

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place - Room 503
Boston, MA 02108
(617) 727-2293**

**OBDULIO RODRIGUEZ,
JOSE ARAUJO,**
Appellants

**CASE NOS: G1-09-24 (Rodriguez)
G1-09-25 (Araujo)**

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appellants' Attorney:

Harold L. Lichten, Esq.
Lichten & Liss-Riordan, P.C.
100 Cambridge Street, 20th Floor
Boston, MA 02114

Appointing Authority's Attorney:

Amanda E. Wall, Esq.
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120

HRD's Attorney:

Michelle Heffernan, Esq.
Deputy General Counsel
Human Resources Division
One Ashburton Place
Boston, MA 02108

Commissioner:

Paul M. Stein

DECISION ON MOTION FOR RECONSIDERATION

The Appellants, Obdulio Rodriguez and Jose Araujo, appeal to the Civil Service Commission (Commission) under G.L.c.31,§2(b), from the Human Resources Division (HRD) approval of the Appellants' alleged bypass for appointment as Spanish-speaking police officers by the Respondent, Boston Police Department (BPD), the Appointing Authority, which resulted from unfavorable reports from BPD's psychiatric screeners. The BPD and HRD each have moved to dismiss the appeals for lack of jurisdiction. The Commission denied these motions on September 10, 2009. The BPD and HRD moved for reconsideration.

After careful review of the Motions for Reconsideration presented by the BPD and HRD, as well as the Appellant's opposition, the Commission Majority finds no clerical or mechanical error in the Decision or a significant factor the Commission or the presiding officer overlooked that requires reconsideration of the Decision in this case.

As to HRD's and BPD's position that history of score banding in civil service examinations in the Commonwealth, rather than numerical examination scoring, has been the "status quo" since 2006, the Commission Majority does not agree. As the Appellants' point out, HRD was still vigorously defending the validity of rank order numerical exam scoring in the case of Bradley v. City of Lynn, 443 F.Supp.2d 145 (D.Mass.2006) and, at that time, even "expressed some legal uncertainty whether the statutory framework in Massachusetts allows banding." Id. 443 F.Supp.2d at 174. The published decision in Bradley noted that HRD had "several alternative selection procedures", including "to create a better examination" that included "non-cognitive" testing. Id., 443 F.Supp.2d at 174-75. The final remedial order in the Bradley case on December 6, 2006 addressed primarily the 2002 and 2004 examination and says nothing about score bandings; rather, the court order actually required "all test scores", weighting criteria, and other relevant test data be disclosed to the plaintiffs upon release of the 2006 examination results. Remedial Order (Saris, USDJ) dated December 6, 2006, Bradley et al v. City of Lynn et al, U.S.D.C.(Mass.) Civil Action No. 05-CV-10123-PBS. The Commission's records indicate that the Commission was first briefed on January 10, 2008 concerning the subject of "HRD's new method of ranking candidates on eligibility lists into 'bands' as opposed to the current method of ranking candidates, in which each candidate is given an individual rank."

The Commission also takes note that, on November 24, 2009, HRD issued a notice of proposed changes to the Personnel Administration Rules (PAR) that would authorize the use of score bands in civil service examinations and which acknowledge a right of recourse to the Commission by non-selected candidates, such as these Appellants, who would be considered “tied” within a score band. The Commission expresses no opinion on those proposed changes and underscores that this Decision is meant only to adjudicate the rights of the Appellants to proceed to a full hearing on these two pending appeals under the Commission’s determination of existing Civil Service Law and rules and is not meant to express any opinion as to the rights, if any, of future appellants, if HRD adopts, and the Commission approves, the proposed or any other appropriate prospective changes to the existing rules concerning score banding..

Accordingly, the BPD and HRD Motions for Reconsideration are *denied*. These appeals will be scheduled for a full evidentiary hearing by the Commission forthwith.

Civil Service Commission

Paul M. Stein
Commissioner

By 3-2 vote of the Civil Service Commission (Bowman, Chairman [NO]; Henderson [YES], Marquis [NO], Stein [YES] and Taylor [YES], Commissioners) on December 10, 2009

A True Record. Attest:

Commissioner

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission’s order or decision.

Notice to:

Harold L. Lichten, Esq. (for Appellants)

Amanda E. Wall, Esq (for Appointing Authority)

Michelle Heffernan, Esq, (HRD)