

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

Tracking No. I-23-084

Re: Request by Jonathan Blodgett to investigate the Human Resources Division's decision to limit the persons entitled to take the 2023 Police Promotional Examination

COMMISSION RESPONSE TO REQUEST FOR INVESTIGATION

Background

On June 27, 2023, the Petitioner, Jonathan Blodgett, filed a request for investigation with the Civil Service Commission (Commission), asking the Commission to investigate the decision of the Human Resources Division (HRD) to limit the persons entitled to take the 2023 Police Promotional Examination (presently scheduled for September 2023) to those candidates who had signed up and taken the cancelled 2022 Police Promotional Examination and not to open the examination to new candidates.

On July 5, 2023, I held an expedited show cause conference to provide the Petitioner with the opportunity to show cause why such an investigation should be initiated by the Commission, which was attended by the Petitioner, counsel for the Petitioner, and General Counsel for HRD. On July 10, 2023, at my request, the Petitioner filed a supplemental Reply in support of his request for an investigation. On July 21, 2023, HRD filed a written Opposition to the Request for Investigation.

Undisputed Facts

Based on the information provided prior to and at the show cause conference, in the Petitioner's Reply and HRD's Opposition, and taking administrative notice of the proceedings in the Suffolk Superior Court referenced in HRD's Opposition, the following appears to be undisputed:

1. The Petitioner is currently employed as a Police Sergeant with the Peabody Police Department (PPD).
2. The Petitioner had initially signed up to take the 2022 Police Promotional Exam (for Lieutenant) that was scheduled for September 17, 2022.
3. On September 16, 2022, the Petitioner notified HRD that he was not eligible to take the September 17, 2022 exam and requested a refund.
4. The Petitioner's name was not one of the PPD officers listed by the City of Peabody as eligible to take the 2022 promotional exam.

5. Although the 2022 Police Promotional Examination was administered on September 17, 2022, it ultimately was not scored due to the decision in a class action brought to challenge HRD's administration of prior police promotional examinations as discriminatory. See [Tatum v. Commonwealth of Massachusetts](#), Suffolk Sup.Ct. C.A. No. 0984CV00576 (*Tatum*).
6. The re-administration of the 2022 statewide Police Promotional Examination is scheduled for September 23, 2023.
7. The Human Resources Division will only register those candidates who participated in the September 2022 administration to retake the exam in September 2023.
8. On July 18, 2023, HRD was served with a Motion for Preliminary Injunction by the Plaintiffs in the *Tatum* class action, seeking an emergency hearing and temporary restraining order to require HRD to permit certain persons who were part of the class granted relief in *Tatum* to sit for the September 2023 Police Promotional Examination, whether or not they had previously registered and taken the cancelled 2022 Police Promotional Examination.
9. The Petitioner sought to intervene in the aforesaid proceedings to obtain similar relief for himself.
10. By [Memorandum of Decision and Order dated August 10, 2023](#), the Superior Court (Connolly, J.) denied the *Tatum* Plaintiffs' emergency motion for temporary injunctive relief. By order of the same date, the Petitioner's Motion to Intervene was also denied.¹

Commission's Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity that is not affiliated with HRD or its civil service unit. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law's provisions to decide whether and to what extent an investigation might be appropriate.

Further, Section 72 of Chapter 31 provides for the Commission to "investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services."

The Commission exercises its discretion to investigate only "sparingly," typically only when there is clear and convincing evidence of systemic violations of Chapter 31 or an entrenched political or personal bias that can be rectified through the Commission's affirmative remedial intervention.

¹ I note that the *Tatum* plaintiffs have filed a petition with the Appeals Court Single Justice for immediate relief pending appeal of the Superior Court's decision referenced above.

Commission's Response

As even the Petitioner acknowledges, the Commission has plowed this ground in deciding to deny several prior requests for investigation of HRD's comparable decisions to limit the persons entitled to take the rescheduled Fire Service Promotional Examinations that had been administered or scheduled in 2022, also cancelled as a result of the Tatum decision and readministered in March 2023. See Ranahan v. Human Resources Division, CSC No. E-22-170, xx MCSR xxx (2023); Dasey v. Human Resources Division, CSC No. E-22-168, xx MCSR xxx (2023).

I find nothing in the facts of the present request or the applicable law to distinguish this matter from those prior requests. In fact, the recent Superior Court decision denying a temporary restraining order to the Tatum Plaintiffs and declining to allow the Petitioner to intervene in that civil action further reinforces the Commission's prior conclusions that HRD's decision to restrict those entitled to take the re-administration of the 2022 promotional examination to those who registered for the originally scheduled 2022 examinations was within its authority as a matter of sound discretion over the administration of civil service examinations, and was neither unreasonable, arbitrary, nor capricious.

In view of the foregoing, I recommend that the Petitioner's request for an investigation be denied.

Civil Service Commission

/s/ Paul M. Stein
Commissioner

On August 24, 2023, the Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) voted to accept the recommendation to deny the request for investigation.

Notice:

James W. Simpson, Jr., Esq. (for Petitioner)
Michele Heffernan, Esq. (HRD)