

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

RE: Request for Investigation against the Human Resources Division (HRD) by Petitioners Craig Hardy and Nine Others regarding HRD's decision to revoke the eligible list for Deputy Fire Chief in the City of Everett.

Tracking Number: I-22-086

Appearance for Petitioners:

Leah Barrault, Esq.
The Labor Collaborative LLC
3 Boulevard Street
Milton, MA 02186

Appearance for Human Resources Division:

Melissa Thomson, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

On June 15, 2022, the Petitioners, Craig Hardy and nine others (Petitioners), pursuant to G.L. c. 31, § 2(a), filed a request for the Civil Service Commission (Commission) to investigate the decision by the state's Human Resources Division (HRD) to revoke the eligible list for Deputy Fire Chief in the City of Everett (City) on May 5, 2022.

On July 19, 2022, I held a remote show cause conference, which was attended by counsel for the Petitioners, candidate for promotion William Hurley, Petitioner Craig Hardy, counsel for HRD and counsel for the City. Based on the submissions received and the discussion at the Show Cause Conference, the following does not appear to be in dispute:

1. On May 18, 2019, HRD administered the examination for Deputy Fire Chief, in which

the City participated. The examination was a written examination only (written 80%; education and experience (E&E) 20%).

2. On July 15, 2019, HRD established the eligible list for Everett Deputy Fire Chief.
3. Section 25 of G.L. 31 states in relevant part that:

“Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: (1) such eligibility is extended by law because such persons are in the military or naval service; (2) the administrator is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order; or (3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established; provided, however, that the administrator may revoke the eligibility of the entire list or of any persons on such list subsequent to said two-year period if he shall determine that the effective maintenance of the merit system so requires such revocation and, provided further, that a written notice and explanation for said revocation is sent to the clerks of the senate and house of representatives.”

4. Since at least January 2019, HRD has maintained a “Revocation Policy” which states in relevant part that:

“If an appointing authority does not have an eligible list scheduled to be merged with, or to replace an existing eligible list, that department’s existing eligible list will be extended for a period of time not to exceed three years from the first day of the month the examination was held.”

5. HRD’s Revocation Policy also allows for additional extensions on a “case-by-case basis” in “limited circumstances” upon written request.
6. On July 15, 2021, HRD extended the Everett Deputy Fire Chief eligible list as there was no new eligible list in place at the time.

7. HRD did not receive a request to extend the list beyond the default date in the above-referenced Revocation Policy.
8. On May 5, 2022, HRD revoked the Deputy Fire Chief eligible list.
9. At the time of the expiration, two names were on the expiring eligible list: William Hurley and Gary Oster.
10. On May 21, 2022, HRD conducted an examination to establish a new eligible list for Deputy Fire Chief.
11. At the time of the Show Cause Conference, it was anticipated that the new eligible list would be established by September 1, 2022. The new eligible list was actually established on September 15, 2022. The names of two candidates are on the new eligible list: William Hurley, who is ranked first and Craig Hardy, one of the petitioners in the instant request for investigation, who is ranked second.
12. No permanent Deputy Fire Chief vacancies existed between the revocation of the prior eligible list and the establishment of the new eligible list.

Legal Standard for 2(a) Investigation

Section 2(a) grants the Commission broad discretion upon receipt of an allegation of a violation of Chapter 31's provisions to decide whether and to what extent an investigation might be appropriate. 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's exercise of its power to investigate is not subject to the general rules for judicial review of administrative agency decisions under G.L. c. 30A, but can be challenged solely for an "abuse of discretion". See Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014), citing Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321-22 (1991).

The Commission exercises its discretion to conduct an investigation only "sparingly" and, 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 into the hiring process. Compare, e.g., Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011) (declining to investigate alleged age discrimination and favoritism in provisional promotions, but admonishing agency that "certain actions . . . should not be repeated on a going forward basis") and Perry v. Dep't of Mental Health, 28 MCSR 243 (2015) (despite drop in candidate's ranking from first to fourth place after reposting of position following management concern over initial interview process, Commission declined to proceed with investigation after ascertaining absence of evidence of personal or political bias) with In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield, 24 MCSR 627 (2011) (investigation into hiring spearheaded by Deputy Fire Chief which resulted in his son's appointment and required reconsideration of numerous candidates through a new hiring cycle conducted by outsiders not connected with the Springfield Fire Department); In Re: 2011 Review and Selection of Permanent Intermittent Police Officers By the Town of Oxford, CSC No. 1-11-280 (2011) (investigation of alleged nepotism in hiring Selectman's relatives required reconsideration of all 19 candidates through an new independent process); and Dumont v. City of Methuen, 22 MCSR 391 (2009), findings and orders after

investigation, CSC No. I-09-290 (2011) (rescinding hiring process and reconsideration of all candidates after Police Chief had participated in selection of her niece).

Commission Response

Since there were no permanent vacancies for Everett Deputy Fire Chief between the time that the prior eligible list was revoked and the time that the new eligible list was established, this request for investigation is moot. Put another way, neither candidate whose name was on the prior eligible list that was revoked lost an opportunity for promotion because of the revocation. Further, the Petitioners do not dispute that, by operation of law, once the new eligible list is established, the prior eligible list is effectively revoked. I also see no reason, at this time, for the Commission to address the more global issue raised by the Petitioners regarding whether HRD's Revocation Policy, in general, is consistent with basic merit principles. It would seem prudent, however, for HRD to begin complying with the plain language of Section 25 which requires that HRD file a written notice with the legislature each time an eligible list is revoked along with an explanation for the revocation.

For all of the above reasons, the Petitioners' request for investigation is denied and this matter is *closed*.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on September 22, 2022.

Notice to:

Leah Barrault, Esq. (for Petitioners)
Melissa Thomson, Esq. (for HRD)
Colleen Mejia, Esq. (for City of Everett)