

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

RE: Peabody Police Lieutenant Eligible List Rankings

Tracking Number:

I-24-173

FINAL REPORT AND ORDER

Procedural History

By Order dated November 14, 2024, the Commission, pursuant to its authority under Sections 2(a) and 72 of Chapter 31, opened this investigation to determine whether civil service law was followed in setting the rank order of the Peabody Police Lieutenant eligible list established by the state's Human Resources Division (HRD) based on the scores achieved by the candidates on the Police Lieutenant promotional examination administered by HRD on September 23, 2023. At the same time, the Commission deferred further action in a related appeal brought by Sergeant Robert Faletra under Docket No. E-24-136. Both of these matters have been assigned to me for further action, including, but not limited to, convening an investigative conference for such further fact-finding as may be necessary and appropriate.

As explained in the Commission's November 14, 2024 Order, both of these matters turn on the proper method of calculating the period of a police officer's service for purposes of determining eligibility for the so-called two-point "25 year preference" provided by G.L. c. 31, §59 and Personnel Administration Rule 14(2), as most recently judicially construed by the Massachusetts Appeals Court in Ralph v. Civ. Serv. Comm'n, 100 Mass. App. Ct. 199 (2021) (the Ralph Decision). In particular, the rank order of the candidates on the May 24, 2024 eligible list for

Peabody Police Lieutenant could be different if time served as a reserve police officer (assigned to detail work) prior to service as a full-time regular police officer were included in the calculation of the period of service.

By Interim Order issued on November 22, 2024, I requested that HRD provide the Commission with confirmation about certain relevant facts concerning the calculation of the 25-year preference.

By report dated December 9, 2023, HRD provided the following information:

- a. The starting date for the 2023 “readministered” promotional examinations for calculation of all experience credits, including the 25-year preference, is the originally scheduled written examination date of September 17, 2022, and not the date of the readministered examination or the date of any associated assessment center.
- b. After further research, HRD determined that, if service only as a full-time regular police officer, but not reserve time, were counted for purposes of the 25-year preference, Sergeant Javier Sanchez is the only candidate on the current Peabody Police Lieutenant’s Eligible List with such 25+ years of service as a full-time regular police officer and thus qualified for the 25-year preference.
- c. Further research also established that, even if his reserve time were counted, prior to September 17, 2022, Sgt. Zampitella had served a total of 24 years and 6 months (23 years and 10 months of full-time regular police duty and 6 months of reserve time), less than the 25 years necessary to qualify for the 25-year preference.
- d. After adjusting Sgt. Zampitella’s score by deducting the 2-point 25-year preference credit incorrectly awarded to him, Sgt. Zampitella’s position on the Peabody Lieutenant’s Eligible List should be corrected to put him in 4th place, tied with Sergeant Faletra and Sergeant Lane.

- e. After correcting Sgt. Zampitella's place on the eligible list, and crediting only Sgt. Sanchez with the 25-year service credit, based on his 25+ years as a full-time regular police officer, the rank order of the Peabody Police Lieutenant's Eligible List would be as follows:

1	Javier Sanchez
1	Timothy Sullivan
3	James Harkins
4	Robert Faletra
4	Stephanie Lane
4	Stephen Zampitella

To date, the Commission has received no response disputing the facts set forth in HRD's December 9, 2024 report.

Commission's Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity. 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.*" The Commission exercises its discretion to investigate 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 Analysis and Orders

As a preliminary matter, there is **no** allegation of wrongdoing on behalf of any individual here. Specifically, regarding Sergeant Zampitella, he followed the instructions on the employment verification form, exercised his option of contesting his score with HRD, and ultimately received

a modification in his score from HRD, which resulted in him receiving a higher rank on the eligible list than he would have had he not filed an appeal. Put simply, he has done nothing wrong here.

Based on HRD's November 9, 2024 report, there now is no dispute that the Peabody Police Lieutenant's Eligible List must be corrected to align with the rank order set forth in sub-paragraph e. above. It is also clear that if Sgt. Faletra is not appointed to one of the three current vacancies his non-selection would not be a bypass for which he would be eligible to appeal to the Commission, as no one ranked below him would have been appointed (and the appointment of another candidate in his tie group would not be a bypass). Accordingly, I recommend that the Commission order HRD to correct the eligible list and that the related appeal of Sgt. Faletra be dismissed.

The issue remains whether including reserve, intermittent, or call services in calculating the allowance of the 2-point credit for 25-years of service in a regular police force is consistent with the plain language of Section 59 of the civil service law. Section 59 of G.L. c. 31 states in relevant part:

Notwithstanding the provisions of any law or rule to the contrary, **a member of a regular police force** or fire force **who has served as such** for twenty-five years and who passes an examination for promotional appointment in such force shall have preference in promotion equal to that provided to veterans under the civil service rules.

That "preference in promotion" for veterans is two additional points on a promotional examination.

The Appeals Court stated clearly in its published Ralph decision, *supra* at 205:

... the Legislature considered "member of a regular police force" as referring to a person's status as a **regular police officer, rather than, for example, a reserve, intermittent, or call officer.** See Lawrence v. Civil Serv. Comm'n, 66 Mass. App. Ct. 309, 313 (2006) ("In the first sentence of the third paragraph of § 59 . . . , the Legislature has provided a means by which police officers who are not on the regular force, but are instead on either the reserve or intermittent police forces, may be included on the list" [emphasis added]). Accord Cobble Hill Ctr. LLC v. Somerville Redev. Auth., 487 Mass. 249, 255 (2021), quoting Plymouth Retirement

Bd., supra (court reads "the statutory scheme as a whole, so as to produce an internal consistency within the statute"). Accordingly, the proper question is whether Sergeant Ralph's prior service was regular police officer service or more akin to a reserve, intermittent, or call officer. (emphasis added)

The Ralph decision is binding on the Commission unless there are specific facts that the Appeals Court did not consider in reaching its decision in that case. At a minimum, the Ralph decision raises a legitimate question as to whether the legislative intent in providing the equivalent of the 2-point veteran's preference after 25-years of service was meant to cover officers who rely on time spent as a reserve, intermittent or call officer to qualify, but who did not perform the "regular" duties of a full-time police officer during such service. The Commission recommends that HRD undertake a thorough review of this question, including offering any interested person the opportunity to be heard as to whether the statutory 25-years of service preference is limited to full-time service in the regular police force, as stated in the Ralph decision, or whether there are circumstances in which reserve, intermittent or call service may and ought to be included. Should this question remain unanswered, the Commission reserves its right to revisit the issue through a future investigation and to take such other action as required, per G.L. c. 31, § 77, to ensure compliance with civil service law.

Civil Service Commission

/s/ Paul M Stein

Paul M Stein
Commissioner

On December 19, 2024, the Civil Service Commission (Bowman, Chair; Dooley, Markey McConney & Stein, Commissioners) voted to accept the recommendation to order HRD to recalculate the Peabody Police Lieutenant's Eligible List as set forth in this Final Report, to recommend that HRD conduct a review of the scope of the 25-years' service statutory preference, and to close the present investigation.

Notice to:
Robert Faletra
James Harkins
Stephen Zampitella

Police Chief Thomas Griffin
Donald L. Conn, Jr., Esq. (City of Peabody)
Sheila Gallagher, Esq. (HRD)
Erik Hammerlund, Esq. (HRD)