

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street: Suite 200  
Boston, MA 02114  
(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  
100 Cambridge Street, Suite 600  
Boston, MA 02114

Commissioner:

Christopher C. Bowman

**RESPONSE TO REQUEST FOR INVESTIGATION**

***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.” IBPO has approximately twenty-three local unions in the Commonwealth, of which eighteen are subject to the civil service law.

The IBPO’s Petition stated 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)

Thirty-three IBPO members took the September 2022 promotional examination; twenty-one from Worcester; ten from Holyoke and 2 from Westfield.

### ***Commission Request for More Definite Statement***

Considering HRD’s decision to convene a stakeholder committee to oversee the process for developing valid police promotional examinations, the Petitioners were given 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. HRD was given two weeks to file a response to the more definite statement. Submissions were received from the IBPO and HRD, which were reviewed by the full Commission.

### ***Developments Since the IBPO Filed the Request for Investigation***

Since the IBPO filed its request for investigation, the following developments have occurred:

1. HRD has conducted multiple stakeholder meetings, which have included the IBPO, other public safety unions and other stakeholders, regarding the development of a new promotional examination. Currently, HRD anticipates the rescheduled exam initially administered in September 2022 and the regularly scheduled September 2023 exam will both be held on September 23, 2023. The September 2022 exam re-administration will only be open to candidates who participated in last fall’s exam and will not be reopened to other candidates. HRD has continued to stress that to meet the tentative September 23rd exam administration date, it requires subject matter expert participation in upcoming activities in June and July.

2. On May 11, 2023, the Superior Court issued an [Order Approving Class Action Settlement](#), approving a settlement agreement between the Plaintiffs and HRD. In issuing its Order, the Court was aware that HRD had not scored the September 2022 promotional examination, had extended existing eligible lists and had begun the process of developing a new promotional examination that, according to the Court, would serve as the “fairest, most statistically valid way to identify and select” the best candidates.

### ***Commission Jurisdiction***

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity that is 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.*”<sup>1</sup> (*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.

### ***Commission Response***

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

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<sup>1</sup> 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].”

administered in September has been 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 continues to be the Commission's highest priority.

Based on a careful review of the parties' submissions, as well as the most recent judicial developments, the Commission denies the request for investigation. Initiating such an investigation would undermine the ongoing, court-sanctioned process to develop a new promotional examination, which is tentatively scheduled to be administered by HRD in September 2023. The IBPO opted not to intervene in those judicial proceedings, and it would be counterproductive for the Commission to effectively turn the clock back at this point, as opposed to supporting the ongoing efforts to put this unfortunate series of events behind us.

The Commission appreciates the significant time and effort being put forth by all stakeholders, including HRD, to make that happen. Hundreds of superior officers have completed job surveys to assist HRD with completing updated job analyses; representatives of various organizations have participated in the stakeholder meetings; dozens of officers have agreed to serve as subject matter experts; and thousands of civil service police officers across Massachusetts have shown a commendable degree of patience regarding a series of impactful events that occurred through no fault of their own.

### ***Conclusion***

The Commission need not initiate an investigation to continue to exercise its oversight authority in this matter, both through its role on the stakeholders panel and by all appropriate measures authorized by the civil service law should such further action be required. For that

reason, the IBPO's request for an investigation is *denied*.<sup>2</sup>

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

By vote of the Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on June 15, 2023.

Notice to:

Michael Manning, Esq. (for Petitioners)

Michele Heffernan, Esq. (for HRD)

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<sup>2</sup> It is the Commission's understanding that all testing material from the September 2022 promotional examinations has been preserved. HRD should take all steps necessary to ensure that such preservation is permanent.