

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

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REQUEST FOR INVESTIGATION  
OF THE COMMONWEALTH'S  
HUMAN RESOURCES DIVISION  
BY RICHARD MACKINNON, JR., ET AL.

**Tracking Number: I-23-035**

Appearance for Petitioners:

Leah M. Barrault, Esq.  
Barrault and Associates, LLC  
3 Boulevard Street  
Milton, MA 02186

Appearance for HRD:

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

Commissioner:

Paul M. Stein

**REPORT AND ORDERS ON PENDING INVESTIGATION REQUESTS**

***Procedural Background***

On March 27, 2023, the Petitioners (ten registered voters including Richard MacKinnon, Jr.) and the Professional Firefighters of Massachusetts (PFFM) asked the Civil Service Commission (Commission) to conduct an investigation into a recent decision of the Human Resources Division (HRD) “setting a November 19, 2022 education and experience [credit cutoff] deadline for the statewide lieutenant and captain promotional examinations that were held on March 25, 2023, while at the same time setting a [March] 25, 2023 education and experience [credit cutoff] deadline for the Boston [Fire Captain] and Lieutenant promotional examinations that were held on the same date.” (*emphasis added*)

On March 29, 2023, the Commission issued a Procedural Order directing the Petitioners and HRD to confer in good faith to ascertain whether a resolution could be reached between the Petitioners and HRD absent intervention by the Commission. The Procedural Order also directed that, pending further potential action by the Commission, HRD shall not preclude any candidate who sat for the Statewide Firefighters’ Promotional Examination from submitting, provisionally, documentation reflecting education, training, certification, or experience attained between November 19, 2022 and March 25, 2023.

On April 3, 2023, the Petitioners submitted a supplement to the request for investigation, to add the following two issues on which an investigation was requested: (1) HRD's decision to grant certain candidates the opportunity to take a make-up examination at a later date; and (2) alleged failure to provide candidates with a template showing the point structure that would be applied to the ECT&E component of the March 25, 2023 promotional examination.

On April 5, 2023, HRD filed its Response to Request for Investigation (HRD First Response), in which it asserted that it had acted reasonably in all respects.

On April 6, 2023, the Commission received a Reply to HRD's First Response from counsel for the Petitioners.

After consideration, the Commission declined to open an investigation into HRD's delayed disclosure of the point structure for the ECT&E component until examination scores were calculated, deeming this issue more appropriate for the traditional initial HRD review and appeal process provided in G.L. c. 31, §§ 22-24.

The Commission directed HRD to supply further information on the make-up examination issue and ordered the Petitioners to supply further information on the cut-off date issue.

On April 13, 2023, HRD submitted a further Response (HRD Second Response), in which it provided additional information about the make-up examination issue.

On April 14, 2023, pursuant to notice duly issued, HRD and the Petitioners appeared before me in Hearing Room 2-E, 100 Cambridge Street, Boston MA 02114. The investigative conference was audio/video recorded (via Webex webinar) and [live streamed via YouTube](#).

The Petitioners produced further documentation, which they simultaneously provided to HRD, identifying a total of 38 Statewide Firefighters' Promotional Examination test-takers that would allegedly be eligible to claim additional credit for "acting time" in the relevant grade and/or educational degrees obtained if the cut-off date was March 25, 2023, as opposed to November 19, 2022.

I also received further information from HRD concerning the changes that HRD had made to the process for calculating ECT&E credits as well as additional facts regarding the subject of make-up examinations.

The record was kept open for the submission of additional comments to [csccomments@mass.gov](mailto:csccomments@mass.gov). Three comments were received.

### ***Analysis***

Based on the documentary information received, after colloquy and argument with HRD and the Petitioners at the investigative conference, review of the comments received from interested persons, and taking administrative notice of relevant matters of public record, I recommend that the Commission close its investigation of this matter at this time for the reasons explained below.

#### **MAKE UP EXAM.**

As to HRD's treatment of make-up examination requests, I find HRD's practice was not unreasonable or arbitrary. All make-up exam requests required supporting documentation and were reviewed and approved by the Director of HRD's Civil Service Unit. All but four involved

military deployments (mandated by law) and medical events that could not be postponed. According to HRD, the make-up exam will be different from the March 25, 2023 exam to ensure that someone taking a make-up exam gains no advantage by access to inside information about the content of the exam from those who took the March 25, 2023 test (which would be a violation of civil service law). I find HRD's specific decisions to allow 14 candidates to take a make-up exam were reasonable and none were made arbitrarily or capriciously.

#### CUT-OFF DATE

According to the Petitioners, the issue of the cut-off dates now seems to involve approximately 38 candidates out of a total of approximately 900 test-takers. Each of those 38 examples requires a case-by-case analysis which is most appropriately handled through the standard examination appeal process, as opposed to a global order by the Commission through an investigation that could risk delaying the release of scores and further delay the establishment of eligible lists, an outcome that would be unwise and potentially unnecessary.

The Commission's prior orders directed that HRD shall not preclude any such candidate from asserting a claim to a different cut-off date for ECT&E credit than HRD currently recognizes. Those orders are sufficient to preserve the rights, if any, of candidates to contest HRD's use of any earlier cutoff date than March 25, 2023 for ECT&E credits and, if they are able to prove that their civil service rights were actually infringed, to obtain appropriate relief through the G.L. c. 31, §§ 22-24 review process. Until a full record has been made that permits such a review, it is premature and possibly counterproductive for the Commission to address the merits of HRD's decision at this time.

#### COMPUTATION OF ECT&E SCORES

In view of the foregoing, I have reconsidered the matter of HRD's delayed issuance of the point structure for the ECT&E component. As referenced above, the Commission previously declined to open an investigation regarding HRD's delayed disclosure of the point structure for the ECT&E component until examination scores were prepared deeming this issue more appropriate for the traditional initial HRD review and appeal process provided in G.L. c. 31, §§ 22-24. I have now reviewed HRD's new ECT & E instructions and claim forms. Unlike prior E&E claim forms, which showed specific point credits for each category on the form, under the new ECT&E form:

“[A] candidate will not be able to see point values for the associated claim entries. When exam scores are released, the candidate will receive a breakdown of their final score consisting of their written technical knowledge component; written exam situational judgement testing component; and ECT&E score.”

During the investigation process, HRD clarified that candidates will receive an “explanatory reference guide when the ECT&E scores are issued”. The level of detail that such a guide will provide, however, remains unclear. Although these facts do not warrant changing the Commission's decision not to open an investigation, for clarity, the Commission's decision to defer consideration of ECT&E issues reinforces the need for HRD to ensure that candidates receive sufficient detail about the computation of their individual ECT&E scores to enable them to check the computations against the claims they submitted and to decide whether or not to request an HRD review as to whether they are aggrieved by any cutoff date dispute, as well as whether the

candidate actually got credit for all the experience, education, training, credentials and/or licenses they believe they duly claimed.

***Conclusion***

Accordingly, I recommend that, in view of the above, further investigation of HRD's administration of the ECT&E component of the March 25, 2023 Statewide Firefighters Promotional Exam is not necessary at this time and that the Commission close this investigation

I also recommend that, in any future appeals to the Commission after HRD's review of any ECT&E claims emanating from the March 2023 promotional examinations, the Commission authorize the Chair to waive the filing fees for such appeals.

Civil Service Commission

*/s/ Paul M. Stein*

Paul M. Stein  
Commissioner

On April 20, 2023, the Civil Service Commission (Bowman, Chair; McConney, Stein & Tivnan, Commissioners [Dooley – Absent]), voted to accept the recommendation of Commissioner Stein and close the investigation at this time.

Notice to:

Leah M. Barrault, Esq. (for Petitioners)  
Michele Heffernan, Esq. (for HRD)  
Regina Caggiano, Director, HRD Civil Service Unit