

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

RE:

Tracking Number: I-14-304

Request by Jon Mograss, Stephen Hocking & Ted McLaughlin to investigate the failure to administer civil service examinations for the public safety position of Captain at the Massachusetts Department of Correction.

Appearance for Petitioners:

James F. Lamond, Esq.
McDonald, Lamond, Canzoneri &
Hickernell, Attorneys at Law
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Appearance for Human Resources Division:

Michele Heffernan, Esq.
Deputy General Counsel
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Appearance for Department of Correction:

Earl Wilson, Esq.
Director of Employee Relations
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Appearance for Interveners:

Thomas E. Horgan, Esq.
Hanley Law Offices, LLC
308 Victory Road, 3rd Floor
Quincy, MA 02171

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION AND ORDER OF RELIEF

On December 24, 2014, Jon Mograss, Stephen Hocking and Ted McLaughlin (Petitioners), all permanent Lieutenants at the Massachusetts Department of Correction (DOC) who are all members of the Massachusetts Correction Officers Union (MCOFU), filed a petition with the

Civil Service Commission (Commission), asking the Commission to investigate why the state's Human Resources Division (HRD) has not conducted promotional examinations for the public safety position of Captain and/or delegated to DOC the responsibility for conducting these examinations. MCOFU is a public sector labor union representing approximately four thousand (4,000) correction officers, sergeants and lieutenants employed by DOC within state bargaining unit 4.

On January 16, 2015, the Commission received a petition from the New England Police Benevolent Association (NEPBA), which represents Captains, all of whom are currently serving in a provisional capacity, asking to intervene in this matter. I subsequently allowed motions to intervene from seven (7) individual Captains¹, all of whom are NEPBA members.

On January 20, 2015, I held a show cause hearing to give the Petitioners the opportunity to show why the Commission should initiate an investigation regarding this matter. The show cause hearing was attended by counsel for HRD, counsel for DOC, the Petitioners, counsel for the Petitioners, counsel for the now-Intervenors (the provisional Captains) and some of the provisional Captains.

At the conclusion of the show cause hearing, I provided HRD & DOC with thirty (30) days to submit briefs regarding why the Commission should not initiate an investigation and/or order that examinations be administered for the public safety position of Captain at DOC. I also provided the intervening Captains with thirty (30) days to submit a brief regarding the same question and to address the following question: "If the Commission, as part of an order to begin examinations for Captain, required provisional Captains to take and pass that examination to retain their position, what would the position of the intervenors be regarding whether the

¹ Robert Tarantino, Jason Lanpher, Shaun Dewey, Mark Reilly, Michael Edwards, David Kenneally, Christopher Crown

Commission should order that such examinations be administered.” The Petitioners were given ten (10) days thereafter to file a reply. All of the briefs were received and reviewed.

Background

Unless otherwise noted, the following is not disputed:

1. Pursuant to c. 30, § 46E, as amended by Section 73 of Chapter 699 of the Acts of 1981, state management positions allocated to job group M-V through job group M-XII are exempted from the civil service law.
2. Captains at DOC are designated as Program Managers IV.
3. The predecessor title to the public safety position of Captain at DOC was Assistant Deputy Superintendent.
4. Since 1981, the public safety position of Captain, or the predecessor title of Assistant Deputy Superintendent, has been covered by the civil service law.
5. No civil service examinations have ever been administered since 1981, or at any time, for the public safety position of Captain or Assistant Deputy Superintendent at DOC.
6. During this time period, civil service examinations have been administered for other, lower, public safety titles at DOC such as Correction Officer I (CO I); Correction Officer II (CO II or Sergeant); and Correction Officer III (CO III or Lieutenant)
7. When asked during these proceedings, neither HRD or DOC could identify any other public safety position covered by the civil service law for which no examination is administered.
8. In the absence of civil service examinations, DOC has filled the public safety title of Captain through provisional (as opposed to permanent) promotions.

9. There are eighty-eight (88) individuals serving as provisional Captains at DOC. All of them have permanency in some lower title, but not all of them have permanency in the title of CO III (Lieutenant).

Commission Response

After reviewing the briefs submitted by the parties and reviewing all applicable laws, rules and prior Commission decisions related to this matter, the Commission issued a Response to the Request for Investigation (See Response to Request for Investigation, CSC Tracking No. I-14-304, 5/28/15). In that Response, the Commission, pursuant to its authority under G.L. c. 31, § 2(a), initiated an investigation regarding the failure to administer examinations, either through a traditional or alternate means, in order to make permanent promotional appointments to the position of Captain at DOC.

HRD and DOC were provided with ninety (90) days to propose the most cost effective and efficient means to ensure compliance with the civil service law and rules, the Commission's Order and all prior Commission decisions related to the position of Captain at DOC. Any such proposal was to include provisions to protect the rights of provisional, long-term incumbents in this position.

A status conference was scheduled to be held at the offices of the Commission on Monday, September 21st at 10:00 A.M to review the proposed plans of HRD and DOC.

Status Conference I

I held a status conference on September 21st, which was attended by the same individuals who attended the show cause hearing on January 20th. As part of that status conference, counsel for HRD and DOC stated that they intended to move forward with conducting a promotional examination for Captain in conjunction with a private vendor by the name of EB Jacobos. HRD and DOC anticipated that said examination would include: a) a multiple choice component; b) an

assessment center component; and c) credit for training and experience. Although no firm target date was provided by HRD and DOC to complete the examination process, they estimated that it would take approximately one (1) year to complete the first component of the examination process.

Further, at the status conference, HRD and DOC submitted a joint motion to grant permanent status, effective immediately, to all current (provisional) incumbents of the Captain position. The rationale for said motion was, in part, a) the need to utilize the services and expertise of the provisional Captains in developing the promotional examination without there being a conflict; and b) the recommendation contained in the Commission's Response. HRD and DOC made no recommendation at the time regarding any "new" individuals provisionally promoted to Captain ("the new Provisional Captains") between now and the date that an eligible list has been established.

I asked HRD to consider what, if any, relief should be granted to the new Provisional Captains. Further, I urged all parties (HRD, DOC, the Petitioners and the Intervenors) to reach a consensus on all issues related to a possible order of relief by the Commission regarding these matters and report back to the Commission on October 20, 2015.

Status Conference II

On October 20, 2015, I held another status conference to address all matters related to this Petition. I heard from counsel for HRD, DOC, the Petitioners and the Intervenors. I advised all parties that I would forward to them a proposed order for review and comment.

On November 13, 2015, I sent all parties a proposed order for their review and comment. HRD and DOC did not respond. The Petitioners replied and stated that they were in agreement with the proposed order. The intervening Captains replied and stated that they were opposed to incorporating an Assessment Center component into the promotional examination for Captains.

Order

After careful review and consideration, the Civil Service Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, makes the following orders:

1. Forthwith, HRD and DOC shall take all necessary steps to: a) create a promotional examination for the position of Captain at DOC; and b) create an eligible list of candidates for the position of Captain that will be used to create Certifications which will be used to make promotional appointments to the position of Captain at DOC.
2. HRD and DOC shall provide the Commission with status updates at least every six (6) months which shall include a list of benchmarks, timelines for meeting those benchmarks and information regarding whether those benchmarks and timelines have been met.
3. Upon the establishment of an eligible list for the position of Captain, all individuals serving as Provisional Captains at DOC prior to the date of this Order shall be made permanent and given tenure.
4. The relief provided for in Paragraph 3 shall not apply to any individual provisionally promoted to the position of Provisional Captain at DOC on or after the date of this Order. To achieve permanency in the position of Captain at DOC, these individuals shall be required to comply with all applicable civil service law and rules and shall be treated in the same manner as any other individual seeking promotional appointment to the position of Captain.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 10, 2015.

Notice:
James Lamond, Esq. (for Petitioners)
Thomas E. Horgan, Esq. (for Interveners)
Michele Heffernan, Esq. (for HRD)
Earl Wilson, Esq. (for DOC)