

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

JOHN SOLIS SCHEFT, ESQ. et al.
Appellants

I-09-53

v.

HUMAN RESOURCES DIVISION,
Respondent

Attorney for Appellants:

John Solis Sheft, Esq.
846 Massachusetts Ave
Arlington, MA 02476

Attorneys for Human Resources Division:

Michelle Heffernan, Esq. and
Tsuyoshi Fukuda, Esq.
Human Resources Division
One Ashburton Place, Room 211
Boston, MA 02108

Hearing Officers:

Christopher C. Bowman,
John E. Taylor, and
Angela C. McConney

COMMISSION'S RESPONSE TO PETITION FOR INVESTIGATION INTO THE
HUMAN RESOURCES DIVISION'S CREATION OF THE READING LIST
FOR THE POLICE PROMOTIONAL EXAMINATIONS

Procedural Background

Pursuant to the provisions of G.L. c. 31, § 2(a), the appellants have asked the Civil Service Commission (hereinafter "Commission") to investigate the manner in which the police promotional examination reading list is created by the state's Human Resources Division (hereinafter "HRD").¹

¹ John Solis Scheft, Esq. and 51 others, all police officers.

A pre-hearing conference was conducted at the offices of the Commission on March 3, 2009 for the purpose of determining whether an investigation would be appropriate.² This public hearing was presided over by Commission Chairman Christopher C. Bowman, Commissioner John E. Taylor and Commission General Counsel Angela C. McConney. The hearing was recorded. Attorney John Solis Scheft was present and represented himself and the other petitioners. Counsel for HRD was also present. Attorney Scheft and counsel for HRD provided oral argument and responded to questions from the presiding Commissioners. After the pre-hearing conference, Attorney Scheft submitted correspondence to the Commission and HRD filed a written response.

Factual Background

On October 18, 2008, HRD administered police promotional examinations for the ranks of sergeant, lieutenant, and captain within the Boston Police Department and dozens of other civil service communities in Massachusetts. These promotional examinations are administered by HRD on an annual basis.

According to HRD, the complete reading list is reviewed every five years upon consultation with subject matter experts for each exam.

Arguments

Attorney Scheft, citing two books in particular, argues that some of the reading material: 1) contains erroneous information; and 2) was included on the reading list through a faulty process. Specifically, he argues that at least one of the experts consulted by HRD recommended an author's publications for inclusion on the reading list as a

² G.L. c. 31, §2(a) confers "significant discretion upon the Civil Service Commission in terms of what response and to what extent, if at all, an investigation is appropriate." (Boston Police Patrolmen's Ass'n et al. v. Mass. Civ. Serv. Comm'n, and Boston et al., Suffolk Super. Court, Nos. 2007-1220 and 2006-4617, Memorandum of Decision at 9 (filed January 8, 2008) (Brassard, J.)

result of a close professional association.

HRD strenuously denies this serious allegation and argues that Attorney Scheft is before the Commission “in an effort to further his own self interest and to increase his personal profit margin”. (HRD letter to the Commission, March 5, 2009)


Conclusion

Attorney Scheft is the Principal and founder of Law Enforcement Dimensions, LLC. He writes books on criminal law, criminal procedure, motor vehicle law and juvenile law. (See Scheft Petition for Investigation) At the pre-hearing conference, Attorney Scheft freely acknowledged that he believes that his own publications, rather than of those of the author singled out in his petition, should be included on the HRD reading list.

Attorney Scheft also acknowledged that his for-profit company has engaged in actions that HRD has deemed to violate its rules. His company posted a raffle prize on its website (an iPod) to induce test takers of the promotional examination to submit complete questions, answer choices and page references from the promotional examination. Attorney Scheft used those questions to create a “Civil Service Exam Reincarnation,” which is sold to his clients in preparation for future examinations. (HRD submission at pre-hearing conference: e:mail correspondence dated 2/27/09)

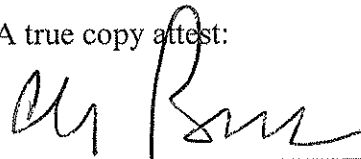
While Attorney Scheft stated that he no longer engages in such activity now that he understands that HRD deems this to be in violation of its rules, his actions are of grave concern to the Commission. Attorney Scheft’s desire to see his own publications placed on the reading list, while representing the other petitioners who may not be aware of this same interest or share his financial incentive, creates a potential conflict of interest that cannot be ignored by the Commission.

For these reasons, we do not believe it is appropriate to conduct an investigation as requested by Attorney Scheft and his fellow petitioners.³



Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on March 12, 2009.

A true copy attest:


Commissioner

Notice to:

John Solis Scheft, Esq. (for Petitioners)
846 Massachusetts Avenue
Arlington, MA 02476

Michelle Heffernan, Esq and
Tsuyoshi Fukuda, Esq. (for HRD)
One Ashburton Place, Room 211
Boston, MA 02108

³ While the Commission has opted not to commence an investigation, HRD shall continue to take all appropriate steps (including consultation with appropriate oversight agencies) to ensure that its current process for creating the police promotional examination reading list is in accordance with all applicable laws, rules and regulations.