

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

Tracking No. I-21-203

Re: Request by Brockton Police Supervisors' Union to investigate the City of Brockton's decision not to participate in the September 2023 statewide Police Captain examination.

COMMISSION RESPONSE TO REQUEST FOR INVESTIGATION

Background

On July 24, 2023, the Brockton Police Supervisors' Union (Union or Petitioner), filed a request for investigation with the Civil Service Commission (Commission), asking the Commission to investigate the City of Brockton (City)'s decision not to participate in the upcoming, September 2023 Police Captain promotional examination.

On July 31, 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 counsel for the Petitioner, the Union President, a member of the Union's E-Board, counsel for the City, and General Counsel for the state's Human Resources Division (HRD).

Undisputed Facts

Based on the information provided prior to and at the show cause conference, which was audio / video recorded via Webex, the following appears to be undisputed:

1. The most recent eligible list for Brockton Police Captain was revoked in 2021.
2. There has been no vacancy for Brockton Police Captain since the revocation of the eligible list in 2021.
3. There is no anticipated vacancy for a Brockton Police Captain position until at least 2025. (The City argues that there will be no vacancy until 2026, but the Union argued that there may be a vacancy in 2025.)
4. The City sought to participate in the September 2022 promotional examination for Police Captain, but an insufficient number of Brockton police lieutenants (less than 4) expressed an interest so the examination was canceled due to lack of interest.

5. The statewide examination for Police Captain that was administered in September 2022 was not scored because of the court's decision in *Tatum v. Human Resources Division* and re-scheduled promotional examinations will be held on September 23, 2023.
6. The City did not request to participate in the statewide (re-scheduled) September 23, 2023 examination for Police Captain.
7. HRD anticipates giving another promotional examination for Police Captain in September 2024 and the City anticipates participating in that examination, which will likely result in the establishment of an eligible list for Brockton Police Captain prior to any vacancies occurring in that title.

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.

Commission's Response

The City has represented that it will participate in the 2024 promotional examination for Police Captain, resulting in the establishment of an eligible list for Brockton Police Captain prior to any anticipated vacancies for this position. Further, the City has represented that the decision to participate in the 2024 examination, as opposed to the 2023 examination, has no impact on the eligibility of the Police Chief's spouse, who currently serves in the next lower title, to sit for the examination.

Based on those representations, and for the reasons discussed at the Show Cause Conference, I recommend that the Commission deny the Petitioner's request for investigation at this time.

Finally, as discussed at the show cause conference, the City should take all proactive steps to ensure that the Brockton Police Department complies with all civil service and state ethics laws regarding *any* decisions that could have even the appearance of benefiting the Police

Chief's spouse. Specifically, I referenced a [policy adopted by the Town of Braintree](#) in response to a Commission investigation that should serve as a guide to Brockton in this regard. See *"Ruling on Investigation" In Re: Braintree Police Department's 2013 / 2014 Police Officer Hiring Process*, 28 MCSR 114 (2015).

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

On August 10, 2023, the Commission (Bowman, Chair; McConney, Stein and Tivnan, Commissioners [Dooley-Absent]) voted to accept the Chair's recommendation and close the investigation.

Notice:

Alan Shapiro, Esq. (for Petitioner)
Karen Fisher, Esq. (for City of Brockton)
Michele Heffernan, Esq. (HRD)