

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
One Ashburton Place, Room 503  
Boston, MA 02108  
(617) 979-1900

RE: Request by Thomas Conners, nine others and the Coalition of Public Safety (State Bargaining Unit 5) to investigate whether the position of Captain<sup>1</sup> in the Massachusetts Environmental Police (MEP) is subject to the provisions of General Laws Chapter 31 and therefore requires a civil service promotional examination administered by the Human Resources Division (HRD).

Tracking Number: I-21-197

Appearance for Petitioners:

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Appearance for Human Resources Division:

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Commissioner:

Christopher C. Bowman<sup>2</sup>

**RESPONSE TO REQUEST FOR INVESTIGATION**

On October 18, 2021, the Coalition of Public Safety (state bargaining unit 5) and ten of its members (collectively, “Petitioners”)<sup>3</sup> filed a request for investigation with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(a). The Petitioners requested that the

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<sup>1</sup> The position is called “Deputy Bureau Chief,” or sometimes simply “Deputy Chief” (i.e., of Enforcement), but it is commonly referred to within the MEP as “Captain.”

<sup>2</sup> Law Fellow Courtney Timmins, Esq. assisted with the drafting of this Response.

<sup>3</sup> The Coalition of Public Safety filed collectively on behalf of its member employees of the MEP, as well as the following individually named MEP officers: Thomas Conners, Cynthia Kalkwarf, Jason DeJackome, Michael Lees, Daniel Reeve, Daniel McGonagle, James C. Hennessey, William Woytek, John Girvalakis, and James P. Cullen. All of these individuals are employed in titles below “Captain” at MEP.

Commission investigate “the MEP’s failure to use the civil service process at all to promote officers to the position of Captain.” (Emphasis in original).

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, in response to an alleged violation of the civil service law, to decide whether and to what extent an investigation might be appropriate. Further, Section 72 of Chapter 31 authorizes 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.” (Emphasis added).

In response to the Petitioners’ request for an investigation, the Commission held a show-cause conference on November 16, 2021, allowing the Petitioners to show why the Commission should initiate the requested investigation. In attendance were some of the Petitioners, counsel for the Petitioners, counsel for HRD, and counsel for MEP. On November 22, 2021, the Commission issued a procedural order which directed the parties to produce the following additional information within sixty days:

- A. Any records related to whether there is a distinction between the terms “deputy chief” and “deputy bureau chief” at MEP.
- B. Any records related to the civil service status of any positions held by persons formerly employed by what was known as the Division of Law Enforcement and the Division of Marine and Recreational Vehicles.
- C. Any records related to the civil service status of any employees who effectively transferred into the newly created entity as a result of the 1985 Special Act.
- D. Any records related to those employees first transferred into and/or appointed to the position of “Captain” after the passage of the 1985 Special Act.
- E. Any records specifically related to RL, including whether RL took and passed a civil service examination in or around 1985.
- F. Any other records relevant to whether the position of Captain at MEP is covered by the civil service law.

On June 6, 2022, both parties submitted written position statements outlining why the Commission should, or should not, initiate an investigation.

***Background***

The following appears to be undisputed:

1. Pursuant to Chapter 231 of the Acts of 1985, the former “Division of Law Enforcement” (DLE) and “Division of Marine and Recreational Vehicles” (DMRV) merged into what has now become the MEP.
2. According to Section 56A of Chapter 231 of the Acts of 1985, MEP Captains<sup>4</sup> are subject to Chapter 31 (the civil service law). The provision states that “the director of law enforcement shall appoint, **subject to the provisions of chapter thirty-one of the General Laws, such deputy bureau chiefs, enforcement officers and administrative and clerical personnel as may be necessary to carry out the duties of the division.**” (Emphasis added). St. 1985 c. 231, § 56A.
3. Section 63 of Chapter 231 of the Acts of 1985 provides: “**The positions of director, deputy director, chief and deputy chief shall be classified in accordance with section forty-five of chapter thirty of the General Laws** and their salaries shall be determined in accordance with section forty-six C of said chapter thirty.”
4. Section 62 of Chapter 231 of the Acts of 1985 states, in relevant part:

All such employees who are transferred to enforcement positions shall be deemed to have all rights of permanent appointment to comparable positions under chapter thirty-one of the General Laws upon successful completion of a course of instruction conducted by the Massachusetts criminal justice training council and of a civil service qualifying examination of their training and experience.

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<sup>4</sup> MEP Captains are officially called “Deputy Bureau Chiefs.” See note 1, supra.

5. Under G.L. c. 30, § 46E, which was added by St. 1981 c. 699, § 73, state management positions allocated to job group M–V through job group M–XII are exempt from the civil service law.

**Notwithstanding any provision of law to the contrary**, after June twenty-seventh, nineteen hundred and eighty-one, **no position allocated to job group M–V through job group M–XII**, inclusive, of the management salary schedule provided in section forty-six C **shall be classified under chapter thirty-one**; provided, however, that this section shall not apply to positions for which full or partial reimbursement is made by the federal government and which are required by federal law or regulation to be covered by a merit system, so-called; and provided further, that no exemption from the provisions of this section shall be allowed unless certification of the federal requirement is received from the appropriate federal official and unless such certification is renewed at regular intervals.

G.L. c. 30, § 46E (emphasis added).

6. MEP Captains were classified as M-III positions at the time Chapter 231 of the Acts of 1985 was enacted. MEP Captains were reclassified as M-V positions in 1995 and, in 2001, reclassified to their current allocation as M–VI positions.

### ***Commission’s Response***

Where the text of a statute is clear and unambiguous, it must be given its ordinary meaning. *Phillips v. Equity Residential Mgmt., LLC*, 478 Mass. 251, 257 (2017), citing *Bronstein v. Prudential Ins. Co.*, 390 Mass. 701, 704 (1984). As the Supreme Judicial Court has stated, the “primary goal in interpreting a statute is to effectuate the intent of the Legislature, and ‘the statutory language is the principal source of insight into legislative purpose.’” *Aids Support Grp. of Cape Cod, Inc. v. Barnstable*, 477 Mass. 296, 300 (2017), quoting *Bronstein*, 390 Mass. at 704. Thus, “[w]here the language of a statute is clear and unambiguous, it is conclusive as to legislative intent.” *Aids Support Grp.*, 477 Mass. at 300, quoting *Worcester v. Coll. Hill Properties, LLC*, 465 Mass. 134, 138 (2013).

Turning to the plain language of G.L. c. 30, § 46E, it is clear that the Commission has no jurisdiction over MEP Captains because they are M–VI positions. Section 46E explicitly states that job groups M–V through M–XII “have no civil service status . . . in their management positions.” *Knox v. Civ. Serv. Comm’n*, 63 Mass. App. Ct. 904, 906 n.7 (2005). These management positions are “outside the protection of the civil service system.” See *Knox*, 63 Mass. App. Ct. at 905; see also *Spencer v. Civ. Serv. Comm’n*, 479 Mass. 210, 212 (2018) (“The civil service laws do not apply to middle and upper level management positions in public service.”).

Moreover, the Commission’s lack of jurisdiction is supported by the legislative history and purpose behind St. 1981 c. 699, § 73, which created G.L. c. 30, § 46E. In *Spencer v. Civil Service Commission*, the Supreme Judicial Court explained:

Prior to 1981, middle and upper managers were eligible to receive civil service status and tenure. However, in 1981, the Governor proposed a comprehensive overhaul of the Massachusetts civil service system to the Legislature, accompanied by a letter and a document explaining the details of the legislation. The legislation accomplished multiple, related purposes. Notably, it removed upper and middle level managers from the civil service system and increased their pay. It thereby provided much greater flexibility in the hiring, promotion, and removal of managers. In his letter accompanying the proposed bill, the Governor stated: “[T]he implementation of this plan is essential if we are to encourage more responsibility and accountability in our managers and if we are to motivate such managers to assist in the achievement of the state’s objectives in a more economical and efficient manner.” The summary of the legislation further indicated that a modern personnel system required that “managers be recognized as such—a group separate and apart from employees; a group, in fact, responsible for the supervision of those same employees.”

479 Mass. 210, 217 (2018) (citations omitted), citing 1981 House Doc. No. 6279.

In addition, the Petitioners’ reliance on Chapter 231 of the Acts of 1985 is flawed. Section 63 of that statute specifically incorporated reference to the 1981 reclassification law (G.L. c. 30, §§ 45 and 46C). When St. 1985 c. 231, §§ 56A and 62-63, were enacted, MEP

Captains were classified as M–III positions and thus outside the purview of G.L. c. 30, § 46E.<sup>5</sup> The Petitioners acknowledge this fact, that “for more than a decade following the creation of the agency, captains were classified as M–III,” and “for many years following the acts of 1985, the position of MEP Captain was classified below M–V . . . .” *See* Petitioners’ Position Statement at 3. Moreover, the Petitioners are correct that, upon enactment of Chapter 231 of the Acts of 1985 MEP Captains were provided with the protection of the civil service system, subject to Chapter 31. However, the Petitioners fail to acknowledge that, when MEP Captains were reclassified to M–V positions in 1995, and subsequently reclassified to their current classification of M–VI in 2001 (pursuant to Section 45 of Chapter 30, which Section 62A of Chapter 231 of the Acts of 1985 also specifically made applicable to them), this reallocation increased the level of compensation for MEP Captains and also removed them from the civil service system. *See* G.L. c. 30, § 46C (setting forth salary schedule for employees classified in the M–V and M–VI job groups) and G.L. c. 30, § 46E (“Notwithstanding any provision of law to the contrary, after [1981], no position allocated to job group M–V [or M–VI] . . . of the management schedule provided in section forty-six C shall be classified under chapter thirty-one”). In light of these circumstances, absent a change in the statute, the Commission lacks jurisdiction over MEP Captains, and has lacked such jurisdiction since their reclassification in 1995.

Civil Service Commission

/s/ Christopher C. Bowman  
Chair

So ordered by vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on January 12, 2023.

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<sup>5</sup> For this reason, there can be no valid argument that the 1985 Act impliedly repealed (or was repugnant to) the 1981 Act referred to herein.

Notice to:

Gary G. Nolan, Esq. (for Petitioners)

Michele Heffernan, Esq. (for HRD)

Eric Klein, Esq. (for MEP)