

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

INVESTIGATION RE:

**JUNE 2011
MAKE-UP
EXAMINATIONS
ADMINISTERED BY
THE STATE'S
HUMAN RESOURCES
DIVISION**

I-12-291

FINDINGS AND CONCLUSIONS OF INVESTIGATION

Procedural History

On April 21, 2011, the Civil Service Commission (Commission) issued a decision in regard to:

- David Dickinson & William Hallisey v. Human Resources Division, CSC Case Nos. E-10-274 & E-10-278.

In Dickinson and Hallisey, the Commission concluded that the state's Human Resources Division (HRD) had erred by denying Mr. Dickinson and Mr. Hallisey the right to sit for promotional examinations administered in October 2010 and ordered HRD to permit Mr. Dickinson to sit for a make-up police lieutenant promotional examination and for Mr. Hallisey to sit for a make-up police lieutenant and captain examination.

In June 2011, Mr. Dickinson and Mr. Hallisey sat for the make-up examinations referenced above.

On February 24, 2012, Brockton Police Sergeant Richard Linehan filed an appeal with the Commission (CSC Case No. I-12-77), asking the Commission to investigate matters related to these make-up examinations.

As part of his request for investigation, Mr. Linehan alleged that Mr. Dickinson and Mr. Hallisey were given an unfair advantage because: a) a large number of the questions from the October 2010 examination were repeated, verbatim, on the June 2011 make-up examination; and b) Mr. Dickinson and Mr. Hallisey became aware of the questions and correct answers through various means including a blog maintained by a private vendor that prepares candidates for civil service examinations.

On May 18, 2012, Sergeant Michael Dennehy filed an appeal with the Commission (CSC Case No. G2-12-173), raising the same concerns first brought to the Commission's attention by Mr. Linehan. Mr. Dennehy's name initially appeared *first* (Linehan appeared second) on the promotional eligible list for police lieutenant in Brockton. After the make-up examination was administered, Mr. Hallisey's name appeared first, Mr. Dickinson's name appeared second, Mr. Dennehy's name appeared *third* and Mr. Linehan's name appeared fourth. As referenced above, the City then promoted Mr. Hallisey and Mr. Dickinson to the position of lieutenant.

On November 1, 2012, the Commission, pursuant to G.L. c. 31, § 2(a), initiated an investigation regarding the make-up examinations administered by HRD in June 2011 under Docket No. I-12-291. Since all of the issues raised in the appeals filed by Mr. Linehan and Mr. Dennehy would be addressed as part of this investigation, their appeals under Docket Nos. I-12-77 and G2-12-173 were dismissed / closed.

On December 11, 2012, a pre-hearing conference was held and attended by counsel for HRD, counsel for the City of Brockton, Richard Linehan and his counsel, Michael Dennehy, and David Dickinson and William Hallisey and their counsel.

Findings

Based on the information provided by the parties at the pre-hearing conference and through post-hearing submissions, I find the following:

1. In October 2010, fifteen (15) cities and towns had applicants sit for the captain examination and forty (40) communities had applicants sit for the lieutenant examination. Two hundred and sixty (260) individuals took the lieutenant examination and seventy-three (73) individuals took the captain examination.
2. Thirteen (13) individuals took the lieutenant examination for the City of Brockton and eight (8) individuals took the captain examination for the City of Brockton.
3. The average statewide score for the lieutenant examination was 65.8%. The average statewide score for the captain examination was 68.1%.
4. Between April and June 2011, seven (7) individuals took makeup examinations, with six (6) lieutenant examinations being given and two (2) captain examinations. Sergeant Dickinson took the lieutenant examination and Sergeant Hallisey took both the lieutenant and captain examinations.
5. The average score on the make-up examination for lieutenant was 68.7% and the average score on the captain examination was 81.25%.
6. Mr. Dickinson received a score of 80% on the lieutenant make-up examination and Mr. Hallisey received a score of 88% on both the lieutenant and captain make-up examination.
7. HRD refused to disclose the following information: a) how many make-up examinations were created; b) the contract between HRD and EB Jacobs, LLC regarding the creation of

the examinations; c) what steps EB Jacobs, LLC takes to ensure that the examination is valid; and d) of those questions on the 2011 make-up examination(s), how many of those were duplicative of the questions that appeared on the initial examinations administered in October 2010.

8. No documentary evidence was offered to demonstrate that Mr. Dickinson or Mr. Hallisey received information regarding the questions that appeared on the make-up examination(s).

Discussion

The core allegation raised in this investigation is that two (2) individuals who took the make-up examinations allegedly had an unfair advantage over those who took the initial examination for two (2) alleged reasons. First, the make-up examination allegedly contained duplicate questions from the initial examination. Second, the two (2) individuals who took the make-up examination received some of these duplicate questions through a private, for-profit consulting company that prepares individuals for public safety civil service examinations in Massachusetts.

In regard to the latter allegation, only totem-pole hearsay was offered regarding whether Mr. Dickinson received some of the purportedly duplicate questions prior to taking the make-up examination. Even standing alone, this totem-pole hearsay is wildly unreliable. Further, Mr. Dickinson flatly (and credibly) denied receiving any such questions.

Beyond hearsay statements, the only information in this regard against Mr. Hallisey was a statement by Mr. Dennehy that he saw a posting from Mr. Hallisey on the consulting firm's blog in which Mr. Hallisey sought out the questions. Mr. Dennehy failed to print out this purported blog posting and, according to Mr. Dennehy, the entire blog has been pulled down from the consulting firm's website. Further, Mr. Hallisey denies ever making any such posting.

In summary, there is no credible information to warrant further investigation into whether Mr. Dickinson or Mr. Hallisey received certain questions in advance of the make-up examination.

That leaves the second prong of this investigation regarding whether, as argued by Mr. Dennehy and Mr. Linehan, that the make-up examination was inherently unfair because it contained duplicate questions from the initial examination.

As referenced in the findings, HRD steadfastly refuses to disclose any information to shed light on this subject, even going so far as to refuse to produce a copy of a contract between HRD and the testing provider, the disclosure of which is plainly not exempt even from the public records law.

In regard to whether, and to what extent, the make-up examination here contained duplicate questions, HRD cites the public records law, the Standard Adjudicatory Rules of Practice and Procedure, and the Rules of Civil Procedure, stating, that "the requested information is privileged and proprietary information, which is protected from disclosure by

G.L. c. 4, § 7, cl. 26(l) and G.L. c. 31, § 70. Additionally, this information is protected from unnecessary discovery by 801 CMR 1.01 (8) and Mass. R. Civ. P. 26(c).”

Respectfully, none of these statutes or rules stand for the proposition that the Personnel Administrator can refuse to produce this information as part of an investigation by the Civil Service Commission, the quasi-judicial agency that is statutorily authorized 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.” G.L. c. 31, § 72. Similarly, reading the provisions of Section 70, which states that the question and answer sheets are not “open for inspection” to mean that the Commission is prohibited from reviewing such information, either as part of an investigation or as part of a “fair test” appeal, would effectively eliminate the Commission’s ability to effectively carry out its statutory appellate and investigatory functions. This is contrary to the plain reading of the applicable statutes and the intent of the Legislature.

Absent any credible information, however, that either Mr. Hallisey or Mr. Dickinson received information that would provide them with an unfair advantage on a make-up examination, regardless of whether duplicate questions from the initial examination were used, I see no purpose, as it relates to this investigation, in ordering HRD to produce the information requested. For this same reason, a further investigation, beyond what has already occurred here, is not warranted at this time and the investigation should be closed.

While there is insufficient information to warrant a further investigation at this time, I would be remiss not to reiterate the grave concerns first expressed by the Commission in 2009 in Scheft et al. v. HRD, CSC Case No. I-09-53 (2009). In Scheft, a private, for-profit consultant posted a raffle prize on its website (an iPod) to induce test takers of the promotional examination to submit complete questions, answer choices and page references from the promotional examination. Here, four (4) years later, it is has been alleged that another for-profit company hosted a blog in which examination questions from an examination were posted. If true, any such posting would violate HRD’s examination rules in which all test-takers, under the penalties of perjury, sign a statement which states in relevant part:

“I understand and agree that removing or attempting to remove examination content from the examination site is strictly prohibited. I agree and understand that under no circumstances may any part of the examination content viewed during the examination be removed, reproduced, and/or disclosed in any form by any means, including, but is (sic) not limited to, verbally, in writing, or electronically, to any person or entity at any time. This includes, but is not limited to, discussing or disclosing such examination content via email; in any Internet “chat room,” message board, or other forum; or otherwise. I agree and understand that this disclosure prohibition applies before, during and after any administration of the examination.”

Further, G.L. c. 31, § 72 states in relevant part, that:

“The commission or administrator, upon the request of an appointing authority, shall inquire into the efficiency and conduct of any employee in a civil service position who was appointed by such appointing authority. The commission or the administrator may also conduct such an inquiry at any time without such request by an appointing authority. After conducting an inquiry pursuant to this paragraph, the commission or administrator may recommend to the appointing authority that such employee be removed or may make other appropriate recommendations.”

On a going forward basis, should the Commission receive any credible information that any civil service employee has violated HRD’s rules against cheating, we will, at the request of an appointing authority, or on our initiative, conduct an inquiry regarding the conduct of such employee, determine whether he/she has engaged in cheating, and if so determined, recommend appropriate action to the Appointing Authority up to and including removal.

In the interim, we urge HRD to take the following action. As part of this investigation, the Commission was presented with five (5) copies of “simulated promotional examinations” produced and sold by a private, for profit consulting firm. HRD should review those “simulated promotional examinations” and compare the questions against the actual questions from its own examinations. If, as I suspect is the case, some of the “simulated” questions are identical to the actual questions, HRD should take all steps necessary to modify the testing procedures to prevent any individual test-takers from gaining an unfair advantage including, but not limited to, requiring the testing company to produce new, unique questions for each examination as opposed to using any duplicate questions from a prior examination.

For the reasons stated above, the Commission’s investigation under Docket No. I-12-291 is *closed*.

By a vote of the Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 18, 2013.

Civil Service Commission

Christopher C. Bowman
Chairman
April 18, 2013

Notice to:
Michael Dennehy
Judith Cohen, Esq. (for Richard Linehan)
Andrew Levrault, Esq. (for HRD)
Katherine Feodoroff, Esq. (for City of Brockton)
Caitlin E. Leach, Esq. (for City of Brockton)
Frank McGee, Esq. (for David Dickinson and Hallissey)