

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RE:

Tracking Number: I-20-038

Request by: Michael McCarthy for the Civil Service Commission (Commission) to investigate whether the state's Human Resources Division (HRD) and/or the Department of Correction (DOC) should be ordered to conduct examinations for the Industrial Instructor and Recreation Officer series.

Appearance for Petitioner:

Pro Se
Michael McCarthy

Appearance for DOC:

Norman Chalupka, Esq.
Department of Correction
P.O. Box 946
Norfolk, MA 02056

Appearance for HRD:

Melissa Thomson, Esq.
Human Resources Division
100 Cambridge Street, Ste. 600
Boston, MA 02204

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On March 3, 2020, Michael McCarthy (Mr. McCarthy), a provisional Industrial Instructor II at the Department of Correction (DOC), pursuant to G.L. c. 31, § 2(a), filed a request for investigation with the Civil Service Commission (Commission), asking the Commission to open an investigation regarding whether the state's Human Resources Division (HRD) and/or the Department of Correction (DOC) should be ordered to conduct examinations for the Industrial Instructor and Recreation Officer series.
2. On March 24, 2020, I held a show cause conference via videoconference which was attended by Mr. McCarthy, counsel for HRD, counsel for DOC and another DOC representative.
3. The Commission recently addressed an identical request in Investigation Request Re: James Hunt & Seven Others (I-19-90) (2020).

4. In the Hunt matter, the Commission conducted a show cause conference and a status conference. The status conference was attended by multiple DOC employees and representatives from the Massachusetts Correction Officers Federated Union (MCOFU).
5. Subsequent to this status conference, MCOFU sent correspondence to all MCOFU members who could be impacted by a decision to conduct an examination for these titles. Specifically, at the Commission's request, MCOFU notified those members that, pursuant to G.L. c. 31, s. 14, paragraph 3, no provisional employment in those positions would be authorized or continued after the establishment of an eligible list and Certification. Thus, those provisional employees whose names did not appear on the eligible list created from the examination (i.e. – they either did not take the examination or did not pass the examination), could not continue being employed in those titles.
6. A majority of impacted members who responded to a MCOFU poll opposed going forward with scheduling examinations at this time. Mr. McCarthy was among the minority, voting to support going forward with examinations in these titles.
7. The Petitioners in Hunt withdrew their request for investigation and the matter was closed by the Commission on March 12, 2020. Mr. McCarthy, through this Petition, is effectively asking the Commission to re-open the matter.

Applicable Civil Service Law and Rules & Final Response

G.L. c. 31, § 2(a) allows the Commission to conduct investigations. This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen's Association et al v. Civ. Serv. Comm'n, No. 2006-4617, Suffolk Superior Court (2007). See also Erickson v. Civ. Serv. Comm'n & others, No. 2013-00639-D, Suffolk Superior Court (2014). The Commission exercises this discretion, however, "sparingly", See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011).

I carefully reviewed and considered Mr. McCarthy's Petition, including his written submission and his statements at the Show Cause Conference. He has not presented any information which would cause the Commission to effectively re-open the matters already addressed in Hunt.

For these reasons, an investigation is not warranted and the Commission has opted not to exercise its discretion to initiate such an investigation under G.L. c. 31, § 2(a).

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) April 9, 2020.

Notice to:
Michael McCarthy (Petitioner)
Norman Chalupka, Esq. (for DOC)
Melissa Thomson, Esq. (for HRD)