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JOSEPH VIGLIOTTI

v.

CITY OF WORCESTER

G2-18-011

*December 20, 2018*

*Christopher C. Bowman, Chairman*

**Bypass Appeal-Promotion to Police Sergeant-Disciplinary Record-Last Chance Agreement**—The City of Worcester did not act improperly when bypassing a candidate for appointment to police sergeant based on his lengthy disciplinary history that included a 2015 domestic violence incident that resulted in discipline and a Last Chance Agreement.

## DECISION

On January 10, 2018, the Appellant, Joseph Vigliotti (Officer Vigliotti), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Worcester (City, Department or WPD) to bypass him for promotion from the rank of police officer to Sergeant. I held a pre-hearing conference at the offices of the Commission on February 20, 2018, followed by a full hearing at Worcester City Hall on June 20, 2018.<sup>1</sup> The full hearing was digitally recorded and both parties received a CD of the proceeding.<sup>2</sup> Both parties submitted post-hearing briefs in the form of proposed decisions.

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1. 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.

2. 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.

## FINDINGS OF FACT

Twelve (12) exhibits were entered into evidence at the hearing. Following the hearing, the record remained open for the submission of additional documents, which resulted in four (4) additional exhibits being submitted. Based on the documents submitted, the testimony of the following witnesses:

Called by the WPD:

- Steven Sargent, Chief, Worcester Police Department

Called by Mr. Vigliotti:

- Joseph Vigliotti, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations and policies, and reasonable inferences therefrom, I make the following findings of fact:

1. The City of Worcester's Police Department employs approximately 450 police officers and officials. (Testimony of Chief Sargent) This includes the Chief, four (4) Deputy Chiefs, eight (8) Captains, twenty-two (22) Lieutenants, fifty-six (56) Sergeants, and approximately three hundred seventy-five Police Officers. (Testimony of Chief Sargent)
2. The Department also employs approximately 50 civilian staff members. (Testimony of Chief Sargent)
3. In October 2017, the Police Department sought to promote three individuals to the rank of Sergeant. (Testimony of Chief Sargent)
4. Among the candidates for promotion was Officer Vigliotti. (Testimony of Chief Sargent)
5. Officer Vigliotti was born and raised in Worcester. He holds a bachelor's degree in criminal justice from Curry College. (Testimony of Appellant)
6. Officer Vigliotti has been employed as a police officer with the City since 2001. Prior to his employment with the City, Officer Vigliotti worked for ten (10) years at the Worcester County Sheriff's Department. (Testimony of Officer Vigliotti)
7. On October 15, 2016, Officer Vigliotti took the promotional examination for police sergeant and received a score of 75. (Stipulated Fact)
8. As a result of passing the examination, Officer Vigliotti's name appeared on an eligible list of candidates for Worcester Police Sergeant. (Stipulated Fact)
9. On October 16, 2017, the City created Certification No. 317-048 from which it promoted three (3) candidates from police officer to sergeant, two (2) of whom were ranked below Officer Vigliotti. (Stipulated Facts)
10. On December 5, 2017, the City notified Officer Vigliotti of the reasons for his bypass. (Stipulated Fact)
11. The City bypassed Officer Vigliotti primarily due to his prior disciplinary history and the fact that he is subject to a 2015, ten (10)-year "last chance agreement" which was associated with discipline that resulted in thirty (30) days punishment duty. (Exhibit 4)
12. While evaluating the candidates, Steven Sargent, the City's Chief of Police, reviewed the work history, sick leave, and disciplinary history of each candidate. He also spoke with direct and indirect officials within the Police Department. (Testimony of Chief Sargent)
13. Chief Sargent found that Officer Vigliotti had been subject to discipline on multiple occasions, as follows:
  - October 31, 2003: Officer Vigliotti made an arrest during which another officer struck the individual that Officer Vigliotti had in custody. (See Exhibit 10.) Although Officer Vigliotti reported that he did not observe anyone striking the arrestee while in his custody, the Bureau of Professional Standards concluded that Officer Vigliotti had not been truthful and he received a two (2) day suspension. (See *id.*) As Chief Sargent testified, this conduct did not weigh heavily in the decision-making process because of the passage of time between the conduct and the promotional opportunity. (Testimony of Chief Sargent)
  - On June 13, 2013, Officer Vigliotti received a written reprimand arising out of an incident in which he made two arrests at a local establishment. (See Exhibit 12.) As a result of the arrest, charges were filed in court and subsequently dismissed. (Testimony of Chief Sargent.) Officer Vigliotti did not notify liaison supervisors of a modification to the charges, which was in violation of Worcester Police Department Policy 470. (See Exhibit 12) Officer Vigliotti received a written reprimand. (See *id.*) As Chief Sargent testified, this rule is important because it avoids back room deals in which charges could be reduced without the authority of the Department's liaison officer. (Testimony of Chief Sargent)
  - June 9, 2014: Prior to a visit of President Barack Obama, the United States Secret Service learned that Officer Vigliotti, who had been assigned to the Presidential Detail, had made comments about a bomb. (Testimony of Chief Sargent) Although the comments were determined to have been made "offhand," Officer Vigliotti was removed from the detail, and the Department promised the Secret Service that Officer Vigliotti would be kept off the street on the date of the President's visit, which it did by requiring him to remain in the police station at that time. (Testimony of Chief Sargent.) Officer Vigliotti received a two (2) day suspension, which was later reduced to one (1) day of punishment duty. The Department learned of this conduct when it was approached by a member of the Secret Service. (Testimony of Chief Sargent.) As Chief Sargent testified, this conduct demonstrated Officer Vigliotti's poor judgment. (Testimony of Chief Sargent.)
  - March 5, 2015: Officer Vigliotti was arrested in a domestic incident at the home of his girlfriend. (See Exhibit 9.) Officer Vigliotti was charged with Domestic Assault and Battery. (See *id.*) The criminal charges were dismissed. (Testimony of Appellant) However, the Department conducted a thorough investigation, after which it determined that Office Vigliotti had engaged in behavior that constituted criminal conduct and conduct unbecoming an officer. (See Exhibit 9.) Officer Vigliotti received a thirty (30) day suspension, which was converted to 30 tours of punishment duty. In connection with the 30 day suspension, on October 1, 2015, Officer Vigliotti signed a last chance agreement, which will remain in effect for ten (10) years from the date of his signature.

14. Officer Vigliotti, who was represented by both MPA and Union counsel, voluntarily accepted the thirty tours of punishment duty, as well as the terms set forth in the last chance agreement. (Testimony of Officer Vigliotti.)

15. The two (2) promoted police officers who were ranked below Officer Vigliotti had no disciplinary history. (Testimony of Chief Sargent)

16. Chief Sargent questioned Officer Vigliotti's judgment and ability to serve as an official in the Department. (Testimony of Chief Sargent.)

17. In addition to his own review, Chief Sargent conferred with the Department's Deputy Chiefs, who had reviewed the same materials. (Testimony of Chief Sargent.)

18. During the meetings, which were held individually and collectively, the Chief and Deputy Chiefs discussed the three candidates. (Testimony of Chief Sargent.)

19. All four Deputy Chiefs recommended that Officer Vigliotti not be promoted at this time. (Testimony of Chief Sargent.)

20. After comparing the candidates, and conferring with his Deputy Chiefs, Chief Sargent met with and recommended to the City Manager that Officer Vigliotti be bypassed. (Testimony of Chief Sargent.)

21. On September 8, 2009, "Police Officer A" signed a last chance agreement with the City. He was not promoted to the rank of Sergeant until April 9, 2017. (See Exhibit 7.)

22. On April 14, 2006, "Police Officer B" signed a last chance agreement with the City. He was not promoted to the rank of Sergeant until May 22, 2016. (See Exhibit 8.)

#### LEGAL STANDARD

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.

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, 332 (1983). See *Commissioners of Civil Service v. Municipal Ct. of Boston*, 369 Mass. 84, 86 (1975); and *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *City of Beverly v. Civil Service Comm'n.*, 78 Mass. App. Ct. 182, 189, 190-191 (2010) citing *Falmouth v. Civil Serv. Comm'n.*, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an "impartial and reasonably thorough review" of the applicant. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. *Beverly* citing *Cambridge* at 305, and cases cited. Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates. *Beverly* citing *Cambridge* at 305, and cases cited. "It is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree." *Town of Burlington*, 60 Mass. App. Ct. 914, 915 (2004).

#### ANALYSIS

The City was justified in bypassing Officer Vigliotti for promotional appointment to sergeant based on his lengthy disciplinary history, including a 2015 incident which resulted in discipline and a last chance agreement. I carefully reviewed the Department's comprehensive fifty (50)-page report regarding their investigation into the 2015 incident, which ultimately resulted in Officer Vigliotti agreeing to a long-term LCA and lengthy discipline in lieu of termination.

The Department has a documented history of requiring employees subject to a last chance agreement to reestablish and rebuild the Department's trust in them. Mr. Vigliotti identified two individuals who had been subject to last chance agreements and then promoted to Sergeant. The Department's records demonstrate that one individual waited approximately eight years to be promoted while the other waited approximately ten. As Chief Sargent testified, if Mr. Vigliotti is able to demonstrate a pattern of good judgment and behavior, he will at some point in the future be considered a viable candidate for promotion.

Although Officer Vigliotti was not interviewed as part of this promotional process, based on his employment record, particularly the more recent events that resulted in him being subjected to thirty (30) days of punishment duty and voluntarily signing a last chance agreement in October 2015, the WPD had reasonable justification to bypass him. Given the circumstances, and the evidence offered at hearing, the WPD would have had been justified in reaching the same conclusion even if Officer Vigliotti had been granted an interview.

CONCLUSION

The City of Worcester’s decision to bypass Mr. Vigliotti is affirmed and Mr. Vigliotti’s appeal under Docket No. Docket No. G2-18-011 is hereby *denied*.

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By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein, and Tivnan, Commissioners) on December 20, 2018.

Notice to:

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