

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RE:

Tracking Number: I-21-039

Request by: Daniel Coons and Nine (9) Others for the Civil Service Commission (Commission) to investigate the City of New Bedford’s Decision to not participate in the upcoming promotional examinations for Deputy Fire Chief and District Fire Chief

Appearance for Petitioners: Daniel Coons and 6 Other Petitioners

Appearance for New Bedford Fire Department: Jane Medeiros Friedman, Esq.

Commissioner: Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

Background

1. On February 22, 2021, Daniel Coons and nine (9) other petitioners (Petitioners), all of whom are employed by the City of New Bedford (City)’s Fire Department (NBFD), filed a Petition with the Civil Service Commission (Commission), asking the Commission to investigate the City’s decision to not participate in the upcoming statewide promotional examinations for Deputy Fire Chief and District Fire Chief.
2. At the request of the Petitioners, I expedited the scheduling of a show cause conference, which was held remotely via Webex videoconference on March 9, 2021. In attendance at the show cause conference was Mr. Coons, six (6) other Petitioners, Provisional Fire Chief Scott Kruger, counsel for the City and counsel for the state’s Human Resources Division (HRD).
3. Based on statements made at the show cause conference, it appears that the following facts are undisputed, unless noted otherwise:
 - A. On May 18, 2019, the City participated in a statewide promotional examination for Deputy Fire Chief and District Fire Chief.
 - B. On July 15, 2019, HRD established eligible lists for Deputy Fire Chief and District Fire Chief for the City of New Bedford.
 - C. Scott Kruger is ranked first on the eligible list for Deputy Fire Chief.

- D. These eligible lists are scheduled to expire on July 15, 2021, two years from the establishment of the eligible list.
- E. Consistent with HRD's standard practice, these eligible lists may be extended until May 1, 2022 (three years from the first day of the month in which the promotional examinations were administered) if no new eligible lists have been established as of July 15, 2021.
- F. The next statewide promotional examination for Deputy Fire Chief and District Fire Chief is scheduled to be held by HRD on May 12, 2021. The deadline for applicants to apply for this promotional examination is March 16, 2021.
- G. There is currently no eligible list for New Bedford Fire Chief.
- H. Scott Kruger, who holds permanency as a District Fire Chief and, as referenced above, is first on the current eligible list for Deputy Fire Chief, is currently serving as the City's Provisional Fire Chief.
- I. The City recently completed an Assessment Center / Written Examination for Fire Chief, with the written portion of the examination held on October 14, 2020 and the Assessment Center portion of the examination on February 20, 2021.
- J. HRD anticipates that it will be a "few months" (i.e. – June 2021) before an eligible list is established for Fire Chief. Provisional Chief Kruger is one of three applicants who sat for the Fire Chief examination.
- K. For those communities who are participating in this year's promotional examinations for Deputy Fire Chief and District Fire Chief, eligible lists for these positions will most likely be established after the establishment of the eligible list for New Bedford Fire Chief.
- L. For at least the past decade, the City has participated in the statewide promotional examination for District Fire Chief every two years. Participation in the Deputy Fire Chief examination (for which there is only one position), has been dictated by whether there is a vacancy in the position.
- M. Provisional Fire Chief Kruger recommended to the City's Mayor, who is the appointing authority, that the City not participate in the upcoming promotional examinations for Deputy Fire Chief and District Fire Chief.
- N. Several of the Petitioners submitted letters to the Commission in which they recounted being told by Provisional Chief Kruger that his recommendation to the Mayor was based, at least in part, on the fact that he (Chief Kruger) had not had time to study for the Deputy Fire Chief examination.

- O. If the City participated in a promotional examination for Deputy Fire Chief in May 2021, a new list could be established as early as July 15, 2021. If Chief Kruger did not take that promotional examination, his name would be removed from that list as early as July 15, 2021. If the City does not participate in the statewide promotional examination for Deputy Fire Chief, and the eligible list is extended, Chief Kruger could remain first on that eligible list through May 1, 2022.

Alleging that Chief Kruger would benefit from having the eligible list extended, the Petitioners argue that Chief Kruger should have played no role in making a recommendation to the City's Mayor regarding whether or not the City should participate in the upcoming promotional examinations. Further, the Petitioners argue that, in anticipation that the City would be participating in the upcoming promotional examinations, they have been preparing (i.e. – reading recommended publications) to take the examinations.

While Chief Kruger acknowledges that he referenced his inability to study for a statewide Deputy Fire Chief examination as one reason for his recommendation to the City's Mayor, he argues that his statement was taken out of context. Chief Kruger, at the show cause conference, argued that the entire administrative command staff, in part due to the strains put on the Department because of COVID-19, have been forced to focus their time on Department operations, as opposed to studying and preparing for civil service examinations.

Counsel for the City argued that Chief Kruger will not see any benefit from the City's decision not to participate in the Deputy Fire Chief examination, outlining scenarios showing that any potential vacancy and subsequent filling of the Deputy Fire Chief position would be made before July 15, 2021, the first date that the current eligible list for Deputy Fire Chief would expire if the City participated in the upcoming promotional examinations.

HRD, while taking no position, stated that it may not be feasible at this late date for the City to participate in the upcoming promotional examinations, pointing to the various requirements (i.e. – posting the examination, etc.) that must precede the applicant deadline of March 16th, which is only days away.

After the close of the show cause conference, lead Petitioner, Captain Daniel Coon, penned an email to me, copied to the City, stating:

“Thank you for hearing our case. I know that there is a time constraint with getting New Bedford on for this test, and if it is not possible, I am asking you to consider not allowing the extension of the current district chief and deputy list. This will allow the positions that become available in that year to be filled with provisional promotions, and give everyone the opportunity for those [permanent] promotions on the next exam.”

Applicable Civil Service Law and Commission 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).

Based on an initial review, I am troubled that Provisional Chief Kruger, who sits at the top of the current eligible list for Deputy Fire Chief, and who acknowledges making a statement referencing his inability to study for any statewide examination, played a major role in deciding whether the City should participate in the upcoming statewide promotional examinations by making a recommendation which was adopted by the Mayor.

Based solely on the undisputed facts here, there is at least an open question as to whether the City’s decision to adopt the Fire Chief’s recommendation provided for fair and impartial treatment of all candidates, which is the core mission of the Civil Service Commission, or whether that decision at least appeared to tilt the scales in favor of one or more potential candidates for potential promotion to these positions.

However, the window for the City to participate in the upcoming promotional examinations has effectively closed. Put another way, the relief being sought by the Petitioners is not available.

I do, however, believe sufficient evidence has been presented for the Commission to initiate an investigation to: a) determine whether the actions taken by the City here are consistent with basic merit principles; and, b) if not, issue other relief and orders deemed appropriate, including, but not limited to, relief related to whether the City should be permitted to extend the eligible lists for Deputy Fire Chief and District Fire Chief beyond July 15, 2021. Until further order of the Commission, no such extensions shall be allowed.

Under separate cover, the parties will be notified of the date and time of an investigative hearing, to be held remotely, regarding this matter, which will be preceded by a logistical status conference to prepare for the submission of documents, etc.

In the interim, I encourage the parties to make a good faith effort to resolve this matter in a manner that foregoes the need for a hearing and/or further orders by the Commission.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of 5-0 on March 11, 2021, the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) voted to adopt the recommendations of Commissioner Bowman, including the initiation of an investigation under G.L. c. 31, s. 2(a).

Notice to:
Petitioners
City of New Bedford
Human Resources Division