

COMMONWEALTH OF PENNSYLVANIA

Bryn E. Albee : State Civil Service Commission  
 :  
 v. :  
 :  
 Allegheny County Department of :  
 Human Services : Appeal No. 30638

Bryn E. Albee Biannely Diaz-Wilk  
*Pro Se* Attorney for Appointing Authority

Shelby Alston, et al.<sup>1</sup>  
Indispensable Parties

Biannely Diaz-Wilk  
Attorney for Indispensable Parties

ADJUDICATION

This is an appeal by Bryn E. Albee challenging her non-selection for promotion to County Casework Supervisor employment with the Allegheny County Department of Human Services. A hearing was held September 2, 2021, via video, before Commissioner Gregory M. Lane.

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<sup>1</sup> In recognition of the due process requirements noted in *Jefferson County Assistance Office, Department of Public Welfare v. Wolfe*, 136 Pa. Commw. 115, 582 A.2d 425 (1990), the individuals currently occupying the challenged positions were given the opportunity to participate in the proceedings, which they accepted. N.T. pp. 15-17; Comm. Exs. C, C-1. The following people are Indispensable Parties to the action: Shelby Alston, William Bedillion, Miranda Bortmas, Casey Brown, Sarah Deak, Jennifer Detwiler, Candice Dewberry, Olivia Doswell, Hannah Shankle, Kelley Smithula, Kelly Ann Spinner, Angela Steele, and Justine Waltz. Comm. Exs. C, C-1. By email received February 15, 2022 before the issuance of this adjudication, the Commission was informed Miranda Bortmas is withdrawing as an Indispensable Party.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing as well as the Briefs submitted by the parties. The issue before the Commission is whether the appointing authority's non-selection of appellant was based upon any discriminatory factor.

### FINDINGS OF FACT

1. By letter dated October 15, 2020, appellant was notified of her non-selection for promotion to County Casework Supervisor. Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. B.
3. Appellant began employment with the appointing authority in 2011. She has been employed as a Caseworker 3 since 2014. N.T. pp. 34-35; Ap Ex. 1.
4. From June 30 to July 14, 2020, the appointing authority posted an internal Job Posting for thirteen vacant County Casework Supervisor positions. Ap Ex. 29.

5. The Job Posting listed the minimum experience and training requirement as:

Two (2) years of professional experience in public or private social work and a Bachelor's Degree with a major coursework in sociology, social welfare, psychology, gerontology, criminal justice, or other related social sciences or any equivalent combination of experience and education which includes 12 college credits in sociology, social welfare, psychology, gerontology, criminal justice, or other related social sciences.

Ap Ex. 29.

6. The Job Posting defined meritorious service as:

(a) the absence of any discipline during the 12 months preceding the closing date of this posting and (b) the last due overall regular or probationary performance evaluation is higher than fair.

Ap. Ex. 29.

7. The Job Posting defined "seniority" as a "minimum of one year of service in the next lower classes as of the closing date of this posting." Ap. Ex. 29.

8. Appellant was a candidate and interviewed in the first round of interviews for the vacancies.<sup>2</sup> N.T. pp. 38-39; Ap Ex. 1.
9. Interview panels were constructed as “a pod” of four individuals. There were four pods for the first round of interviews. N.T. p. 142.
10. After her first interview, appellant’s name was misspelled, which caused a delay in receiving and evaluating her references. N.T. pp. 156-157.
11. Without receipt of the references, appellant was referred to the second round of interviews, along with twenty-seven other candidates.<sup>3</sup> N.T. pp. 21, 65, 144, 156-157.
12. For the second round of interviews, there were three interview pods. Each pod consisted of four individual members. N.T. p. 144.
13. The candidates answered a different set of questions. N.T. pp. 144-145.

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<sup>2</sup> The date and time of her first interview is not in the record.

<sup>3</sup> The date and time of appellant’s second interview is not in the record.

14. During the second round of interviews, appellant's references were received. N.T. pp. 156-157.
15. After all of the second round candidates were interviewed, each pod deliberated and discussed their individual scores for the candidates and reached a consensus score. N.T. p. 145.
16. Each individual panelist uploaded their scoresheet for each candidate to a SharePoint file. N.T. p. 145.
17. Each pod had its own SharePoint file of the candidates they interviewed. N.T. pp. 145-146.
18. After the submission of all the consensus scores from each pod, there were some candidates who "deserve[d] a little bit more of deliberation." N.T. p. 148.
19. In the Round 2 Decision Making document, dated October 5, 2020, candidates were categorized as "yes," "no," and "maybe." N.T. pp. 148-149; Ap Ex. 25.

20. The Round 2 Decision Making document outlines the “Process for today” as follows:
  - a. “Yes” candidates (12) will move through to matching
    - i. Pod leads will present information on candidates
    - ii. No discussion of candidates
  - b. “Maybe” candidates (5)
    - i. Will be discussed
    - ii. Three will be chosen to move forward to matching; one will get a position
    - iii. Two will be moved to “no”
  - c. “No” candidates (12)
    - i. Will be identified
    - ii. Will not be discussed

Ap. Ex. 25.

21. Additional deliberations were held to further discuss candidates’ job performances, work styles, ability to receive work critiques, ability to multi-task, and racial equity. N.T. pp. 193, 206.
22. Appellant was not selected for promotion. Comm. Ex. A.
23. Appellant’s consensus score was higher than five people who were promoted to the County Casework Supervisor position. N.T. pp. 48, 55, 57-58.

## DISCUSSION

At issue before the Commission is whether the appointing authority discriminated against appellant when it did not select her for promotion to County Casework Supervisor. Appellant asserted she was discriminated against based upon non-merit factors, specifically arguing promotions were based upon nepotism and favoritism as well as retaliation. Appellant also raised issues of procedural discrimination based upon a failure to consider her references in her interview score, using an interview scoring system that does not comply with Act 71 of 2018, not properly weighing her seniority, education, and meritorious service, and misapplying the consensus scoring system the appointing authority established.

Appellant testified on her own behalf and presented the testimony of Casework Supervisors Casey Brown, Miranda Bortnas, Sarah Deak, Candice Dewberry, and Shelby Alston.<sup>4</sup> The appointing authority provided the testimony of Talent Acquisition Engagement and Retention Manager Kelly Dillard and Deputy Director Jacki Hoover.

Before this Commission, an appellant can only challenge her non-selection through Section 3003(7)(ii) of Act 71 of 2018 based upon an allegation of discrimination affecting the involved personnel action; in an appeal alleging

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<sup>4</sup> The Commission notes the transcript indicates the witness' names are Shelby Austin and Sarah Deek. The document "Round 2 Decision Making" indicates the witness' names are Shelby Alston and Sarah Deak. In addition, the notices to the Indispensable Parties lists them as Shelby Alston and Sarah Deak. Comm. Ex. C. Thus, the Commission will use the names Shelby Alston and Sarah Deak throughout the adjudication. This discrepancy does not affect the outcome of the adjudication.

discrimination, the burden lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991); 71 Pa.C.S.A. §3003(7)(ii); 4 Pa. Code §105.16.

Section 2704 of Act 71 of 2018 prohibits discrimination. 71 Pa.C.S. § 7104. Specifically, Section 2704 of Act 71 of 2018 provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other non-merit factors.

71 Pa.C.S. § 2704. The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language.<sup>5</sup> This includes prohibiting both procedural and traditional discrimination. Traditional discrimination encompasses claims based upon non-merit factors. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996); *Pronko v. Department of Revenue*, 114 Pa. Commw. Ct. 428, 539 A.2d 462 (1988); 71 P.S. § 2704.

In claims of traditional discrimination, the appellant must prove a *prima facie* case of discrimination by producing sufficient evidence which, if believed and otherwise unexplained, indicates it is more likely than not discrimination has

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<sup>5</sup> Section 905.1- Prohibition of Discrimination, provided:

No officer or employe[e] of the Commonwealth shall discriminate against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin, or other non-merit factors.

occurred. *Henderson v. Office of the Budget*, 126 Pa. Commw. Ct. 607, 560 A.2d 859 (1989); *Department of Health v. Nwogwugwu*, 141 Pa. Commw. Ct. 33, 594 A.2d 847 (1991). Once a *prima facie* case of discrimination has been established, the burden shifts to the appointing authority to present a legitimate, non-discriminatory explanation for the employment action. Appellant always retains the ultimate burden of persuasion and must demonstrate the proffered merit reason is merely a pretext for discrimination. *Henderson* at 126 Pa. Commw. Ct. 607, 560 A.2d 859.

We begin with appellant's claim of discrimination based upon non-merit factors.<sup>6</sup> First, appellant alleges there was nepotism and favoritism in the hiring process because Regional Office Director Betsy Caroff<sup>7</sup> was involved in creating the scoring system utilized to rate the candidates and four of the thirteen selected candidates were her subordinates and a fifth person worked in Caroff's region. N.T. pp. 54-55.

In this regard, appellant did not present any testimony or evidence indicating Caroff's involvement in creating the interview system resulted in skewing the process to favor her subordinates. In addition, appellant did not present any evidence indicating Caroff was a member of any pod or exerted influence over any

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<sup>6</sup> At the hearing, appellant did not present any evidence or arguments regarding retaliation. As such, we consider appellant's retaliation claim waived. Furthermore, in her Brief, appellant raises allegations of discrimination based upon her gender. This issue was not raised during her hearing and, therefore, is waived.

<sup>7</sup> Testimony indicates "Betsy Kara" as the Regional Office Director. However, based upon the information provided in the appointing authority's document titled "Promotions Process Overview" her name is, in fact, Betsy Caroff. Ap Ex. 1. This discrepancy does not alter the outcome of the adjudication.

members of a pod during the hiring process. Thus, appellant has not met her burden to establish a *prima facie* case of discrimination. *Henderson, supra*. Appellant's discrimination claim based upon nepotism or favoritism is not substantiated.

We next discuss appellant's allegations of procedural discrimination. Act 71 of 2018 addresses "procedural" discrimination. "Procedural discrimination" involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996); *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.3d 462 (1988); 71 P.S. § 2704. Where a procedural violation of the Act constitutes the alleged discrimination, no showing of intent is required. *Price, supra*. However, to obtain relief, the employee must show she was harmed because of the procedural noncompliance with the Act, or that because of the peculiar nature of the procedural impropriety, she could have been harmed, but there is no way to prove that for certain. *Price, supra*.

First, appellant alleges her interview score from the first round of interviews is improperly lower than other candidates' scores because her references were not considered while those of the other candidates were factored into their scores. N.T. pp. 41, 46-47. Appellant explained the appointing authority's interview notes from her first-round interview state her consensus score was not calculated because they were still waiting for her references. N.T. p. 41; Ap Ex. 22. Also, the appointing authority's "Supervisor Hiring Discussion" document clearly states her references were not considered during the first round of interviews due to a clerical

error in the spelling of her name. N.T. pp. 42-43; Ap Ex. 24. Therefore, she does not know if her references were ever considered or included in her interview score during the hiring process. N.T. pp. 42-43, 63, 65. Appellant acknowledges she received an interview during the second round of the hiring process. N.T. p. 65.

The appointing authority acknowledges appellant's name was misspelled, which led to a delay in receiving her references. N.T. p. 156. However, the error was corrected, appellant's references were received, and they were shared with the interview panelists in the second round of interviews. N.T. p. 156. Appellant successfully qualified for and received a second interview. N.T. p. 156.

Upon review of the record, the Commission finds appellant has not established any harm or potential harm because her references were not reflected in her initial interview score. Appellant acknowledges she received a second interview, and the appointing authority states her references were received and provided to the interview panelists in the second round. Thus, there was no procedural discrimination based upon the delay in receiving her references. *Price, supra*.

Next, appellant alleges the appointing authority inappropriately disregarded her seniority, meritorious service, and education. Appellant acknowledges the Job Posting defines seniority as "a minimum of one year of service in the next lower classes...as of the closing date of this posting." N.T. p. 68; Ap Ex. 29. In 2011, appellant began employment with the appointing authority. N.T. pp. 34-35. She insists she has more seniority with the appointing authority than eight of the selected thirteen candidates. N.T. p. 70. With respect to meritorious service, appellant asserts that between 2017 and 2020, she has displayed professional management experience through her work in ten different community-based

projects. N.T. pp. 49-52. In addition, she has served as a board member or participant in community-based advocacy work. N.T. pp. 49-42. In addition, in 2018, she was awarded the Georgia Hernandez Award for Excellence in Child Welfare Practice, an honor awarded to only one caseworker each year. N.T. p. 54; Ap Ex. 32. Appellant asserts she has, therefore, more meritorious service than several selected candidates. N.T. p. 52. In addition, appellant earned a Master's degree, which two of the selected candidates have not earned. N.T. p. 52.

In support of appellant's arguments regarding seniority, meritorious service, and education, she presented the testimony of candidates who were promoted to five of the vacant County Casework Supervisor positions. Brown, Bortmas, Deak, Dewberry, and Alston each provided testimony regarding their years of employment, meritorious service including advocacy and community work experience, professional management experience, and education. N.T. pp. 104-1054; 109-111; 114-115, 122-123, 126.

In response to appellant's arguments, Talent Acquisition Engagement and Retention Manager Dillard provided an explanation of how seniority, meritorious service, and education were factored into the hiring process. Specifically, "tenure" is how many years an employee has worked with an agency, whereas "seniority" is the necessary years of employment required to meet the minimum qualifications for the position. N.T. pp. 149-150, 166-167; Ap Ex. 29. In this instance, seniority was defined in the Job Posting as serving one year in the next lower classification and all interviewed candidates met this criterion. N.T. pp. 152-153; Ap Ex. 29.

Similarly, meritorious service was defined in the Job Posting as having no disciplinary action within the past twelve months, another criterion which was met by all interview candidates.<sup>8</sup> N.T. p. 153. Finally, an applicant's education was evaluated at the time of their initial application to determine if they are able to interview for the vacancy. N.T. p. 153. Here, the Job Posting stated the education requirement for a candidate is a Bachelor's degree in specific related fields or an equivalency of experience and education which included twelve college credits in specific fields. Ap Ex. 29. All of the interview candidates met the educational requirements provided on the Job Posting. Ap Exs. 1, 2.

Upon review of the record, appellant has not provided sufficient evidence of procedural discrimination based upon the appointing authority's application of seniority, meritorious service, and education. Dillard's credible testimony and the Job Posting clearly define each of the terms. Thus, appellant has not met her burden of establishing procedural discrimination pertaining to the application of seniority, meritorious service, or education. *Price, supra*.

We next discuss appellant's argument that the appointing authority did not properly score the interviews. Specifically, appellant argues the appointing authority should have scored the interviews based upon an "average" scoring system, not a "consensus" scoring system. To support her argument, appellant asserts consensus scoring is not provided for in the Civil Service Act of 2018 (hereinafter

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<sup>8</sup> The Job Posting also requires interview candidates have an overall rating higher than "fair" on their most recent regular or probationary performance evaluation. Ap. Ex. 29. The appointing authority did not present testimony in this regard.

“Act”) and, instead, the Act mandates the use of an “average” scoring method required under Section 2305 of the Civil Service Act of 2018. Section 2305 of the Civil Service Act provides in relevant portion:

**Computation of rating.** – The final earned rating of an individual competing in an examination shall be attained by computing the ratings for each part or parts of the examination, the qualifying point for which is set by the Office of Administration, according to the weights for each test.

71 P.S. § 2305. According to appellant, this provision is the equivalent to averaging for an interview score. Also according to appellant, she scored higher than five selected candidates using the average scoring system she alleges should have been applied. N.T. p. 48. During cross examination, appellant acknowledged the section of the Act to which she referred applies to examinations administered by the Office of Administration. N.T. pp. 73-74.

In response, the appointing authority explained the scoring system to which appellant refers applies only to examinations issued under 71 Pa.C.S. § 2305. N.T. p. 154. Talent Acquisition Engagement and Retention Manager Dillard explained the Office of Administration requires examinations for candidates applying to positions open to candidates outside of the appointing authority. N.T. p. 154. In this instance, the thirteen County Casework Supervisor vacancies were filled utilizing the promotion without examination process provided under 71 P.S. § 2301(d)(3) of the Act, which states, “...promotion based upon meritorious service and seniority to be accomplished by appointment without examination if the individual has completed the probationary period on the next lower position and meets the minimum requirements for the higher position.” 71. P.S. § 2301(d)(3). This section does not provide a required method for scoring interviews under the

promotion without examination process. N.T. p. 154. These County Casework Supervisor positions were only available to applicants already employed by the appointing authority. N.T. pp. 154-155.<sup>9</sup>

Upon review of the record, the Commission finds the appellant did not provide sufficient evidence of discrimination in the use of a consensus scoring system. Specifically, appellant misunderstood the applicable provision within the Civil Service Act of 2018. Thus, there has been no procedural discrimination in this regard. *Price, supra*.

Appellant next argues the appointing authority misapplied its own consensus scoring system when it considered factors outside of the scores established by the pods. Appellant testified her second round of interviews resulted in a consensus score of seventeen, which is higher than several of the selected candidates. N.T. pp. 48, 55, 57-58. In this regard, appellant presented the Round 2 Decision Making document wherein candidates are ranked “yes,” “no,” and “maybe.” Ap Ex. 25. The document also outlines the process for the discussion and states:

- A. “Yes” candidates (12) will move through to matching
  - i. Pod leads will present information on candidates
  - ii. No discussion of candidates
- b. “Maybe” candidates (5)
  - i. Will be discussed
  - ii. Three will be chosen to move forward to matching; one will get a position
  - iii. Two will be moved to “no”

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<sup>9</sup> Appellant argues the appointing authority’s scenario-based question during the second round of interviews constituted an examination. N.T. pp. 169-170. Appellant did not present any testimony or evidence to explain the scenario or how it may have constituted an examination.

- c. “No” candidates (12)
  - i. Will be identified
  - ii. Will not be discussed

Ap. Ex. 25. Appellant is ranked higher than several candidates ultimately selected for the promotions yet placed in the “no” category. Ap Ex. 25.

In response, Talent Acquisition Engagement and Retention Manager Dillard explained how the promotion process was developed. The developers of the process took a “holistic view” of the position requirements, which included weighing a candidate’s life experiences and any personal utilization of the agency’s services. N.T. pp. 140-141.

Dillard also explained the interview process. When developing the interview process, four interview pods were created, and each pod had four individual members. Those individual members each had a scoresheet and were asked to score a candidate based upon their interpretation of the candidates’ responses to the interview questions. N.T. pp. 142-143. After the interviews, they were to deliberate, discuss their impressions of the interview responses, and reach a consensus score. N.T. p. 143. The consensus score was intended to show an agreement within the pod about a candidate’s final score. N.T. p. 143. From this, the candidates were categorized into “yes,” “no,” and “maybe,” and further deliberations were held to determine which candidates proceeded to the second round of interviews. N.T. pp. 147-148.

Twenty-eight people received a second-round interview. N.T. pp. 144, 147-148. For the second round of interviews, there were three pods with four individual members and a new set of interview questions. N.T. p. 144-145. After

the interviews were completed, each pod met to deliberate and reach a consensus score for each candidate. N.T. p. 145. After the deliberations, each pod member uploaded their individual scorecard to a SharePoint file. N.T. p. 145. Each pod had a SharePoint file. N.T. p. 146. Dillard reviewed some of the scorecards in the SharePoint folders and noticed some individual panelists did not place a score on their individual scoresheet. N.T. pp. 142-146. She also noticed there was “just” a consensus score for some interview pods. N.T. p. 147.

Upon cross examination, appellant asked Dillard to explain how people with a lower consensus score were promoted over people with higher consensus scores. N.T. p. 161. Dillard replied:

I don't know if I can explain that. But what I can offer is...that the scores themselves were not the sole determining [factor]...we had to figure out the way to...sort through the mass amount of individuals that applied for this position...So those scores were a way for us to look at...who really surfaced to the top...who was in the middle, and who we might not necessarily...think was ready. And then there were larger deliberations...

N.T. pp. 161-162. Dillard denied there were other factors considered, but then stated the consensus scores were a method to “help us sort through candidates” and “we were open to deliberation amongst all the panels.” N.T. pp. 162-163. When asked to explain how the consensus score system provided for additional deliberations, what was involved in those discussions, and what transpired that resulted in people with lower scores receiving promotions, Dillard replied, “I don't know that I can answer that.” N.T. p. 163. She further testified she could not provide a satisfactory response because, “it really did just become a deliberation...And I certainly cannot point to a piece of policy or something written that says what you're asking.” N.T. pp. 163-165.

Thus, the Commission finds Dillard did not adequately explain why the consensus scoring system was not followed. First, she provides no explanation as to why each individual panelist did not have a score for every candidate they interviewed. Second, she does not provide any explanation as to why the candidates were divided into “yes,” “no,” and “maybe” categories as listed in the Round 2 Decision Making document, what criteria were used to separate the candidates into these categories, or why a candidate was placed into a category based upon anything other than their consensus score. Ap Ex. 25. Additionally, Dillard cannot provide any information about the number of conversations that occurred or the details of those conversations. More directly, despite appellant’s consensus score of seventeen, the appointing authority never explained how her name was in the “no” category when she scored higher than candidates in the “maybe” category.<sup>10</sup> This complete lack of information leaves room for speculation as to what was discussed and whether race, age, gender, or other non-merit factors were considered instead of the originally established consensus scoring system.

Furthermore, Deputy Director Hoover’s testimony also clearly shows the appointing authority deviated from the consensus score system it created. When asked if she was familiar with the consensus scoring process, Hoover stated, “Not really, no.” N.T. p. 186. She explained after the second round of interviews, some interview pods had scored candidates higher than others and they wanted to deliberate to “check their current work against what was being evaluated during the interview.” N.T. p. 185. She explained the additional deliberations were held in order to “check biases” and added that she “probably [was] not the best person to

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<sup>10</sup> Consensus scores are not provided for Maurice Eberhardt or Dominic Pedicino, two candidates listed as “yes” in the Round 2 Decision Making document. Ap Exs. 25, 27. Therefore, it is unclear whether appellant’s consensus score was higher or lower than either candidate.

elaborate on that.” N.T. pp. 185, 199-201. She then clarified that they wanted to make sure they were using facts and not opinions to determine who would be promoted. N.T. pp. 199-201.

Hoover also explained her involvement with the hiring process included deliberations in “the last two sessions” but then contradicted herself by stating, “I don’t believe at the second session I had any role.” N.T. pp. 182, 186. At the last two sessions, there were several people involved including Deputy Director Jessica Ruffin, all of the Regional Office Directors, all of the clinical managers, some of the Managers in training, and the Child Welfare Analyst. N.T. p. 184. The deliberation sessions were designed to have “fair conversations about people and check biases at the door [and] recognize that not all of...[the] interviewers were created equal.” N.T. pp. 184-185. During deliberations, factors considered beyond the interview process included the scope of compliance around current work, peer relations, current supervisory experience and oversight, mentoring, and knowledge of regulations and compliance. N.T. p. 183. In addition, the deliberations included discussion about “what was needed at each office” including the skills, predictive index, and “a lot of conversation” related to diversity, current work style, and ability to accept constructive criticism, and references. N.T. pp. 187, 192, 197. Hoover acknowledged there were other deliberation sessions in which she did not participate. N.T. pp. 186-187.

However, in further contradiction with her own testimony, Hoover said, “The score was one factor in the decision on promotion” but could not recall what other factors were considered throughout the deliberations. N.T. p. 192. She then also testified additional deliberations considered the candidates’ job performances, work styles, ability to receive work critiques, ability to multi-task, and racial equity.

N.T. pp. 193-194. Hoover could not recall any deliberation discussions pertaining to appellant's work style or attitude but recalled one of her references discussed her ability to accept constructive criticism. N.T. p. 194.

The Commission finds Hoover's testimony of grave concern. Specifically, there still is no explanation or justification for deviating from the consensus score process by holding additional deliberation sessions. Second, Hoover, in her role as the Deputy Executive Director, is completely unaware of how many deliberation sessions were held. It is obvious there were multiple deliberation sessions which did not consist of the same employees each time. Furthermore, it is clear the deliberations included factors outside of the interview process. If the appointing authority considered these additional factors merit related, they should have been established during the creation of the consensus scoring system and included in the interview questions. Moreover, the references were a factor to be utilized in determining if a candidate moved onto the second round of interviews, however, Hoover discussed them during the deliberations after the second round of consensus scores.

During the hearing, appellant presented a chart providing the consensus scores for many of the candidates. Ap Ex. 27. Using information from appellant's chart and the Round 2 Decision Making document created by the appointing authority, the following chart provides a list of scores with each candidate's placement:

<b>Albee worksheet</b>				
<b>name</b>	<b>consensus score after 2nd round</b>	<b>October 5th placement (yes/no/maybe) - AP15</b>	<b>final hiring status</b>	<b>placement in top 13 based on known consensus score</b>
Angela Steele	25	yes	yes	1
Hannah Shankle	21	yes	yes	2
Bill Bedillion	20.5	yes	yes	3, 4, 5
Rikell Ford	20.5	yes	no	3, 4, 5
Kelly Smithula	20.5	yes	yes	3, 4, 5
Jennifer Detwiler	20	maybe	yes	6
Justine Waltz	19.5	yes	yes	7
Kelly Spinner	19	yes	yes	8
Loretta Brown	18.5	yes	no	9
Olivia Doswell	18	yes	yes	10
Sarah Deak	17.5	yes	yes	11
Bryn Albee	17	no	no	12
Maurice Eberhardt		yes	no	
Dominic Pedicino		yes	no	
Shelby Alston	15.5	maybe	yes	
Miranda Bortmas	15.5	maybe	yes	
Candice Dewberry	16.5	maybe	yes	
Kameka Walters		maybe	no	
Casey Winters/Brown	14	maybe	yes	
Roscoe Bright		no	no	
Malinda Fensterer		no	no	
Pat Gordon	14	no	no	
April Hayden		no	no	
Lindsey Hern		no	no	
Juanita Mitchell		no	no	
Zachery Podsobinski		no	no	
Jennifer Watson		no	no	
Michelle White		no	no	
Janie Wright		no	no	

Thus, appellant's consensus score of seventeen places her into the twelfth vacancy based solely upon the known consensus scores. Because there is no way to know for certain whether the consensus scores of the other candidates are, in fact, higher or lower than appellant's consensus score, there is no way to show for certain that appellant was harmed. However, based upon the evidence appellant presented and appointing authority did not refute, appellant could have been harmed because she did not get promoted. Therefore, appellant has successfully shown she may have been harmed by the procedural impropriety created by the categorization and additional discussions held after the second round of consensus scores was established. *Price, supra.*

The Commission concludes that the appointing authority presented no evidence or clear explanation for deviating from the original consensus scoring system. The appointing authority has not provided any substantive evidence or testimony to show they properly implemented their own consensus scoring system or justifying the categorization of candidates into "yes," "no," and "maybe" based upon any criteria other than the consensus scores.

A review of the candidates in the "yes," and "maybe" columns shows candidates originally in the "yes" category were subsequently not offered a promotion. Similarly, a review of the "maybe" category shows four candidates who were offered promotions. The appointing authority provides no explanation for their movement from one category to the other.

Despite the indication there would be promotions based solely on the consensus scores, the appointing authority acknowledges additional deliberations were held. There is no clarity as to who was involved in those deliberations or how many deliberation sessions were held. Importantly, neither Dillard nor Hoover can explain why they deviated from the consensus scoring system by conducting additional deliberations after the second round of interviews.

Thus, upon review of the record, the Commission finds the appellant has presented sufficient evidence to establish a procedural impropriety in the hiring process. 4 Pa. Code Section 603.7 provides in relevant portion, “An appointing authority may conduct an interview or otherwise assess relative suitability for appointment of a certified eligible, but the assessment must be based on position-related criteria...” Appellant credibly<sup>11</sup> testified that, using the appointing authority’s newly established consensus scoring system, she scored higher than five of the selected candidates but was ultimately not awarded a promotion to County Casework Supervisor.

The appointing authority does not present any credible testimony or evidence to explain any position-related criteria utilized to select candidates after the second round of interviews.<sup>12</sup> The appointing authority fails to explain any of the

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<sup>11</sup> The Commission has the inherent power to determine the credibility of witnesses and the value of their testimony. *McAndrew v. State Civil Service Commission (Department of Community and Economic Development)*, 736 A.2d 26 (Pa. Commw. Ct. 1999).

<sup>12</sup> The Commission does not have enough information to determine if the appointing authority utilized position-related criteria after the first round of interviews to determine which candidates would be considered for the second round of interviews. As appellant did receive a second interview, the Commission does not need to evaluate the validity of the first round interview process.

following: what position-related criteria was used to establish categories of “yes,” “no,” and “maybe” based on anything other than consensus scores, why further deliberations were necessary, when those deliberations occurred, how many deliberation sessions took place, who participated in those deliberations, why or how those deliberations resulted in a change in scores, or any other reason for appellant’s non-selection for promotion. The appointing authority provides no explanation for appellant’s placement in the “no” category despite her higher consensus score. By abandoning its own consensus scoring procedure and engaging in a vague process with no evidence of any position-related criteria, appellant may have been harmed when she was not selected for promotion. *Price, supra*.

In summation, appellant has not established discrimination based upon nepotism, favoritism, or retaliation. Additionally, appellant has not established procedural discrimination based upon a failure to consider her references in her interview score, using an interview scoring system that does not comply with Act 71 of 2018, or not properly weighing her seniority, education, and meritorious service. Appellant has established she may have been harmed by the appointing authority’s deviation from its own scoring system. Thus, the appointing authority must return the thirteen promoted candidates to their original positions and reconduct the second round of interviews. Accordingly, we enter the following:

CONCLUSION OF LAW

Appellant has presented evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, sustains the appeal of Bryn E. Albee challenging her non-selection for promotion to County Casework Supervisor employment and overrules the action of the Allegheny County Department of Human Services, in the selection of Shelby Alston, et al. for promotion to County Casework Supervisor employment. The position of County Casework Supervisor, to which Shelby Ashton, William Bedillion, Miranda Bortmas, Casey Brown, Sarah Deak, Jennifer Detwiler, Candice Dewberry, Olivia Doswell, Hannah Shankle, Kelley Smithula, Kelly Ann Spinner, Angela Steele, and Justine Waltz, were promoted is directed to be vacated. Shelby Ashton, et al. are returned to the positions they held immediately prior to their promotions. The appointing authority is directed to refill the thirteen vacated positions from among the twenty-eight candidates who were considered in the second round of interviews. The appointing authority must utilize a selection process based upon position related criteria in accordance with the Civil Service Act.<sup>13</sup> This order shall not prejudice the appellant or any other affected person from

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<sup>13</sup> The effective date of the promotions is not clear from the record.

appealing when this position is officially refilled. We further order that within thirty (30) calendar days of the mailed date of this opinion, the appointing authority shall submit written notice of compliance with this order to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: March 23, 2022

COMMONWEALTH OF PENNSYLVANIA

Bryn E. Albee : State Civil Service Commission  
: :  
v. : :  
: :  
Allegheny County Department of : :  
Human Services : Appeal No. 30638

Alexis S. Cobb Biannely Diaz-Wilk  
Attorney for Appellant Attorney for Appointing Authority

Shelby Alston, et al.<sup>1</sup>  
Indispensable Parties

Biannely Diaz-Wilk  
Attorney for Indispensable Parties

REVISED ORDER

On or about October 26, 2020, appellant filed an appeal challenging her non-selection for promotion to County Casework Supervisor with the Allegheny County Department of Human Services. On September 2, 2021, a hearing was held before Commissioner Gregory M. Lane.

In an Adjudication mailed March 23, 2022, the Commission sustained appellant’s appeal. The Commission ordered the appointing authority to vacate the thirteen County Casework Supervisor positions and return the Indispensable Parties

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<sup>1</sup> In recognition of the due process requirements noted in *Jefferson County Assistance Office, Department of Public Welfare v. Wolfe*, 136 Pa. Commw. 115, 582 A.2d 425 (1990), the individuals currently occupying the challenged positions were given the opportunity to participate in the proceedings, which they accepted. N.T. pp. 15-17; Comm. Exs. C, C-1. The following people are Indispensable Parties to the action: Shelby Alston, William Bedillion, Miranda Bortmas, Casey Brown, Sarah Deak, Jennifer Detwiler, Candice Dewberry, Olivia Doswell, Hannah Shankle, Kelley Smithula, Kelly Ann Spinner, Angela Steele, and Justine Waltz. Comm. Exs. C, C-1. By email received February 15, 2022 before the issuance of this adjudication, the Commission was informed Miranda Bortmas is withdrawing as an Indispensable Party.

to their original positions. The appointing authority was directed to refill the thirteen vacated positions from among the twenty-eight candidates considered in the second round of interviews and utilize a selection process based upon position related criteria.

On April 7, 2022, the appointing authority filed a Request for Reconsideration asserting compliance with the Order created a hardship on the clients served and harmed the Indispensable Parties. The appointing authority requested a modification of the Order to appoint appellant to a vacant County Casework Supervisor position. On April 15, 2022, the appellant replied to the Request for Reconsideration indicating she may be willing to accept an appointment to the vacant County Casework Supervisor position.

AND NOW, the State Civil Service Commission, by agreement of its members, hereby grants the Reconsideration Request of the Appointing Authority to modify the remedy provided after it sustained the appeal of Bryn E. Albee challenging her non-selection for promotion to County Casework Supervisor employment.

The Allegheny County Department of Human Services is directed to do one of the following. It may appoint Bryn E. Albee to a vacant County Casework Supervisor position. This remedy does not include backpay.

In the alternative, the position of County Casework Supervisor, to which Shelby Alston, William Bedillion, Miranda Bortmas, Casey Brown, Sarah Deak, Jennifer Detwiler, Candice Dewberry, Olivia Doswell, Hannah Shankle, Kelley Smithula, Kelly Ann Spinner, Angela Steele, and Justine Waltz, were promoted is directed to be vacated. Shelby Alston, et al. are returned to the positions

they held immediately prior to their promotions. The appointing authority is directed to refill the thirteen vacated positions from among the twenty-eight candidates who were considered in the second round of interviews. The appointing authority must utilize a selection process based upon position related criteria in accordance with the Civil Service Act.<sup>2</sup>

This order shall not prejudice any other affected person from appealing when this position is officially refilled. We further order that within thirty (30) calendar days of the mailed date of this opinion, the appointing authority shall submit written notice of compliance with this order to the Executive Director of the State Civil Service Commission.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: April 22, 2022

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<sup>2</sup> The effective date of the promotions is not clear from the record.