

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**CIVIL SERVICE COMMISSION**

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

**IN RE: PETITION OF JOSEPH HICKEY,  
LAWRENCE CARDINALE & MICHAEL  
RAGUCCI (REQUEST TO INVESTIGATE  
THE EVERETT FIRE CHIEF ASSESSMENT  
CENTER PROMOTIONAL EXAMINATION)**

**Tracking No. I-19-038**

Appearance for Petitioners:

Patrick Bryant, Esq.  
Pyle, Rome, Ehrenberg, P.C.  
2 Liberty Square -10<sup>th</sup> Floor  
Boston, MA 02109

Appearance for City of Everett:

Albert Mason, Esq.  
145 Springfield Street  
Chicopee, MA 01013

Appearance for HRD:

Mark P. Detwiler, Esq.  
Labor Counsel  
Human Resources Division  
100 Cambridge Street – Suite 600  
Boston, MA 02114

Commissioner:

Paul M. Stein

**RESPONSE TO REQUEST TO OPEN INVESTIGATION**

On February 8, 2019, the Petitioners, Joseph Hickey, Lawrence Cardinale and Michael Ragucci (Petitioners), acting pursuant to G.L.c.31, §2(a), requested that the Civil Service Commission open an investigation into whether factors other than basic merit principles improperly influenced the procedures approved by the Massachusetts Human Resources Division (HRD) that allowed the City of Everett (Everett) to select a candidate for appointment to the civil service position of permanent Fire Chief in the Everett Fire Department (EFD) through a Sole Assessment Center with “In-Title” Education and Experience (E&E) credit allowed for “In-Title” experience only. On February 15, 2019, the Commission (Bowman, Chair) issued an Order to Show Cause (OSC) why the

Commission should conduct such an investigation and I held an OSC conference on February 26, 2019 in the matter at which the Petitioners and HRD appeared through counsel. Following the conference, after inquiry of the Everett City Solicitor as to why Everett did not appear at the OSC conference, I came to learn that notice had not been forwarded to her office in time for Everett's labor counsel to attend the conference. Accordingly, an Interim Order was issued on March 29, 2019 requesting certain information from HRD and Everett, which information was subsequently received. A second OSC conference was convened on April 24, 2019 at which HRD, Everett and the Petitioners appeared and were represented by counsel.<sup>1</sup> Following the second OSC conference, Everett and HRD provided certain additional information that I had requested. After carefully reviewing the Petitioners' request, the information provided by Everett and HRD, and considering the argument of counsel, I have determined that, in the exercise of its broad discretion in this regard, the request for investigation be closed without further action by the Commission.

### **Background**

Civil service promotional examinations are used to create eligible lists of candidates for selection to positions in the civil service above the entry level. In the absence of an active eligible list, an appointing authority may fill such positions provisionally, pending the next civil service promotional examination.<sup>2</sup>

Design and administration of promotional examinations come within the purview of the administrative expertise of HRD. See G.L.c.31,§3(c) & §22; Personnel Administration Rules, PAR.06. The Commission has construed the applicable Massachusetts civil service laws and rules to

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<sup>1</sup> The second OSC conference on April 24, 2019 was held in conjunction with two other related hearings concerning E&E issues. (McDonald v. HRD, CSC No. B2-18-246; Ridick v. HRD, CSC No. B2-19-085 and was digitally recorded.

<sup>2</sup> HRD no longer administers civil service examinations for most civil service entry positions and, save for public safety promotions such as the fire service involved in this matter, most civil service jobs above entry-level are filled using a provisional appointment or provisional promotional process which, although intended to be temporary in nature are, in effect, permanent appointments without the civil service status of a tenured employee promoted from an eligible list after examination.

vest HRD with broad, although not unfettered, discretion to determine the technical requirements for competitive civil service examinations, including the type and weight given as credit for training and experience, subject to scrutiny solely when HRD's decisions, actions or failure to act are devoid of any rational explanation, are not firmly grounded in common sense, have not been uniformly applied, are arbitrary, capricious or otherwise run afoul of basic merit principles of civil service law. See, e.g., Borjeson v. Human Resources Div., 31 MCSR 267 (2018) (Interim Decision), 31 MCSR 297 (Final Decision) (allowing appeal and requiring rescoring of E&E when HRD had arbitrarily changed its long-standing traditional methodology for reasons that were neither "persuasive nor logical"); Clarke v HRD, 29 MCSR 1 (2016) (allowing appeal, in part, to grant education credit when documentation submitted indistinguishable from information previously found sufficient to grant such credit); Merced v. Human Resources Div, 28 MCSR 396 (2015) (affirming HRD's requirement that university teaching credit required faculty status of adjunct professor or higher); Carroll v. Human Resources Div., 27 MCSR 157 (2014)(deferring to HRD's technical expertise in defining criteria for educational credit); Cataldo v. Human Resources Div, 23 MCSR 617 (2010) (allowing E&E appeal, in part, for education credit that HRD denied for reasons that could not be reconciled with a reasonable construction of HRD's examination instructions). See generally, G.L.c.31,§1 (basis merit principles means "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills", "assuring fair treatment of all applicants" and protecting employees from "arbitrary and capricious actions"); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303, rev.den., 426 Mass. 1102 (1997) (decision "is arbitrary and capricious when it lacks any rational explanation.")

HRD provides appointing authorities three options for promotional examinations: (1) the traditional written examination administered and scored by HRD, which consists of two components,

a written test of technical ability (generally weighted 80%) and a “traditional” education and experience (E&E) component (generally weighted at 20%) that gives credit established by HRD for a candidate’s past relevant training and experience; (2) a “Sole Assessment Center”, in which HRD authorizes an appointing authority, through a “Delegation Agreement”, to administer a vendor created examination, involving oral interviews and practical exercises judged by a panel of experts selected by the vendor, which may also include the “traditional” E&E component or an “In-Title Experience” component that awards points only for a candidate’s prior service “in the title” for which the examination is given, but not for any prior service; and (3) a combination of an HRD administered written examination, a vendor created Assessment Center, and a “traditional” E&E component. Under all options, candidates would also have points added to their scores pursuant to statutory mandates, such as veteran’s preference.

The petitioners’ request for an investigation in this matter challenges Everett’s choice of the “Sole Assessment Center” with In-Title experience only. The petitioners, all EFD Deputy Fire Chiefs point to the fact that the EFD has been headed by an Acting Fire Chief who was provisionally appointed to that position more than two years ago when he was then the most junior Deputy Fire Chief and held less tenure in the EFD than other Deputy Fire Chiefs. The petitioner’s argue that the choice of an In-Title only Assessment Center was designed to provide an unfair advantage to the Acting Fire Chief over all other Deputy Chiefs eligible to take the Fire Chief’s examination by denying them the opportunity to receive credit for their considerable experience as firefighters and officers with the EFD, but who had little or no opportunity to serve “in the title” of Fire Chief. The petitioners also argued that the Acting Fire Chief also had an unfair advantage over the other Deputy Chiefs because he was in a position to play a role in planning for the examination and, therefore, had more time to prepare for the Assessment Center than the other candidates.

Everett contends that the selection of the Assessment Center “In-Title” option was a legitimate choice, given the high-level of responsibility unique to the position of Fire Chief. Everett also contends that, save for involvement of an administrative nature, the Acting Fire Chief played no substantive role in the selection of the Assessment Center vendor or the design of the examination and his limited role was of no material consequence to the ultimate results. The scoring of the Assessment Center exercises were scored by panelists selected by the vendor, who represented that it chose them in a conscious attempt to use qualified, but disinterested experts as the panelists.

HRD points out that the use of a Sole Assessment Center with “In-Title” experience only has been a choice offered to appointing authorities for many years and it is not uncommon for an appointing authority to select that option. HRD exercises no oversight over what option an appointing authority selects.

Four EFD Deputy Fire Chiefs completed and passed the Assessment Center. The Acting Fire Chief received an over-all score of 86 (which included 2 points for veteran’s preference and 0.66 credit for his “in-title” service as a provisionally appointed Acting Fire Chief). The scores of the other three Deputy Fire Chiefs were 79, 75 and 70. At my request, HRD made several hypothetical calculations which suggest that, whether an “In-Title only” or a more traditional E&E component were used, the spread in the score of the Acting Fire Chief and the other candidates is large enough that the Acting Fire Chief would still be ranked at the top of any eligible list. Also, at my request, I have received and reviewed the names and credentials of the four Assessment Center panelists, which includes a former Director of HRD’s Civil Service Unit, the Director of the Rhode Island Fire Academy, Fire Chief (New Hampshire and Dennis, MA) a Deputy Chief (Worcester,MA), HR Director (Worcester,MA) and a Police Chief (Ipswich). Most have served as panelists on dozens of Assessment Centers.

## **Commission Response**

G.L.c.31, §2 states in relevant part:

In addition to its other powers and duties, the commission shall have the following powers and duties:

- (a) To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.”

G.L.c.31, §72 states in part:

The commission or the administrator may 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 or the administrator or any authorized representatives of either, may summon witnesses, administer oaths and take testimony for any hearing, investigation or inquiry conducted pursuant to the civil service law and rules. Fees for such witnesses shall be the same as for witnesses before the courts in civil actions and shall be paid from the appropriation for incidental expenses.

These statutes confer significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007). See also Dennehy v. Civ. Serv. Comm’n, No. 2013-00540, Suffolk Superior Court (2014) (“The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.”). As a general rule, the Commission has chosen to exercise its discretion to initiate a Section 2(a) investigation sparingly, and only when there has been a threshold showing that there is a reasonable likelihood that a violation of civil service law and rules has occurred that has prejudiced the civil service rights of others. A mere possibility of a violation will ordinarily not be sufficient to trigger a full investigation.

For example, the Commission entertained a request for investigation by a group of Lieutenants and Captains of the Department of Correction, to determine why no examinations had been held

since 1981 for promotion to the civil service position of Captain, which deprived them of the opportunity to obtain civil service permanency in this position. Request by John Mograss, et al. to Investigate the Failure To Administer Civil Service Examinations the Public Safety Position of Captain at the Massachusetts Department of Correction, 28 MCSR 601 (2015). The Commission opened an investigation and ordered relief when it became known that the Deputy Fire Chief of the Springfield Fire Department had been involved in the hiring of a class of firefighters which involved the bypassing of certain more highly ranked candidates in favor of the Deputy Chief's son. In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield, 24 MCSR 627 (2011). Similarly, the Commission took action after investigation of appointments made in Methuen and Oxford in which the direct involvement of the appointing authority (Police Chief and Board of Selectmen, respectively) compromised a selection process which favored certain relatives of the appointing authorities. In Re: Town of Oxford's 2011 Review and Selection of Permanent Intermittent Police Officer Officers, CSC No. I-11-280 (2011); In Re: City of Methuen's Review and Selection of Reserve Police Officer Candidates in the Fall of 2008, CSC No.I-09-290 (2010).

After careful review of all of the information and materials provided by HRD, Everett and its vendor, and the petitioners, I have concluded that opening a Section 2(a) investigation into the matters raised by the petitioners here is not warranted. The request for investigation is denied.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on June 20, 2019.

Notice to:

Patrick Bryant, Esq. (for Petitioners)  
Albert Mason, Esq. (for Everett)  
Mark Detwiler, Esq. (for HRD)