

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

RE: Request for Investigation against the Human Resources Division (HRD) by Petitioners The Professional Firefighters of Massachusetts (PFFM), The Boston Firefighters Union Local 718 (Local 718), and Twenty Taxpayers regarding HRD’s decision to cancel the November 19, 2022 examinations for statewide Fire Lieutenant and Fire Captain Promotional Examinations and Boston (City) District Fire Chief Promotional Examination.

Tracking Numbers: I-22-149 (Local 718)
I-22-150 (PFFM)

Appearance for Petitioners:

Leah Barrault, Esq.
The Labor Collaborative LLC
3 Boulevard Street
Milton, MA 02186

Appearance for Human Resources Division:

Michele Heffernan, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ACKNOWLEDGMENT OF PETITIONS AND NOTICE OF SHOW CAUSE CONFERENCE

Petitioners’ Filing of Request for Investigation with the Commission and Request for Injunctive Relief with the Superior Court

On Wednesday, November 9, 2022 at 9:51 P.M., The Professional Firefighters of Massachusetts (PFFM), The Boston Firefighters Union Local 718 (Local 718), and twenty of their respective members (collectively, “The Petitioners”), pursuant to G.L. c. 31, § 2(a), filed petitions with the Civil Service Commission (Commission) requesting that the Commission “investigate the legality of the Massachusetts Human Resources Division (HRD)’s recent actions in abruptly canceling the November 19, 2022, statewide written Lieutenant and Captain

promotional exams [and written City of Boston (City) District Chief promotional re-examinations] that [were] scheduled to be held on November 19, 2022.”^{1,2}

On Friday, November 11, 2022, the Petitioners provided the Commission with copies of: a) a Verified Complaint for Declaratory and Injunctive Relief and Short Order of Notice; and b) a Motion for Injunctive Relief that the Petitioners filed with the Suffolk Superior Court. In a Memorandum of Law in support of their request for the Court to enter a preliminary injunction, the Petitioners wrote in part that they

“ ... have filed a timely appeal with the Civil Service Commission [] pursuing an investigation and resolution to this matter. However, this investigative proceeding will not reach a determination quickly enough to prevent the Plaintiffs from suffering irreparable harm. Defendant [HRD] should be ordered [by the Court] to administer the promotional examinations as scheduled for November 19, 2022.”

Roles and Responsibilities of HRD and the Civil Service Commission

“[P]romotional appointments in police and fire forces of cities and of such towns where such forces are within the official service ... shall be made only after competitive examination except as otherwise provided by section sixty and by sections thirty-six and thirty-six A of chapter forty-eight.” G.L. c. 31, § 59. **HRD** is vested with considerable authority to administer the day-to-day functions of the civil service system, including, but not limited to, “administering and enforcing” the civil service law and “conducting examinations for purposes of establishing

¹ The Commission acknowledges correspondence received from the Boston Fire Commissioner on November 10, 2022 in support of Local 718’s request that HRD rescind its decision to cancel the District Fire Chief examination scheduled for this Saturday.

² The Commission further acknowledges correspondence received from the Boston Society of Vulcans on November 14, 2022 stating in part that they “are in agreement and stand with our Union, Boston Firefighters Local 718, as we advocate in cooperation for the previously-scheduled Civil Service District Chief and Captain / Lieutenant Promotional Exams to be held.”

eligible lists” (G.L. c. 31, §§ 5 and 77).

The **Civil Service Commission**, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity not affiliated with HRD or its civil service unit. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an allegation of a violation of the civil service law’s provisions to decide whether and to what extent an investigation might be appropriate. See, e.g., Dennehy v. Civil Service Comm’n, Suffolk Superior Court C.A. No. 2013-00540 (2014) (“The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.”) See also Erickson v. Civil Service Comm’n, Suffolk Superior Court C.A. No. 2013-00639 (2014); Boston Police Patrolmen’s Association et al v. Civil Service Comm’n, Suffolk Superior Court C.A. No. 2006-4617 (2007). The Commission’s exercise of its power to investigate is not subject to the general rules for judicial review of administrative agency decisions under G.L. c. 30A but can be challenged solely for an “abuse of discretion.” See Erickson v. Civil Service Comm’n, Suffolk Superior Court C.A. No. 2013-00639 (2014), citing Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321-22 (1991).

The Commission exercises its discretion to conduct an investigation only “sparingly” and 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 into the hiring process.

Procedures Related to a Request for Investigation

Upon receipt of a request for investigation, the Commission schedules a “show cause conference” at which the Petitioners are given the opportunity to show cause as to why the

Commission should initiate an investigation. The responding party, in this case HRD, is given the opportunity to respond. Prior to determining whether to initiate an investigation, the Commission may ask the Petitioners and the responding party to provide additional information. Following its review, the Commission notifies the parties of its decision to open an investigation or not. If the Commission does open an investigation, it typically establishes a schedule requiring the parties to produce various records and respond to other requests for information. The Commission may, as necessary, conduct a hearing for the purpose of taking relevant witness testimony as part of an investigation. At the conclusion of an investigation, the Commission may issue findings and orders, including orders to remediate harm to any aggrieved persons.

Expedited Show Cause Conference

HRD's decision to cancel the upcoming fire promotional examinations, scheduled to occur this Saturday, is highly consequential—both to the hundreds of applicants scheduled to take the examinations scheduled for November 19th, and potentially others planning to take future public safety civil service examinations, and to the civil service system as a whole. This warrants the scheduling of an *expedited* show cause conference, to be conducted remotely on **Thursday, November 17th at 10:00 A.M.**³ As referenced above, the purpose of this show cause conference is to provide the Petitioners with an opportunity to show cause why the Commission should initiate an investigation, as well as HRD to reply.

Prior to the Show Cause Conference, the Petitioners and HRD are hereby directed to engage in *good faith discussions* regarding the potential for a short-term, interim resolution regarding the administration of the promotional examinations that were scheduled to be held this

³ In the event that this date / time conflicts with any related judicial proceedings, the Commission reserves the right to adjust the date / time of this Show Cause Conference.

coming Saturday. The Commission is available to assist with facilitating these discussions if requested.

At the outset of the Show Cause Conference, the parties should be prepared to provide the Commission with:

- I. An update regarding any discussions related to the potential for a short-term, interim solution; and
- II. An update regarding any judicial proceedings, including the Petitioners' motion for injunctive relief, currently pending in Suffolk Superior Court.

Other issues the parties should be prepared to address as part of the Show Cause Conference are:

- A. Any additional actions anticipated by HRD regarding administering and/or deferring the scoring of upcoming (e.g., 2023) public safety promotional examinations;
- B. The impact on civil service communities of any confirmed or anticipated future cancellation or deferred scoring of upcoming public safety promotional examinations — and, specifically, whether any existing promotion eligible lists will expire prior to May 15, 2023, without a guarantee of extension of the existing list;
- C. Available measures that could be taken to mitigate the effects of the cancellation and/or deferred scoring of the examinations;
- D. Arguments for and against an expedited investigation schedule in the event that an investigation is initiated; and
- E. Arguments related to the Commission's jurisdiction to conduct an investigation and/or issue interim and/or ultimate relief if warranted, including whether the Commission should defer to any ongoing judicial proceedings.

Logistics of Show Cause Conference

The Show Cause conference will be conducted remotely via Webex. Although open to the public, **public participation during the Show Cause Conference will be limited to the parties' designated representatives only**. Individuals seeking to provide public comment may submit comments at any time to CSCcomments@mass.gov. Individuals seeking an invitation to view the remote Show Cause Conference should send a request to CSChelp@mass.gov.

SO ORDERED.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Sent to parties and posted to CSC Website on November 14, 2022

Notice to:

Leah Barrault, Esq. (for Petitioners)

Michele Heffernan, Esq. (for HRD)