

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200
Boston, MA 02114
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Requests 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.
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Appearance for Respondent:

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Commissioner:

Paul M. Stein

ORDERS ON PENDING INVESTIGATION REQUESTS

On March 27, 2023, the Petitioners (ten named taxpayers including Richard MacKinnon, Jr.) and the Professional Firefighters of Massachusetts (PFFM) filed a letter asking the Civil Service Commission to conduct an investigation into “the legality of the Massachusetts Human Resources Division’s recent actions in arbitrarily 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.” The Commission shall refer to this as “the ECT&E Credit Cutoff Date investigation request.”

By Procedural Order dated March 29, 2023, the Petitioners and HRD were directed to confer in good faith to ascertain whether the cutoff date for Statewide Firefighters’ Promotional Examination candidates claiming and receiving ECT&E credit can be adjusted to a mutually acceptable date. 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.

Finally, absent agreement, HRD was invited to file a response to the Petitioners' letter on or before April 5, 2023.

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

As to the request for investigation of the issue of granting make-up examination requests, the Commission notes that, yesterday, the Commission dismissed as premature a fair test appeal from a candidate named Christopher Gibbons (CSC No. B2-23-042), who alleges that a fellow employee in his fire department has been authorized by HRD to sit for the May makeup examination despite having had access to examination papers on March 25, 2023. In its *Response* dated April 5, 2023, HRD identified "14 candidates who were approved in advance" to sit for the May makeup exam rather than the written exam administered on March 25, 2023 and it briefly described the underlying justification for permitting those 14 candidates to take a makeup exam, but it did not mention the above scenario. (The 14 examples included 6 claiming military deployment, 5 claiming medical emergencies and 4 others claiming personal reasons.) HRD also specified that it was taking certain steps to protect the integrity of the overall examination process.

As to the Petitioners' April 3, 2023 request to investigate a concern that, in contrast to past examinations, HRD withheld from the ECT&E claim form this year the point values associated with each category listed in the claim form, HRD states, in its April 5 *Response*, that it "will provide an explanatory reference guide when the ECT&E scores are issued to the candidates" and in fact this was alluded to in the claim form itself. The Petitioners do not identify who is aggrieved by the failure to provide the point structure in advance, or how any candidate can show prejudice to his or her civil service rights prior to receiving their exam scores.

There having been no reported informal resolution between the parties of these issues, the Commission received instead the *Human Resources Division's Response to Request for Investigation*, dated April 5, 2023, and a reply thereto from counsel for the Petitioners dated April 6, 2023.

After consideration of the submission of the parties, the Commission hereby ORDERS:

1. The Commission shall open an investigation regarding the ECT&E Credit Cutoff Date request and orders the Petitioners and HRD to appear for an investigative hearing to be held in Hearing Room 2-E at 100 Cambridge Street, Boston, MA on **Friday, April 14 at 10:30 A.M.**¹ The Respondent HRD should be prepared to address further at this hearing, without limitation, any practical impediments associated with granting additional credit to candidates who in fact attained a meaningful measure of (non-duplicative) education, credentialing, training, or experience in the 18-week period beginning November 19, 2022 and ending on March 25, 2023. The Petitioners should be prepared to quantify the number

¹ Individuals seeking to view the proceedings remotely should email the Commission at CSChelp@mass.gov.

of candidates adversely affected by the failure to extend the cut-off date beyond November 19, 2023.

2. Based on the information received to date, the Petitioners and HRD are ORDERED TO SHOW CAUSE before and/or at the hearing on **Friday April 14, 2023**, why the Commission should, or should not, include the make-up examination issue as part of the investigation. The Commission hereby orders HRD to supplement its *Response* by noontime on **Thursday, April 13, 2023** to disclose, at a minimum, the following additional, clarifying information: (1) the total number of individuals who have been permitted and/or requested to participate in the planned May 2023 makeup exam; (2) whether or how HRD's policy or practice of authorizing makeup exam participation is memorialized; (3) whether there is a process for appealing any rejection of a request to participate in a makeup examination; and (4) what verification of grounds asserted by candidates for makeup examination eligibility is undertaken by HRD. The parties shall be prepared to discuss these issues at the hearing the Commission is scheduling for Friday morning, April 14, 2023.
3. The Commission declines at this time to open an investigation regarding the disclosure of the ECT&E point allocation investigation request. Until both the actual ECT&E scores and HRD's explanation (*e.g.*, of how points allocated to specific items on the ECT&E claim form are combined to form an individual's actual ECT&E score) are released to candidates, there can be no showing that HRD's actions on this front are not in compliance with the provisions of G.L. c. 31 or that any identifiable candidate has been or will be aggrieved by the scoring of the ECT&E component of the recently administered promotional examination. Accordingly, the Commission deems this issue more appropriate for the traditional review and appeal process provided in G.L. c. 31, Sections 22-24. An investigation of the disclosure of the ECT&E point allocation investigation request is premature at this juncture.

SO ORDERED.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair [Absent]; Dooley, McConney, Stein & Tivnan, Commissioners) on April 6, 2023.

Notice to:

Leah M. Barrault, Esq. (for Petitioners)
Michele Heffernan, Esq. (for HRD)