

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street: Suite 200  
Boston, MA 02114  
(617) 979-1900

Re: Request by Milton Police Department to revive revoked eligible list for  
Police Sergeant

E-24-003

Commissioner: Christopher C. Bowman

**SUMMARY OF DECISION**

The Commission denied the request of the Milton Police Department to revive the revoked eligible list for Police Sergeant after concluding that doing so, particularly given that a new list will be established on February 14, 2024, was not consistent with the effective maintenance of the merit system.

**DECISION**

On January 5, 2024, the Milton Police Department (MPD) filed a request with the Civil Service Commission (Commission) to revive a revoked eligible list for Police Sergeant. On February 6, 2024, I held a remote pre-hearing conference which was attended by counsel for the state's Human Resources Division (HRD), the MPD Police Chief; the Milton Town Administrator; counsel for the Town of Milton; President of the Milton Police Association; counsel for the Milton Police Association; and three Milton police officers who could be impacted by the Commission's decision. Based on the information provided prior to and at the pre-hearing conference, the following appears to be undisputed:

1. On September 19, 2020, HRD administered a promotional examination for Milton Police Sergeant.
2. On December 15, 2020, HRD established an eligible list for Milton Police Sergeant.

3. The MPD made two promotional appointments from the sergeant eligible list on March 27, 2021 and May 28, 2022.
4. The eligible list was set to expire in December 2022, two years from when it was established. However, since no new eligible list was in place at the time, the eligible list, pursuant to HRD policy, was extended until September 1, 2023, three years from the first day of the month in which the eligible list was established (September 2020).
5. On September 1, 2023, HRD revoked the eligible list, along with many other eligible lists in other communities that had been established on the same date.
6. At the time that the eligible list was revoked, the name of Officer Tracy Manion was ranked first on that eligible list and Officer Michael Grant was ranked second.

#### *Tatum-Related Issues*

7. On September 17, 2022, HRD administered statewide police promotional examinations, including for Milton Police Sergeant. Multiple Milton police officers sat for the September 17<sup>th</sup> examination. For personal reasons, Officer Manion did not sit for the September 2022 examination.
8. On October 27, 2022, the Superior Court issued its decision re: [Tatum et al. v. Human Resources Division](#). In response to the Court's Tatum decision, HRD decided to not score any of these September 2022 police promotional examinations. Instead, HRD, with the assistance of a stakeholders' group, administered revised promotional examinations in September 2023 to address the concerns raised in Tatum.
9. Only individuals who sat for the September 2022 examination were eligible to take the September 2023 examination. As Officer Manion did not sit for the September 2022 examination, she was not eligible to take the September 2023 examination.

10. A new eligible list for Milton Police Sergeant is scheduled to be established on February 14, 2024 – less than a week from the issuance of this decision.

*Milton Response to Tatum*

11. Between January 2023 and June 2023, while the Milton Police Sergeant eligible list was still active due to HRD’s extension policy, two vacancies arose for police sergeant in the Milton Police Department.

12. The MPD opted not to fill the vacancies, citing concerns about appointing from an eligible list based on an underlying examination that was criticized by the Court in the Tatum decision.

13. In September 2023, when the extended eligible list for Milton Police Sergeant was set to be revoked, the Town opted not to request a further extension of the eligible list.

14. As cited above, the Town, via a request dated January 5, 2024, is asking the Commission to revive the eligible list for police sergeant that was revoked by HRD in September 2023.

*Reasons for MPD’s Request to Revive Revoked Eligible List*

As part of his request submitted to the Commission, the Town wrote in part:

There remain two (2) vacancies in the Department for the position of police sergeant, and the [revoked] eligible list has qualified candidates. The Town wishes to make a permanent promotion of Officers Manion and Grant at this time rather than a provisional appointment that would require the officers to vacate their sergeant positions upon the establishment of a new eligible list. Finally, as the Division [HRD] is set to establish a new eligible list soon, the revivification of the List would only be for a brief period.

*Union Opposition*

The local police union, the Milton Police Association, opposes the Town’s request, writing in part:

It would be inappropriate at this juncture to allow the permanent promotion of any candidate from a test that is so far in the past – particularly when the Town will

soon have the opportunity to promote based on the results of a fair and regular test that was so recently administered.

### *Police Officer Comments*

Three Milton Police Officers who could be impacted by the Commission's decision submitted comments to the Commission and attended the pre-hearing. Officer Manion, who sits atop the revoked eligible list, supports the Town's request to revive the eligible list. Officers Doyle and Nee, who took the recent 2023 examination and expect to be at or near the top of the eligible list to be established on February 14<sup>th</sup>, oppose the Town's request.

### *Analysis*

Based on the facts presented here, I conclude that reviving the revoked eligible list for MPD Police Sergeant at this time is not consistent with the effective maintenance of the merit system. First, there is less than a week remaining before the Town will have in place a new eligible list for police sergeant, making any argument regarding the inconvenience of making a provisional promotional virtually moot. Second, the Town has failed to articulate a cogent reason for effectively reversing a prior decision, announced to the rank and file, that any promotional appointments would be made from the newly-established eligible list. Third, as referenced at the pre-hearing conference, the Town, should it wish to do so, can participate in promotional examinations to be administered later this year, ensuring that any candidate who did not sit for the 2023 examination would have an opportunity to do so now, and thus be potentially eligible for vacancies that occur after the establishment of a new, merged eligible list. In the unlikely event that an eligible list for Milton Police Department is not established, as scheduled, on February 14, 2024, the Town is free to resubmit this request at that time.

### *Conclusion*

For all the reasons stated above, the Town's request to revive the revoked eligible list for police sergeant is denied and the appeal docketed under CSC Case No. E-24-003 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on February 8, 2024.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:  
Andrew J. Waugh, Esq. (for Town Milton)  
Patrick Bryant, Esq. (for Milton Police Association)  
Sheila Gallagher, Esq. (HRD)  
Tracy Manion  
Patrick Nee  
Timothy Doyle