

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 The International Brotherhood of Police Officers and ten registered voters regarding HRD’s decision to “not score the police promotional examination (for the classification of sergeant lieutenant and captain) administered on September 17, 2022.”

Tracking Number: I-22-165

Appearance for Petitioners:

Michael Manning, Esq.
IBPO
159 Burgin Parkway
Quincy, MA 02169

Appearance for Human Resources Division:

Michele Heffernan, Esq.
Human Resources Division
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Commissioner:

Christopher C. Bowman

**ACKNOWLEDGMENT OF PETITION AND
ORDER TO SUBMIT MORE DEFINITE STATEMENT**

Petitioners’ Request for Investigation

On November 30, 2022, [The International Brotherhood of Police Officers \(IBPO\)](#) and ten registered voters filed a petition with the [Civil Service Commission \(Commission\)](#) requesting that the Commission investigate the decision of the [state’s Human Resources Division \(HRD\)](#) to “not score the police promotional examination (for the classification of sergeant lieutenant and captain) administered on September 17, 2022.”

The IBPO’s Petition states in part that HRD’s decision, based on the Superior Court’s decision in [Tatum et al v. Human Resources Division](#), has resulted in “profound harm” to the

IBPO members who sat for the examination, stating in part:

“All of this harm is unnecessary (underscoring the arbitrary nature of HRD’s decision). Tatum takes pains to make clear (at page 2) that it is not to be applied retroactively, indicating that ‘No party has suggested *a remedy that would affect any existing appointments.*’ These ten individuals, and the hundreds more similarly situated, sat for an exam that HRD had an unqualified obligation to convert into eligible lists. Once those individuals qualified for that announced exam, their interest in said lists became vested and they stand in a position no different from those who have been promoted in the past and whose promotions are not at risk from Tatum.” (emphasis in original)

Correspondence from Other Police Stakeholders

The Commission has also received correspondence related to this matter from the [Massachusetts Fraternal Order of Police \(FOP\)](#) and the [Massachusetts Law Enforcement Policy Group \(MLEPG\)](#). Neither of these organizations has sought an investigation, but, rather, they have sought to be included in any stakeholders committee (similar to a committee created by HRD in response to the cancellation of firefighter promotional examinations) regarding the future administration of police promotional examinations.^{1,2} The Commission shared those requests with HRD and HRD indicated its intention to create a stakeholders’ committee regarding the police promotional examinations.

¹ [MassCOP](#) (the largest law enforcement union in Massachusetts, representing over 4,400 members serving in more than 173 cities and towns in Massachusetts) has also not requested that the Commission initiate an investigation. Rather, counsel for MassCOP has provided its membership with updates regarding ongoing communication with HRD related to the re-scheduling of new police promotional examinations.

² [The Massachusetts Police Association](#) also issued a “[Position Paper](#)” on November 15, 2022 regarding this matter suggesting that HRD seek clarification and guidance from the Superior Court judge in the Tatum case regarding how to proceed with the recently-administered police promotional examinations.

Roles and Responsibilities of HRD and the Civil Service Commission

“[P]romotional appointments in police and fire forces of cities and of such towns where such forces are within the official service ... shall be made only after competitive examination except as otherwise provided by section sixty and by sections thirty-six and thirty-six A of chapter forty-eight.” G.L. c. 31, § 59. **HRD** is vested with considerable authority to administer the day-to-day functions of the civil service system, including, but not limited to, “administering and enforcing” the civil service law and “conducting examinations for purposes of establishing eligible lists” G.L. c. 31, §§ 5, 77.

The **Civil Service Commission**, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity not affiliated with HRD or its civil service unit. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law’s provisions to decide whether and to what extent an investigation might be appropriate. Further, Section 72 of Chapter 31 provides for the Commission 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.*”³ (*emphasis added*)

The Commission exercises its discretion to conduct an investigation only “sparingly”; 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 personnel processes.

³ Further, G.L. c. 7, § 4I states that the Commission may “ ... require in connection with the activities authorized by law any official or employee of the human resources division to give full information and to provide all papers and records relating to any official act performed by [HRD].”

Procedures Related to a Request for Investigation

Upon receipt of a request for investigation, the Commission schedules a “show cause conference” at which the Petitioners are given the opportunity to show cause as to why the Commission should initiate an investigation. The responding party, in this case HRD, is given the opportunity to respond. Prior to determining whether to initiate an investigation, the Commission may ask the Petitioners and the responding party to provide additional information. Following its review, the Commission notifies the parties of its decision to open an investigation or not. If the Commission does open an investigation, it typically establishes a schedule requiring the parties to produce various records and respond to other requests for information. The Commission may, as necessary, conduct a hearing for the purpose of taking relevant witness testimony as part of an investigation. At the conclusion of an investigation, the Commission may issue findings and orders, including orders to remediate harm to any aggrieved persons.

Expedited Schedule for Submission of More Definite Statement by Petitioners

Similar to the matter regarding the recent [cancelation and re-scheduling of the firefighter promotional examinations](#), HRD’s decision to not score the *police* promotional examinations administered in September is highly consequential to the hundreds of applicants who took those examinations, to others planning to take future public safety civil service examinations, and to the civil service system as a whole. Resolution of these matters in a fair, expeditious manner is the Commission’s highest priority.

In light of HRD’s intention to convene a stakeholder committee to oversee the process for developing valid police promotional examinations, *a plan that appears to have the support of other police stakeholders in Massachusetts*, the Petitioners have two weeks to file a more definite statement to explain more fully what a Commission investigation might accomplish

independent of the above-referenced stakeholder process. The Petitioners should identify with particularity the specific provisions of General Laws chapter 31 or the Personnel Administration Rules that they contend have not been adhered to as a result of recent HRD actions, taking into account other related provisions of law that might support HRD's actions. The Petitioners should also identify the evidentiary materials and data they are prepared to offer to show that any civil service-related provision of Massachusetts law has been violated. The individual petitioners, acting through counsel, should also briefly explain how each of them are directly impacted by recent HRD actions (and, likewise, the police departments that employ them are affected) in ways that, in their view, cannot be adequately or fully addressed through a stakeholder review process. HRD shall have up to two weeks to file a response to the more definite statement.

SO ORDERED.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Sent to parties and posted to CSC Website on December 15, 2022

Notice to:

Michael Manning, Esq. (for Petitioners)

Michele Heffernan, Esq. (for HRD)