meeting with Chief LeLacheur and others to discuss the interview rankings. (Exs. 3D, 8E, 11D, 13D, 14D and 15D; Testimony of LeLacheur; Administrative Notice)

15. Candidate A has worked at the police department of a nearby municipality as a patrolman (though not fulltime), a reserve officer, and an auxiliary officer since 2007. He has completed the academy for reserve and fulltime officers. Candidate A reported no discipline during his police officer experience but he had a minor car accident at work on one (1) occasion and an incident involving a citizen in a traffic matter. The police department of the nearby municipality found no wrongdoing on the part of Candidate A regarding the traffic matter but the citizen sued the municipality. Candidate A has not attended college, his credit record contains no delinquent accounts, he has no criminal record, no civilian driving incident since 2007, he has attended numerous police training programs, and he was in the military police. (Exs. 7A – 7F)⁵

16. By letter dated February 27, 2017, Chief LeLacheur informed the Appellant that he had been bypassed. The letter did not list any negative reasons for bypassing the Appellant but listed the reasons that the Respondent selected Candidate A. (R.Ex. 1)

⁵ Candidate A received an honorable military discharge following a physical disqualification. (R.Ex. 7E)

Certification 04635

17. Capt. Hegarty requested the next Certification from HRD and received it on May 12, 2017. This new Certification authorized the BPD to hire nine (9) additional reserve police officers, indicating that the deadline for making appointments from this Certification was August 4, 2017. (R.Ex. 8E) However, Chief LeLacheur testified that he only wanted to hire six (6) candidates, in addition to those hired in connection with Certification 03797. On Certification 04635, the Appellant was ranked 4th among those who signed it. (R.Ex. 8E) On a separate document also marked Certification 04635 and dated May 12, 2017, is a list of two (2) candidates' names (Candidates G and H), both of whom signed this two (2)-person list. (Id.; Testimony of LeLacheur)
18. In considering candidates on Certification 04635 who had been on the prior Certification, the BPD updated their background investigations. (Testimony of LeLacheur)
19. Capt. Hegarty, Sgt. Backstrom and Officer Skerry conducted the interviews of candidates pertaining to Certification 04635. (Testimony of LeLacheur) Capt. Hegarty participated in the interview of Candidate C, who listed Capt. Hegarty (and the Captain's son, who is also a member of the BPD) as a reference in his application and listed him among eight (8) members of the BPD whom he has known for well more than a decade. (R.Ex. 11A and 11D) The questions asked for this Certification were different from the questions asked of candidates on Certification 03797, given that some of the candidates had been interviewed in consideration under Certification 03797. (*See, e.g.* R.Ex. 13D) Like the interview process for Certification 03797, the interviewers regarding Certification 04635 discussed what score to assign to each candidate's answer and took few notes. (R.Exs. 9 and 16) Chief LeLacheur, who observed these interviews (but not the interviews of

candidates relating to Certification 03797), assigned a letter grade to each candidate as follows:

Candidate E received a B+.
Candidate M received an A;
Candidate P received a C+;
Candidate S received an A;
Candidate T received a B+;
Candidate W received a C;
Candidate Y received a B-; and
the Appellant received a C.
(R.Ex. 16)

After the interviews, Capt. Hegarty, Sgt. Backstrom and Officer Skerry met with Chief LeLacheur to discuss the candidates on Certification 04635. (Testimony of Chief LeLacheur) However, for the hiring process under Certification 04635, the interview accounted for 50% of the candidates' final scores and the candidates' civil service exam ranking counted for 50% of the candidates' final scores, instead of the 75% weight given for interviews and 25% weight for rank on the civil service exam used in consideration of candidates under Certification 03797. The resulting rank, combining the candidates' civil service ranking with their oral interview scores, placed the Appellant 7th out of 9 candidates interviewed in connection with Certification 04635. (Testimony of LeLacheur; R.Exs. 9 and 16)

20. At the Commission hearing, when he was asked if the Appellant had any law enforcement experience, Chief LeLacheur testified that he "was told" that the Appellant did not. (Testimony of LeLacheur (Recorded Testimony at 1:51) However, the Chief also testified that he had reviewed the candidates' files. (Testimony of LeLacheur) The Appellant's file included his application, which, at a minimum, included a reference from the Cambridge Police Department Bomb Squad Sergeant with whom the Appellant

works. (Exs. 6A – 6E) Chief LeLacheur also testified, in effect, that his decision not to appoint the Appellant was based on a personal feeling. (Testimony of LeLacheur)

21. Asked why he only hired four (4) reserve officers in connection with Certification 04635 when he had testified that he needed six (6), Chief LeLacheur stated that he did not think that the other candidates were qualified. (Testimony of LeLacheur)

22. In connection with Certification 04635, the Respondent hired four (4) candidates, all of whom ranked below the Appellant on this Certification: Candidates C, D, E, and F. (R.Exs. 8A and 8E) Three (3) of the four (4) selected have relatives in the BPD, one (1) of whom is a superior officer; two (2) of the candidates are related to one (1) member of the BPD. The fourth (Candidate C) lists eight (8) members of the BPD he knows personally, knowing most of them for at least a decade. (R.Exs. 11A – 11E, 13A – 13E, 14A – 14E, 15A – 15E) The successful candidates’ interview scores were:

<u>Candidate</u>	<u>Score - 03797⁶</u>	<u>Score – 04635</u>	<u>Chief’s Score – 04635</u>
C	9 th out of 17 (interviewer noted “numerous involvements W/ BPD” (R.Ex. 4))	highest of 9	A
D	12 th out of 17	4 th highest of 9	B+
E	(not on this Cert.)	2d highest of 9	A
F	16 th out of 17	3 rd highest of 9	B+

(R.Exs. 3A, 3B, 3D, 4, 8A, 8D, 8E, 9, 11D, 13E, 14E, 15E, 16, 24, 25 and 26; A.Ex. 8B)

23. The backgrounds of the four (4) candidates who bypassed the Appellant in connection with 04635 are as follows:

⁶ The record does not include the question forms used in the interviews of Candidates C, D and F, the interviewers’ written notes on the question forms indicating the candidates’ responses and their reactions to them, or the initials of those who actually conducted the interviews in connection with Certification 03797.

Candidate C

- scored highest on the interview;
- earned a BA in Criminal Justice in or around 2014;
- in 2015, he began employment as a Correction Officer at a County Sheriff's Department; prior to that he was employed by a moving company;
- his driver's history includes surchargeable accidents in 2013 and 2017, multiple notices of license suspension and payment defaults in connection with citations for speeding and lane violation for which he was found responsible, in 2012 he was charged with refusing a breathalyzer test in another state and he lost his license but it was reinstated in 2013, and he was required to take a national safety course for incurring multiple incidents within two (2) years;
- his CORI indicated that in September 2014, he was charged with "operating after", which was dismissed after he paid certain fines; and
- his credit history indicates that, of eight (8) accounts, three (3) would be considered negative and five (5) were accounts in good standing.
(Exs. 11A – 11E)

Candidate D

- attended some classes at a community college in 2012;
- has been working at Police Department nearby for five months as a reserve police officer, for which he attended a reserve police academy;
- has been an Assistant Harbor Master in multiple locations. In one such Asst. Harbor Master job, he worked with Candidate E (whose father is a BPD superior officer);
- has a driver's history that includes accidents in 2010 and 2016; and
- has a credit history that is ranked as "good".
(Exs. 13A – 13E)

Candidate E

- earned a BA in Criminal Justice in 2015;
- began employment as a college campus police officer in June 2016, after completing a reserve police academy;
- has been an Assistant Harbor Master in two (2) municipalities;
- used marijuana in high school;
- completed a summer internship at BPD in 2014;
- has no CORI or driver history; and
- has credit rated as "fair".
(Exs. 14A – 14E)

Candidate F

- earned a BA in Criminal Justice in 2015;
- began employment as a reserve officer at a Police Department nearby in June 2015 after completing a reserve officer academy;
- has been an Assistant Harbor Master;

- completed a three-month internship at Police Department nearby in 2014;
 - completed a one-month internship at the BPD in 2012 (in college);
 - had been involved in a physical fight in or about 2010. The parents of the victim declined to file criminal charges against Candidate F and others in view of the injuries their son sustained, which required two surgeries, but submitted an undated letter strongly opposing Candidate F's candidacy for the position of reserve police officer;
 - there was no CORI or driver history found for this candidate; and
 - his credit is rated "fair".
- (R.Ex. 15A – 15E)

24. By letter dated August 2, 2017, Chief LeLacheur informed the Appellant that he had been bypassed again. The letter did not list any negative reasons therefor but stated simply that after the background check, interview, reserve academy experience and law enforcement experience the best candidates were selected: Candidates C, D, E and F. (A.Ex. 23)

25. By letter dated September 25, 2017, Chief LeLacheur again wrote to the Appellant stating that he had been bypassed by Candidates C, D, E and F, this time listing their reported qualifications. This letter also states incorrectly that the Appellant has no law enforcement experience and, although he has not completed the reserve police academy, he has received certain law enforcement training for his work with the State Police and the Cambridge Police Department. (R.Exs. 2 and 6A – 6D; Testimony of Appellant; Administrative Notice)

26. The Appellant timely filed the instant appeal. (Administrative Notice)

Applicable Law

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." City of Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 304 (1997). 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, s. 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 the 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 Commission, 31 Mass.App.Ct. 315 (1991).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. 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, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

Civil service basic merit principles are defined, in part, as follows:

... (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; ... (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

(G.L. c. 31, s. 1)(emphasis added)

Analysis

The Respondent has failed to establish by a preponderance of the evidence that it had reasonable justification to bypass the Appellant. The hiring processes used here, resulting in the selection of four (4) out of five (5) candidates being related to members (including superior officers) of the BPD, were based on unduly subjective and fluid methods of assessing the candidates, in addition to factual inaccuracies and processes that are inconsistent with the basic merit principles of the civil service hiring process.

Capt. Hegarty was at least partly involved in the hiring process when he should not have been involved at all. Capt. Hegarty gave the orientation presentation to candidates related to Certificate 03797. He is also the person who requested both Certifications 03797 and 04635. Although he removed himself from performing background checks at some unknown time and he did not interview the candidates when his nephew (Candidate A) was being considered in connection with Certification 03797, he was clearly involved in the hiring process relating to Certification 04635, interviewing candidates in connection with Certification 04635 (including Candidate C, who listed Capt. Hegarty as a reference and who is one of many members of the BPD whom Candidate C has known for many years), and meeting with Chief LeLacheur and others after the interviews to determine how the candidates would be ranked. By obtaining Certification 04635, the appointing authority was able to reach Candidates D, E and F, all of whom have relatives in the BPD and to reach Candidate C.⁷

The interviews under both Certifications were flawed in a number of ways. First, interviewers did not grade the candidates separately. Rather, they discussed and agreed upon a group score of each candidate's answer to each question, undermining the effect of having

⁷ Candidates C, D and F had been rejected under certification 03797, with interview scores in the bottom half of those who were interviewed. Curiously, under certification 04635, Chief LeLacheur lowered the weight assigned to the candidates' interview scores from 75% (under certification 03797) to 50%.

multiple interviewers. Also, the interview processes for the two Certifications were different in that Chief LeLacheur sat in on the interviews related to Certification 04635 while he did not do so in the interviews related to Certification 03797. Further, similar responses to the same questions by different candidates were scored differently with no apparent reason.

The hiring process was also flawed in that the Respondent inaccurately concluded, despite clear evidence to the contrary, that the Appellant had no law enforcement experience. Even looking just at the Appellant's application, it was clear that he is a firefighter with years of experience, he is a Paramedic, and that one of his references is in charge of the Cambridge PD Bomb Squad who works with the Appellant. At the Commission's hearing, the Appellant underscored that although he has not attended a police academy per se, he has had a number of police-related trainings in order to be able to work with the CPD Bomb Squad and the State Police regarding hazardous materials, he has been trained with regard to the evidentiary chain of evidence rules and has testified in court. In addition, the Appellant indicated that he has treated people suffering from drug overdoses with NARCAN and he has trained others to use it, a scenario with which police are no doubt confronted all too often.

A hiring process is flawed when, as here, it fails to adequately consider the background of each candidate. One of the candidates who bypassed the Appellant in connection with Certification 04635 has a recent poor driving record. Another candidate who bypassed the Appellant was involved in a fight in high school, only five years prior to the civil service exam involved here, in which the victim was beaten such that he required two surgeries. In addition, while the Respondent indicated that it preferred to hire candidates with law enforcement experience, three of the four candidates selected in connection with Certification 04635 had only graduated from college in 2014 or 2015 and, thus, they had limited law enforcement experience

since then. In fact, the Respondent considered as law enforcement experience the brief BPD internships of two of the candidates (Cert. 04635), which candidates are related to members of the BPD. Finally, a hiring process is flawed when, in addition to these errors, an appointing authority bypasses a candidate based on a personal feeling.

Conclusion

Accordingly, for the above stated reasons, the bypass appeal of Mr. Menard, Docket No. G1-17-086, is hereby ***allowed*** and, 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, the state Human Resources Division, or the City of Beverly in its delegated capacity, is ordered to place the name of Nicholas Menard at the top of future certifications for the position of permanent reserve police officer within the City of Beverly Police Department until he is appointed or bypassed. In the event that the City chooses not to appoint reserve officers, the Appellant's name shall be placed at the top of the next certification issued to the City for the position of permanent full-time police officer in Beverly.

Civil Service Commission

/s/Cynthia A. Ittleman

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 20, 2019.

Either party may file a motion for reconsideration within ten days of the receipt of the Commission's decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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:

James Hykel, Esq. (for Appellant)

Jesse Dole, Esq. (for Respondent)

Michele Heffernan, Esq. (HRD)