Gardner Officer Tried Out Taser and a Smack in the Face For Medical Treatment

Somerville Flubs Another Disciplinary Case—Division Commander Skates

Abington Bypasses Candidate for Being Brazilian—Or Is It For Being a Scofflaw? And is Chief Majenski a Liar?

Boston Loses Two Bypasses—One for Language Proficiency and One for a Stale CWOF

Ex-Revere Police Chief Not Getting Back His Tenured Lieutenant Post Any Time Soon

This last couple of months have brought us a number of significant bypass appeal cases that we would like to share with you along with disciplinary appeals involving a Gardner officer discharged for aiming his Taser at an out-of-control patient at a local hospital and then smacking him in the face. A Somerville lieutenant managed to get the Civil Service Commission to set aside a five-day suspension for harassing other employees where the City did a lousy job proving the case. A dispatcher in Methuen was not as lucky but did get her suspension for incompetence reduced from five to two days after convincing a Division of Labor arbitrator that the botched call at issue did not merit emergency treatment. There were also a number of cases where officers contested the denial of E&E credits for time served as a state trooper in Connecticut and for bungling on-line applications by failing to follow instructions. And former Revere Police Chief Joseph Cafarelli, who apprehended the Marathon bomber, was told to take a hike in his effort to be reinstated in his former position as a lieutenant.

Taserman from Gardner

Joseph Wolski wasn't exactly a babe in the woods. He had served as a police officer in Gardner since 2007, and before that he had done stints with the Winchendon PD and the Mass Environmental Police. And there were also the five years he spent in the USAF as a military police officer.

But December 28, 2016 had been a long day for Wolski and his partner Derek Ferreira. At around 1:00 PM they got a call about a male under the influence of drugs and alcohol threatening suicide. They arrived on the scene to find the gentleman totally out of control and a struggle ensued during which Ferreira injured his hand. Eventually they got this deranged citizen under control and dragged him off to the local hospital where ER personnel calmed him down. But soon enough he was acting up again. In a room nearby, another patient was also going berserk. Both officers took turns chatting with this patient, but eventually Wolski went into his room, pulled his Taser, and began to threaten him with bobbing and weaving motions. When the patient tried to raise himself from the bed, Wolski gave him a smack in the face with his hand. All of this was witnessed by hospital personnel.



"NO COPAY FOR *THIS* TREATMENT."

Later in the day, Wolski sealed his fate by boasting about the incident in texts to his partner. The hospital security adviser didn't appreciate Wolski's conduct at the hospital and reported the incident to Gardner Chief of Police Neil Erickson. And he jumped on it.

After the usual dissembling and denials by Wolski and his partner, the truth eventually came out. Wolski was immediately suspended and terminated soon thereafter by the Mayor. Wolski did not have much of a disciplinary record but there were hints of a certain lack of self-control. In 2012, he received a written reprimand over two incidents, including one where he took off his badge to "meet the challenge" of a civilian that confronted him physically. He also was suspended for a day in 2016 for escalating a verbal confrontation with a department store employee in the presence of an intern. And then there were the three days of volunteer work his Chief made him perform in lieu of suspension during the same year arising out of some improper inquiries Wolski made to another police department regarding an ongoing State Police murder investigation.

Wolski was essentially done in by his partner Ferreira's testimony recounting the whole sorry story at the hearing, after which the Commission unanimously affirmed his discharge. *Wolski* v. *City of Gardner*, 31 MCSR 81 (2018).

Somerville Flubs Another Disciplinary Case

It doesn't seem possible to get an issue of this publication out the door without something coming up that involves the city of Somerville. Well, here we go again. Lieutenant Michael Mulcahy has been employed with the Somerville PD for 30 years. He still is. Since 2015, he has served as the Department's Administrative Lieutenant (Division Commander of the Patrol Division) and shift commander of overall patrol operations. In 2016, Somerville's then Chief Nic Malmstrom slapped Mulcahy with a five-day suspension for harassing his subordinates and co-workers after a number of complaints had been filed against him. Mulcahy was accused of making derogatory and slanderous remarks about members of a dispatcher's and police sergeant's family. (Accusing their deceased father of driving "dead people" to the polls, for example) Another complaint was filed against him for spreading rumors that a police sergeant was being investigated by the "Feds." Mulcahy had been previously called out by his captain for his big mouth. The captain warned him in a 2015 letter to stop harassing a Somerville police sergeant and his girlfriend.

Somerville hired two investigators to look into the charges against Mulcahy. One of them was Lieutenant Timothy Mitsakis, the Lieutenant assigned to the Office of Professional Standards. The other was Alfred Donovan, a former Tewksbury Police Chief, now retired, who peddles his services as a police conduct investigator under the rubric of APD Management. Together these two submitted an investigative report that they claimed "sustained" the accusations against Mulcahy. Commission Chair Christopher C. Bowman later found the cover letter of this report "hard to follow"—not a good start from a consultant. The City then held a local disciplinary hearing. Incredibly, neither at the local hearing nor at the Commission hearing did the City bother to present the testimony of witnesses charging Mulcahy with harassment. They only submitted the report prepared by Donovan and Mitsakis. Pure hearsay, of course.

As a result, the Commission granted Mulcahy's appeal and annulled the five-day suspension. At hearing, Mulcahy presented a plausible defense of his innocence which Chairman Bowman wrote he might have chosen not to believe had Somerville bothered to present some witnesses. (The recorded testimony of some of the witnesses submitted to the Commission after the hearing, *at its request*, did not change any minds.)

Reading between the lines, it seems pretty clear the Commission didn't think Mulcahy was any kind of angel. But Somerville did such a pathetic job presenting its case, the Commission had no choice but to toss out the suspension. *Mulcahy* v. *City of Somerville*, 31 MCSR 134 (2018).

LIKE WHAT YOU SEE?
THERE'S MORE!

Methuen Police Dispatcher Screwed Up—But Not That Badly Suspension Reduced from 5 to 2 Days

After finding that the City had failed to show just cause for one of the two charges that it relied upon to impose a five-day suspension, an arbitrator for the Department of Labor Relations reduced a five-day suspension imposed by the City of Methuen on a police dispatcher, Sherri Ventrillo, to two days. The arbitrator ruled that although the dispatcher had violated one section of the Dispatch Operations Manual relating to the obligation to contact a caller to inform him of a delayed response time, the New England Police Benevolent Association was able to establish that this infraction was of diminished importance because the situation could not be classified as an emergency. In this case, the dispatcher had verified that no one had sustained any injuries.

Ventrillo had taken a call from an individual reporting a road rage incident in a Market Basket parking lot but failed to inform the caller once she knew that the officer who had been dispatched was delayed. The caller had reported that the operator of a gray pick-up truck had been driving erratically, almost struck his wife, and had attempted to start a physical altercation before driving off. The officer did not arrive on the scene until 40 minutes later and could not locate the caller. The City had originally become aware of the incident through a *Facebook* post criticizing the Department's response to the call. Although the dispatcher had been subject to a prior two-day suspension in 2013, the Arbitrator ruled that the City's failure to meet its burden of proof with respect to both charges required the reduction of the discipline from five to two days. *City of Methuen and New England Police Benevolent Association Local 117 (Arbitrator's Decision)*, 44 MLC 202 (2018).

Bypassed for Impersonating a Doctor

We don't know much about Michael Lewis, a candidate for appointment to the Boston police, except that he hails from Trinidad and Tobago, briefly attended Merrimack College, and wound up being ranked at number 76 on a 2017 certification that resulted in 130 appointments. He was 38 years old at the time of the Commission hearing, making him a bit on the elderly side for a law enforcement debutant. From 2010 to 2014, he worked as a surgical coordinator at a Boston hospital. He never received any medical training and got fired from that job for signing a doctor's name to a form authorizing a minor eye dilation procedure for a patient who was thereafter to undergo major corneal surgery. The medical office in question was a very busy one and Lewis took the liberty of signing the form



for the doctor, assuming that he had an "implied" agreement with her to take charge in these situations when green lighting such minor dilation procedures. When one of these minor procedures did not go well, and the patient complained, management discovered Lewis had acted on his own and canned him.

The BPD Roundtable reviewed Lewis's candidacy and decided to bypass him for appointment. The panel concluded that he had shown poor judgment, violated hospital policies, and suffered from a lack of credibility and truthfulness. It did so despite a letter submitted by the doctor that stated her strong disagreement with the hospital's decision to terminate Lewis, praised his competence as an employee, and said she would hire him again on the spot since he was the best admin she had ever had.

The Commission dismissed Lewis's appeal, finding that BPD had carefully reviewed Lewis's application and done a sufficient background investigation—despite the complete lack of cooperation from the hospital. The bypass was made for a valid reason as truthfulness is an essential quality for a law enforcement official and Lewis did not have the authority to sign for the doctor. Commission Chair, Christopher C. Bowman wrote that he, for one, was "stunned" to review the letter from Lewis's former boss, a highly accredited doctor, that sought to minimize the candidate's actions. *Lewis* v. *Boston Police Department*, 31 MCSR 148 (2018).

LIKE WHAT YOU SEE?
THERE'S MORE!

Bypassed for Exaggerating Spanish Language Skills

In contrast to the prior case, the Commission hammered the BPD in the following two appeals and reversed its bypasses by unanimous votes.

Paul Dabene was a 24-year-old candidate from the North End who was bypassed for untruthfulness, but in his case, it arose from his supposed exaggeration of his Spanish language skills on a cadet application. Dabene was a budget examiner for the Massachusetts State Police when he applied to the BPD for appointment in 2015. On his cadet application, Dabene indicated that his skill level for reading Spanish was "good" but his reading and writing skills were only "fair." That would seem to be a reasonable response given that he had taken four years of honors Spanish in college but had not had much opportunity to use the language since.

The three choices on the form were fair, good, and excellent. When he was interviewed by BPD, the interview was conducted by Detective Rafael Antunez (whose Spanish is excellent). Antunez asked him "Que hicistes hoy?" or "What did you do today? Although Dabene understood the question, he was unable to formulate a response to it in Spanish. This was, to say the least, embarrassing. Dabene was not offered a cadet position (Boston never told him why).

But he scored very well on the 2015 exam, receiving a score of 91, and put in another application for an original appointment as a police officer. Only on this one, he did not list any fluency in Spanish. When reviewing his application, the Department noticed the discrepancy and asked him about it. He said that his interview with Detective Antunez had shown how rusty his Spanish had become and, despite all his course work in college, he did not feel comfortable listing it as an additional language. The Roundtable went on to bypass him, essentially concluding that he had lied about his proficiency on the first police-cadet application.

In reversing the bypass, the Commission pointed out Boston's lack of any standards for objectively measuring foreign language fluency and the contradictory testimony offered by BPD officials at hearing as to how the candidate should have filled out his application. Chairman Bowman asked BPD witnesses at the full hearing how he, Bowman, should fill out a BPD application given that he had four years of high school Spanish, could count to ten, and could ask the question "Tu tienes agua?" At first, officials (unnamed) said he should fill it out at a proficiency level of "good." But on further reflection, they said they were not sure, acknowledging that the question of proficiency is highly subjective and there were no guidelines in place.

BPD has recently changed its application form, warning applicants that they may be tested on their ability to speak a foreign language during the interview process. *Dabene* v. *Boston Police Department*, 31 MCSR 143 (2018).

LIKE WHAT YOU SEE?
THERE'S MORE!

Bypass for Long Long Ago Felony CWOF

The Commission smacked down another Boston bypass in *Stylien* v. *Boston Police Department,* 31 MCSR 154 (2018). That case involved one Alex Stylien, an African-American candidate bypassed for an ancient felony CWOF and his less than perfect, but hardly disqualifying, driving record. Stylien is 36, fluent in Haitian Creole, married with one child, and works as the Head Case Worker at a Boston special-education day school. During his 11-year tenure at this school he has taken exactly one (1) sick day and was described by his supervisor as someone who meets his responsibilities and can be counted on.

Stylien went to Mount Ida College and worked at an Abercrombie and Fitch retail store to help pay his way. In 2002, approximately 16 years ago, two of his friends came into the store and left with $281.90 worth of stolen merchandise…a heist facilitated by Stylien who took the security tags off the items and did not require his buddies to pay. Stylien admitted to felony larceny (over $250) and the case was dismissed after a year of probation. In 2018, Stylien filed a motion for a new trial in the matter and the judge, at the stipulation of the parties, withdrew Stylien's 2002 admission and again dismissed the case.

How police departments should handle candidates with an ancient felony CWOF has been a longstanding matter of contention with the Commission. Essentially, police chiefs can take these stale CWOFs (and the conduct in question) into account when reviewing candidates but cannot use CWOFs to automatically disqualify candidates. And in this case, says the Commission's decision, it was particularly inappropriate for Boston to give Stylien the boot because the CWOF was stale (16 years old) and was not shown to be accompanied by any kind of pattern of criminal behavior. It was a one-off; and Stylien has been law abiding ever since.

As to Stylien's driving record it really wasn't particularly bad and far better than other candidates that Boston has allowed to join the force. Stylien's record over the last 10 years included one speeding violation, one minor safety violation, and a "failure to stop" that led to a surchargeable accident. Given that Stylien has a special 7D drivers license that allows him to drive students to school daily through Boston's convoluted roadways during rush hour, the Commission did not think that his record showed any kind of pattern of poor driving warranting a bypass. The takeaway from this is that the Commission will look at the candidate's driving history in the context of where the candidate has been driving and how many hours a day he is on the road. It will also assign more significance to infractions that are more recent.

Bypassed For Being Brazilian or Less Than Law Abiding? Only Abington Knows for Sure

Abington is located in Plymouth County and has around 16,000 residents. It is basically a bedroom community with little commercial or industrial activity. As of the last census in 2010, the inhabitants were carried as 92.5% white. Hispanics or Latinos of any race were less than 2% of the population.



Chief David Majenski

One of them, Joao Paulo Leite Pereira de Araujo, looked like a pretty good candidate to become an Abington police officer. He was in his early 30s, married with two kids, owned a house in town, and had been working corrections for Norfolk County for the last five years where he had received several letters of recommendation and multiple evaluations rating his performance as good to excellent. He was first in his class at the Norfolk Sheriff's Department Corrections Academy, a defensive tactics instructor, and a new recruit trainer. He practiced Jiu Jitsu and had received a number of awards for his excellence in that sport. And he spoke Portuguese fluently and Spanish well (really). His statement in his application for appointment as a full-time police officer says, "I have two beautiful daughters who will grow up in the Town

of Abington. I want to make my girls proud, and serve and protect the community we live in." Not bad.

Araujo had the right to a review process conducted in a fair, impartial manner, free of personal or political bias. But according to the Commission, he sure did not get one from Abington Police Chief David Majenski and Deputy Police Chief Christopher Cutter. At first, things went along swimmingly. Araujo had already been appointed a volunteer Special Police Officer and received favorable reviews for his performance. He scored high enough on the exam to be ranked 8th out of 14 (not too shabby for a nonnative speaker). Abington was looking to appoint three new officers so, after a few candidates dropped out, his chances looked pretty good. That is before Deputy Chief Cutter started investigating his immigration status.



Deputy Chief Christopher Cutter

Araujo, Cutter discovered, grew up in Brazil. He came to the US on a B2 visa in 2001, decided he liked the country, and became a temporary resident in 2005. He picked up a green card in 2007 and became a US citizen in 2009. After digging around a bit, Cutter discovered that, in all probability, Araujo unlawfully overstayed his original B2 visa and failed to report his income to the IRS for a period of three years after he first arrived in the US. And it was at that point in time that Abington's review of his background took a turn for the worse and ultimately led to Chief Majenski to produce a mostly bogus list of two dozen allegations against him to justify his bypass. And he also fired Araujo from his volunteer position as a Special Police Officer. On appeal, the Commission determined that most of these reasons were unsupported by the record, taken out of context, or simply untrue. Not only that, but Cutter and Majenski subjected Araujo to a disparately harsh background examination that went further back in time and was much more exhaustive than that given to native-born candidates.

By a 4-1 majority, the Commission voted to reverse the bypass and put Araujo's name at the top off the next certification list. The dissenting Commissioner, Cynthia Ittleman, who had heard the appeal, agreed with the majority's other conclusions but voted to affirm the bypass because of the candidate's "failure to pay taxes" for three years when he first arrived in the US. That may have been overstating the case a bit because the evidence had never established that Araujo *owed* taxes. It did establish that he had failed to file a return and report his income to the IRS, which is a very different offense with very different penalties. Nowhere in the evidence was it ever established that Araujo would have owed the IRS taxes on whatever amount of income he failed to report and an accountant would have had to testify in order to establish that.

The rejection of Araujo's application by Chief Majenski and Deputy Cutter is going to cost Abington some bucks in legal fees, if not damages. Araujo filed a national-origin discrimination appeal with the MCAD, as well as a discrimination charge with the Civil Rights Division of the US Department of Justice. The MCAD case is still pending but the DOJ found that there was insufficient evidence to conclude that Abington had discriminated against Araujo. But one one can argue here that unlawful immigrant bias may not have played much of a role since Araujo had already been appointed a Special Police Officer. If Abington police didn't like Brazilian immigrants, they presumably would have figured out a way not to appoint Araujo as a Special Police Officer. The Chief and Deputy Chief only piled on when they discovered he overstayed his visa and may not have reported his income. Clearly, they were offended with his less than scrupulous attention to immigration niceties and income-reporting requirements. But this is very different than an anti-immigrant or national-origin bias. In any event these matters were well in the past and, as for the immigration issues, it obviously did not bother the feds since they were fully aware of his status since his arrival in the US and gave him a green card and citizenship. *Araujo* v. *Abington Police Department*, 31 MCSR 59 (2018).

Discrimination aside, what clearly troubled the majority of the Commission was that of the over two dozen allegations Chief Majenski came up with to justify the bypass to HRD, most were "either unsupported by the record, taken out of context or simply untrue." That is a very harsh and unusual condemnation of a police chief from the Commission and about as close as it gets to calling a chief a liar. Clearly Abington needs to pick up its game when it comes to candidate reviews.

A final note: Abington filed a motion with the Commission to reconsider its decision and it was, of course, denied. *Araujo* v. *Abington Police Department*, 31 MCSR 152 (2018). 99 times of 100, parties to lawsuits who file reconsideration motions lose them (that is an unofficial statistic). It is a cardinal rule of human behavior that no one wants to admit they made a mistake. If you are paying your own legal bills, don't waste your money on reconsideration motions. Head up to the next level—or move on.

Revere Police Chief's Contract Not Renewed And They Don't Want Him Back as Lieutenant Either

When Mayor Brian Arrigo was elected Mayor of Revere in 2015, defeating the incumbent Dan Rizzo, one of his priorities was to get rid of Police Chief Joseph Caffarelli and name his own chief. One with a softer approach to policing—more community focused. He did so in July 2017 when Cafarelli's contract ran out. And that is when the fun began. A letter went out from the Mayor's office in late 2016 to the Police Chief saying that his contract would not be renewed but that he was entitled to return to his tenured position as a police lieutenant at the expiration of his contract the following year on June 30. Cafarelli never responded to this letter and, in July of 2017, the Mayor wrote him to tell him that he could not

come back as a lieutenant because he had failed to respond to his previous letter. The letter from the Mayor was not a gentle one, pointing out that there were Revere officers who were not thrilled with the prospect of Cafarelli returning to his prior position as a lieutenant—most particularly some of the sergeants on the current active lists for promotion to lieutenant. The Mayor also mentioned sweetly that Cafarelli might be subjected to certain unspecified disciplinary actions if he sought reinstatement.



Chief Joseph Caffarelli

Cafarelli appealed Revere's refusal to reinstate him to the Commission but the Commission did not want any part of it. In its decision, it points out that appeals involving reinstatement after leaves of absence must be filed with HRD, not the Commission. And that there is no appeal to the Commission from whatever HRD decides, only one to the courts.

Cafarelli formally retired on August 20, 2017 and receives an annual pension of $134,368. It's odd that he is messing around with this but maybe this action formed part of a larger litigation strategy against the city and the new mayor. Some may remember that it was Cafarelli's Metro North SWAT team that arrested Marathon bomber Dzhokhar Tsarnaev in 2013 and it was Cafarelli himself who ripped the terrorist's shirt and pants open to verify he was not wearing a suicide vest after hauling him out of the boat in Watertown. Now that cannot have been a whole lot of fun. *Cafarelli* v. *City of Revere*, 31 MCSR 94 (2018).

Odds and Ends—Computer Screw Ups and Wacky HRD Rules

Police chiefs would do well do remind their employees to be very careful when uploading documentation for E & E credits for promotion. In *Foley* v. *Human Resources Division*, 31 MCSR 132 (2018), the Commission dismissed an appeal from a candidate for promotion to sergeant in the Everett Police Department who claimed that he had been wrongfully denied E & E credits. Evidence showed that he had simply failed to upload supporting documentation to the correct part of the website and never followed up when he failed to receive a confirmation email from HRD indicating his application was complete.

And in *Duga* v. *Town of West Springfield*, 31 MCSR 100 (2018), the Commission dismissed the appeal from a candidate for appointment to the West Springfield Police Department who had failed to respond to an HRD notice indicating that he had made the eligibility list because he had not checked his junk and spam folders. Explicit instructions from HRD warn candidates *to check these folders* when awaiting important communications, such as this one, and so this candidate was done in by his own negligence.

Finally, in *Naylor* v. *Human Resources Division*, 31 MCSR 113 (2018), the Commission told HRD to prepare for a full hearing to explain its bizarre policy to allow E & E credits for service as a State Trooper for promotional appointments but not original appointments. The matter came up on an appeal from a seasoned officer who had served 20 years as a Connecticut State Trooper but was denied any credit for it when he took the exam for an original appointment as an entry-level police officer.

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