

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

Request for Investigation against  
the Human Resources Division by  
Petitioners<sup>1</sup>:

- Craig Hardy
- Scott Hogan
- Stephen Merrill
- Scott Taylor
- Richard Costanza
- John Russo
- Donald Meninger
- Rocco Andreotti
- Thomas Pietrantonio
- William Hurley

**Tracking No.:** I-17-020

**RULING ON REQUEST FOR INVESTIGATION**

By letter dated January 24, 2017, Craig Hardy and 9 Others (Petitioners) requested that the Commission conduct an investigation regarding the conduct of Fire Chief examinations. Mr. Hardy and others phoned HRD to inquire in this regard and were told that HRD will not conduct a written Fire Chief examination and assessment centers would be used as an alternative selection method. The Petitioners' letter adds, in pertinent part,

“We are concerned that any discontinuance of an examination may be improper. Section 59 of chapter 31 permits a promotion ‘only after competitive examination,’ whereas Section 7 states, ‘An appointing authority desiring to make a promotional appointment shall recommend the type of examination to be utilized.’ In the past, HRD has conducted assessment centers for Fire Chief at the request of municipalities (and presumably after municipalities have fulfilled any applicable collective bargaining obligations). We are unaware of any instance that HRD has conducted an assessment center unilaterally. Even if not unlawful, we think that HRD should be transparent about the reasons and mechanics for using an assessment center as the exclusive method to create a list. ...”  
Id.

On February 14, 2017, the Commission conducted a show cause hearing to determine if the Commission should conduct an investigation as requested by the Petitioners. Counsel for the Petitioners and the state's Human Resources Division (HRD) attended. At the show cause hearing, I asked HRD for information, which I conveyed by email thereafter, stating, in pertinent

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<sup>1</sup> The Petitioners' request for investigation was joined by Everett Fire Fighters, Local 143, IAFF. However, since the union does not have the status of its members under G.L. c. 31, the union is not recognized as a Petitioner here.

part, “Will HRD conduct an exam or an assessment center for the position of Fire Chief in 2017 and, if so, on what date?”

On February 17, 2017, HRD replied to my February 14 request stating, in full, “[a]t this time, HRD will not be conducting an exam for the position of Fire Chief in 2017. Appointing Authorities who wish to can opt to schedule an assessment center exam by completing a delegation agreement with HRD.”

By email message dated February 23, 2017, the Petitioners responded to HRD’s February 17 message, continuing to argue that HRD is required to conduct Fire Chief examinations, that HRD has now said that it will not conduct Fire Chief examinations and that, therefore, the Commission should pursue an investigation of the matter. The Petitioners reference an article in a recent Plymouth local newspaper article to support their contention that some municipalities are using HRD’s apparent decision not to conduct Fire Chief examinations as a “reason to get rid of civil service”.

On March 13, 2017, I emailed the parties, asking HRD to respond to twelve (12) questions. On April 26, 2017, HRD responded to these questions. The questions and HRD’s responses are attached hereto and incorporated by reference.

1. How do municipalities request a civil service Fire Chief exam?

HRD’s Answer: “If an exam for Fire Chief, Deputy Chief, or District Chief is being offered by HRD, a municipality requests to take part in the examination by submitting an HRD’s answer: Exam Requisition through Civil Service’s online NeoGov System.”

2. List the municipalities with civil service Fire Chiefs.

HRD’s answer: HRD listed fifty-four (54) municipalities with civil service Fire Chiefs.

3. List the years in which the civil service Fire Chief exam has been given since 2009 and any and all costs of the exam each time it was given.

HRD’s answer: “HRD is unable to provide information prior to 2012, as that information was held within the Elipsis mainframe, which is no longer readily accessible. Information is provided below for District Fire Chief, Deputy Fire Chief and Fire Chief exams. ‘Expenses’ reflect the cost of consultation and test creation. ‘Revenue’ reflects candidate fees collected for thee exams. Revenue and Expenses include costs for District Chief. Payroll expenses are in addition to the expenses below and are not reflected in the below chart.”

In summary, the revenue to HRD from examination fees in 2011 for examinations for District Fire Chief, Deputy Fire Chief and Fire Chief was \$28,500; the 2012 revenue to HRD from examination fees for the same three (3) titles was \$54,000, and the expenses for the 2012 exams were \$71,359; the 2013 revenue to HRD from exams for the same titles was \$30,500, the expenses were \$28,433, 17 candidates took the District Fire Chief exam, 93 candidates took the Deputy Fire Chief exam, and 12 candidates took the Fire

Chief exam; the 2014 revenues to HRD from exam fees were \$53,000, the expenses were \$71,153, 48 candidates took the District Fire Chief exam, 116 took the Deputy Fire Chief exam and 10 took the Fire Chief exam; the 2015 revenue to HRD from exam fees was \$27,250, the expenses were \$34,950, 23 candidates took the District Fire Chief exam, 68 took the Deputy fire Chief exam and 12 took the Fire Chief exam; the 2016 revenue to HRD from exam fees was \$51,000, the expenses were \$57,163, 38 candidates took the District Fire Chief exam, 123 took the Deputy fire Chief exam and 14 took the Fire Chief exam; the 2017 revenue to HRD for exam fees for Deputy and District Chief exams has not yet been determined because candidates are still registering for the exams and expenses are estimated to be \$23,030 or more.

4. List the names of the appointing authorities that requested assessment centers, instead of exams, in each year since 2009.

HRD's answer: HRD provides a list of municipalities and exams conducted for District Fire Chief, Deputy Fire Chief and Fire Chief. In summary, the HRD information indicates that in:

2009, 5 municipalities were involved in 7 exams and that 2 of the 7 exams were assessment centers (the remaining 5 exams involved both the written exam and assessment center); 2 of the exams were for Fire Chief;

2010, 11 municipalities were involved in 12 written exams and that 10 of the 12 exams were assessment centers (the remaining 2 exams involved both the written exam and assessment center); 8 of the exams were for Fire Chief;

2011, 4 municipalities were involved in 4 exams and that 2 of the 4 exams were assessment centers (the remaining 2 exams involved both the written exam and assessment center); 2 of the exams were for Fire Chief;

2012, 6 municipalities were involved in 7 exams and that 4 of the 7 exams were assessment centers (the remaining 3 exams involved both the written exam and assessment center); 3 of the exams were for Fire Chief;

2013, 7 municipalities were involved in 8 exams and that 6 of the 8 exams involved both the written exam and assessment center); 3 of the exams were for Fire Chief;

2014, 3 municipalities were involved in 4 exams and that all 4 involved assessment centers; 3 of the exams were for Fire Chief;

2015, 11 municipalities were involved in 15 exams and that 6 of the 15 were assessment centers (the remaining 9 exams involved both the written exam and assessment center); 4 of the exams were for Fire Chief;

2016, 14 municipalities were involved in 17 exams and that 11 of the 17 exams involved both the written exam and assessment center); 7 of the exams were for Fire Chief; and

2017, 8 municipalities were involved in 13 exams and that 7 of the 14 were assessment centers (the remaining 7 exams involved both the written exam and assessment center); 5 of the exams were for Fire Chief.

5. How many candidates have taken the exam in each year it was given since 2009?

HRD's answer: HRD wrote, in summary:

2012 - for District Fire Chief, 6 candidates took the assessment center; for Deputy Fire Chief; 5 took an assessment center and 6 took both the written exam and assessment center); for Fire Chief, 6 candidates took the assessment center;

2013 – for District Fire Chief, 16 candidates took the written exam; for Deputy Fire Chief, 84 took the written exam and 7 took the assessment center; for Fire Chief, 9 candidates took the written exam and 10 took the assessment center;

2014 – for District Fire Chief, 47 took the written exam and 4 took the assessment center; for Deputy Fire Chief, 95 took the written exam, 14 took the written exam and assessment center, and 7 took the assessment center; for Fire Chief, 6 took the written exam and 8 took the assessment center;

2015 – for District Fire Chief, 23 took the written exam; for Deputy Fire Chief, 65 took the written exam, 1 took the written exam and assessment center, and 9 took the assessment center; for Fire Chief, 4 took the written exam and 4 took the assessment center;

2016 – for District Fire Chief, 37 took the written exam; for Deputy Fire Chief, 103 took the written exam, 8 took the written exam and assessment center, and 24 took the assessment center; for Fire Chief, 14 took the written exam, 7 took the written exam and assessment center, and 13 took the assessment center.

6. How many candidates have participated in assessment centers in each year since 2009?  
HRD's answer: data is not available for 2009 to 2011; there were 6 in 2012, 17 in 2013, 36 in 2014, 18 in 2015 and 55 in 2016.

7. List the municipalities with civil service Fire Chiefs who have requested exams in each year since.

HRD answer: see answer to question #4.

8. On what basis did HRD conclude that a Fire Chief promotional exam would not be conducted in 2017? In answering this question, please indicate precisely what factors led to this conclusion beyond HRD staff reductions.

HRD's answer: "As indicated by the charts found in #3, 4, and #5, there has been a lack of interest from Civil Service Communities in calling for these exams that, coupled with the increasing costs without the adequate generation of revenue, the decision was made not to offer the exam."

9. What is the minimum number of municipalities requesting Fire Chief exams and the minimum number of candidates requesting the exam that are needed to justify conducting the Fire Chief exam?

HRD's answer: "HRD must first create the exam prior to knowing how many persons will actually take the exam. For example, a town can request an exam, but then request to postpone it, which results in 0 applicants from that town. The chart in #3 reflects the trends of the past 5 years as to how many have requested and how many have taken each exam."

10. Has HRD conducted an assessment center for Fire Chief on its own, that is, without a municipality having requested it? If so, provide the dates on which such assessment centers were conducted, the names of the municipalities for which it was conducted and the number of candidates who participated in the assessment center.

HRD's answer: "HRD has never conducted an assessment center for the ranks of District Fire Chief, Deputy Fire Chief, or Fire Chief.

11. What cost, on average or in a range, have municipalities incurred when they conducted a Fire Chief Assessment center?

HRD's answer: "HRD is not privy to this information."

12. Has HRD sent notice to the pertinent municipalities that the Fire Chief exam will not be conducted this year? If not, will HRD be sending such notice?

HRD's answer: "All exams that are offered by Civil Service are posted on our website. A Fire Chief exam or reading list has not been posted on our website. Because they had expressed some interest over the last two years, HRD sent emails to Salem, Somerville, Plymouth, and Chicopee indicating the exam would not be offered in 2017."

On May 4, 2017, the Petitioners responded to HRD's answers to the twelve (12) questions, asserting that HRD's responses do not justify its actions, that HRD has a statutory obligation to offer written examinations for Fire Chief, that the information provided by HRD does not show a lack of interest in Fire Chief examinations, that there is no "discernible" trend showing increasing costs of such examinations or that Fire Chief written examinations are the reason for any perceived increase in costs, that HRD could explore ways to reduce costs or increase revenues, that HRD should provide the names of municipalities that requested either a written exam alone or with a written exam and that HRD's response to Question 9 (which asked what is the minimum number of municipalities requesting a Fire Chief exam necessary in order to conduct a written exam).

Section 2(a) of G.L. c. 31 provides that the Commission is authorized, *inter alia*,

"[t]o 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."

Id.

Under this statutory provision, the Commission has broad discretion to decide when and how to conduct an investigation. *See, e.g., Dennehy v. Civil Service Comm'n.*, Suffolk Superior Court, C.A. No. 2013-00540 (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.”). *See also Erickson v. Civil Service Comm'n.*, Suffolk Superior Court, C.A. No. 2013-00639 (2014); *Boston Police Patrolmen’s Association, et al v. Civil Service Comm’n.*, Suffolk Superior Court, C.A. No. 2006-4617 (2007). “The Commission exercises its discretion to conduct an investigation only ‘sparingly’ and, typically, when there is clear and convincing evidence of an irreparable political or personal bias that can be rectified only by the Commission’s affirmative remedial intervention into the hiring process.” *Damas v. Boston Police Department*, 29 MCSR 550, 554 (2016)(citations omitted). *See, e.g. In Re: 2010/2011 Review and Selection of firefighters in the City of Springfield*, 24 MCSR 627 (2011)(investigation of hiring led by Deputy Fire Chief that resulted in his son’s appointment, required reconsideration of many candidates in a new hiring cycle to be conducted by outsiders); and *In Re: 2011 Review and Selection of Permanent Intermittent Police Officers By the town of Oxford*, CSC No. I-11-280 (2011)(investigation of alleged nepotism in hiring Selectmen’s relatives required reconsideration of all 19 candidates in an independent process).

G.L. c. 31, s. 3 provides, in pertinent part, that “[t] administrator shall make and amend rules which shall regulate the recruitment, selection, training and employment of persons for civil service positions ....” *Id.* (emphasis added) Under G.L. c. 31, s. 5(d), the Administrator has the power and duty, *inter alia*, “[t]o conduct examinations for purposes of establishing eligible lists ....” (*Id.*) There is no definition of “examination” in G.L. c. 31, s. 1. Personnel Administrator’s Rules (PAR), PAR.02 defines “examination”, in pertinent part, as “... any instrument or process which, consistent with the civil service law and these rules, measures the fitness of applicants to perform the duties of a position....” *Id.* Section 5(l) provides that the Administrator has the power and duty to “delegate the administrative functions of the civil service system, so far as practicable, to the various state agencies and cities and towns of the commonwealth.” *Id.*

PAR.06, regarding examinations, provides, in pertinent part,

(1) Procedure

(a) The administrator shall establish procedures for competitive and other examinations to test the practical fitness of applicants. ...

(2) Content of Examinations

(a) All selection procedures shall be practical in character and shall relate directly to those matters which fairly determine the relative ranking of the persons examined based on the knowledge, abilities and skills required to perform the primary duties (critical and frequent tasks) of the position title or occupational group as determined by reliable and representative job information available to the administrator.

Examinations may be assembled or unassembled and may include written, oral, practical or performance tests, training and experience rating, assessment centers, other generally accepted selection procedures, or combinations of these, which, in the discretion and judgment of the administrator, are appropriate for the position title or occupational group being tested.

Id.

(b) The administrator shall, on a yearly basis, notify representatives of labor whose members are in the occupational fields to be tested of a proposed examination schedule. If the representatives of labor whose members are in an occupational field to be tested request, in writing, the opportunity to consult with the administrator concerning the subject matter to be tested on a particular examination within thirty (30) days of the notification of the proposed examination schedule, the administrator shall so consult, either through meetings or written submissions, with the representatives of labor prior to making a final determination concerning the form, method and content of an examination. The administrator shall afford professionals in occupational fields to be tested an opportunity to consult on the subject matter of examinations. The final determination as to form, method and content of an examination shall be within the discretion and judgment of the administrator. ...”  
Id. (emphasis added)

Under G.L. c. 31, s. 59,

“Original and promotional appointments in police and fire forces of cities and of such towns where such forces are within the official service, including appointments to the position of chief or similar position where the civil service law and rules are applicable to such position, shall be made only after competitive examination ....”  
Id. (emphasis added)

Further in this regard, pursuant to G.L. c. 31, s. 7,

“Each promotional appointment within the official service shall be made pursuant to section eight [promotional appointments civil service within the same departmental unit] or after certification from an eligible list established as a result of one of the following types of examinations: (a) a departmental promotional examination pursuant to section nine [departmental promotional examinations], (b) an alternate departmental promotional examination pursuant to section ten [alternate departmental promotional examinations] or (c) a competitive promotional examination pursuant to section eleven [competitive promotional examinations], provided that promotional appointments in such police and fire forces of cities and towns as are within the official service shall be made pursuant to section fifty-nine [police and firefighter examinations, appointments and promotions] or section sixty-five [MBTA officers]. An appointing authority desiring to make a promotional appointment shall recommend the type of examination to be utilized. ...”  
Id. (emphasis added)

In view of the information and arguments of the parties, the applicable law, and the Commission’s broad authority in determining whether and when to conduct an investigation and the parameters of an investigation, I find that an investigation here is unwarranted. Although G.L. c. 31, section 5(d) provides the Administrator with the power and the duty to conduct examinations in order to establish eligible lists, section 3 provides the Administrator with considerable authority regarding the selection of candidates for civil service positions. Although G.L. c. 31 does not define “examination”, HRD’s PARs include a definition, which includes

“any instrument or process which, consistent with the civil service law” and its rules “measures the fitness of applicants to perform the duties of a position. PAR.02. In addition, PAR.06 provides that the Administrator “shall establish procedures for competitive and other examinations” to test the fitness of candidates. Under these provisions, it is clear that the term “examination” has more than one meaning and that the Administrator is authorized to determine the appropriate form of an examination. HRD’s decision is that it would not conduct a written examination for Fire Chiefs in 2017. In the post-delegation environment that began in 2009, which delegation is authorized under G.L. c. 31, s. 5(1), HRD delegated a number of personnel functions to civil service municipalities. Under their delegation agreements with HRD, some civil service municipalities have used assessment centers as a means of selection for promotions. I do not understand HRD’s decision not to conduct a written Fire Chief examination in 2017 to preclude the use of assessment centers for promotions.<sup>2</sup>

While HRD has the power and authority to determine the form of examination, the process by which it exercised its authority in this regard is troubling. A decision to alter an examination format is a significant change in the method of selection for promotions, especially for the highest title in a profession. Candidates for Fire Chief have devoted years to their professions, following the steps on the career ladder and preparing for written exams over the years in order to pursue their goals. A change in the selection process should consider the impact it will have on those near the peak of their careers. PAR.06(2)(b) provides that the Administrator shall, annually, “notify representatives of labor whose members are in the occupational fields to be tested of a proposed examination schedule”. There is no indication that such notification was provided. The same provision states that if the Administrator receives a timely written request from the representatives of labor, the Administrator “shall so consult [with the representatives] . . . prior to making a final determination concerning the form, method and content of an examination.” There is no indication that such consultation was requested or occurred. HRD asserts that the data it provided in response to the Commission’s questions provides justification for its decision not to conduct a written Fire Chief exam in 2017, arguing that the data show certain trends. However, the data do not show such trends. Rather, the data show that the number and types of Fire Chief exams, the number of candidates who have registered for the exams in recent years, the expenses and revenues have been in flux. Further, asked what the minimum number of tests and candidates would be necessary to justify conducting a written test, HRD failed to provide such information. Similarly, asked how municipalities request a civil service Fire Chief exam, HRD answered, “[i]f an exam for Fire Chief, Deputy Chief, or District Chief is being offered by HRD, a municipality requests to take part in the examination by submitting an Exam Requisition through Civil Service’s online NeoGov System.” The answer begs the question. How is a municipality to request an exam that is not being given? Further, whether or not there has been consultation with the Administrator, such changes should be made

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<sup>2</sup> The Commission similarly acknowledged the Administrator’s authority to revise examination formats, albeit in the cases involving provisional appointments and promotions, and permitting the Administrator to delegate his or her exam authority to appointing authorities “should the [Administrator], for budgetary reasons, be unable to undertake the responsibility at this time.” Tanca v. Department of Employment and Training and Department of Personnel Administration, 9 MCSR 18 (1996). *See also* Felder et al v. Department of Public Welfare and Department of Personnel Administration, 6 MCSR 67 (1993); and Clark v. Department of Employment and Training and Department of Personnel Administration, 6 MCSR 264 (1993). In the Tanca, Felder and Clark cases, the Commission also found that examinations should not be offered too infrequently. Id.

public in a timely manner. Addressing these procedural matters will ensure that changes in an examination format will be well considered and effective.

Based on the foregoing, the request to open an investigation in this matter is *denied*.

Civil Service Commission

/s/

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Cynthia A. Ittleman  
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - Yes; Camuso, Commissioner – No; Ittleman, Commissioner – Yes; Stein, Commissioner – Yes; and Tivnan, Commissioner – No) on May 25, 2017.

Notice to:

Patrick Bryant, Esq. (for Petitioners)  
Patrick Butler, Esq. (for HRD)  
John Marra, General Counsel (HRD)

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Opinion of Commissioner Camuso and Commissioner Tivnan:

We believe that an investigation is warranted in this matter. HRD's unannounced decision to not conduct a Fire Chief exam in 2017 abrogates its statutory duty to establish eligible lists from examination results. Years ago, HRD abandoned examinations all together for non-public safety titles, leaving us still with the plight of the provisionals. If past is prologue, HRD's decision not to conduct a Fire Chief exam in 2017 portends a dim future for the remaining public safety examinations. Combining the failure of HRD to conduct written exams with the current efforts of a number of municipalities to withdraw from civil service, in part or whole, the future of civil service appears to be in question when it is clear that the reasons for civil service are as valid today as they were when civil service was created. Those reasons include securing basic merit principles and combatting bias, nepotism and disparate treatment in public employment. Further, the manner in which HRD rendered its decision was arbitrary and capricious. HRD asserted, but did not prove, that interest in a Fire Chief exam had diminished when it had not even posted notice of the exam and received any responses thereto. In addition, HRD neither made its decision public nor gave municipalities and candidates timely notice of its decision. We are convinced that many of the fifty-four (54) communities under the protections of civil service law may be adversely impacted by this and they should contact HRD with their concerns.