COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

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OBDULIO RODRIGUEZ,
JOSE ARAUJO,
Appellants

CASE NOS: G1-09-24 (Rodgriguez)
G1-09-25 (Araujo)

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appellants' Attorney:	Leah Marie Barrault, 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:	Suzanne L. Shaw, Esq. Labor Counsel Human Resources Division One Ashburton Place Boston, MA 02108
Commissioner:	Paul M. Stein

DECISION ON MOTIONS TO DISMISS

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, asserting that the Appellants' scores were not higher than any of the selected candidates and, therefore, no bypass occurred, and, as a "fair test" claim, the appeal is untimely. The Appellants oppose both motions.

The Commission heard oral argument on the motions at a hearing on May 18, 2009 which was digitally recorded. Additional submissions were received from HRD on May 21, 2009 and from the Appellants on June 5, 2009.

FINDINGS OF FACT

Based on the submissions of the parties and the argument at the motion hearing, the following facts appear to be undisputed:

1. The Appellant, Obdulio Rodriguez, is a non-veteran resident of Roslindale in the City of Boston. (*Rodriguez Claim of Appeal*)

2. The Appellant, Jose Araujo, is a non-veteran resident of Dorchester in the City of Boston. (*Araujo Claim of Appeal*)

3. On May 19, 2007, HRD administered, and the Appellants took and passed, the entry level police officer examination for individuals interested in becoming municipal police officers. (*HRD 5/21/09 Motion*)

4. Candidates who took the May 2007 entry level police officer examination were assigned by HRD to "Score Bands" from 10 to 1 (10 being the highest, 1 being lowest), based on their numerical point score on the written examination, as follows:

SCORE BANDS: 10 = 97-100; 9 = 94-96; 8 = 90-93; 7 = 87-89; 6 = 83-86;
5 = 80-82; 4 = 77-79; 3 = 74-76; 2 = 70-73; 1 = BELOW 70.

(*HRD 3/12/09 Motions, Exhibit B*)

5. Both Appellants fell into Score Band 9, indicating they each received a numerical point score on the written examination of 94, 95 or 96. (*Appellants' Opposition*)

6. At BPD's request, on November 16, 2007, HRD issued Certification No. 271117 to the BPD containing the Appellants' names along with approximately 90 other names of Spanish-speaking candidates from the eligible list for appointment to the position of Police Officer. (*BPD Motion, Exhibit A*)

7. In March 2008, the Appellants received conditional offers of employment from the BPD. (*BPD Motion*)

8. On May 16, 2008, BPD informed HRD that it withdrew its conditional offers of employment to the Appellants following reports of the BPD's second level psychiatric screener who found each of the Appellants unqualified for appointment as a BPD Police Officer. (*Obdulio, Araujo Claim of Appeal; HRD 3/12/09 Motions*)

9. On June 10, 2008, BPD submitted an Authorization of Employment Form 14 to HRD for approval to hire seven (7) candidates from Certification No. 21117 to fill vacancies for positions of Spanish-speaking Police Officers, with employment dates of 5/27/08, which HRD subsequently approved. (*BPD Motion, Exhibit A; HRD 3/12/09 Motions, Exhibit C*)

10. The seven applicants who were hired include one veteran (with preference) and six non-veterans whose names appear in Score Band 9. (*HRD Motions, Exhibit C; Statements during Oral Argument*)

11. On December 1, 2008, HRD wrote to each of the Appellants to inform them that HRD had determined that the reasons provided by the BPD for the Appellants' non – selection from Certification No. 21117 were "acceptable for appointing individuals ranked lower on the list on this certification" and informed the Appellants that they had a right to appeal HRD's determination to the Commission and they did so. (*Obdulio, Araujo Claim of Appeal; HRD 3/12/09 Motions, Exhibit A*)

12. The use of score bands is a relatively new procedure that was adopted by HRD in 2008, initially applied only to eligibility lists for entry-level positions of police officer and firefighters, and more recently proposed for police officer promotional examinations. (*Administrative Notice of the Commission Decision in Henry Araica v. Human Resources*

Division, CSC Case No. I-09-54, 55 & 66[the CSC Aracia Decision])

13. Neither HRD nor BPD claim to know the Appellants' actual whole number examination point scores, the whole number examination point scores of any of the six applicants selected from Score Band 9, or precisely what methods are now available to retrieve that information. (*Statements during Oral Argument*)

14. On April 15, 2009, as a result of an appeal from the CSC Aracia Decision, the Massachusetts Superior Court (Henry, J.) entered a preliminary injunction against the Commission and Paul Dietl, the HRD Personnel Administrator, in Civil Action SUCV2009-01254, entitled "THOMAS PRATT, et al. vs. PAUL DIETL, in his official capacity as Chief Human Resources Officer of the Commonwealth of Massachusetts and as Executive of the Human Resources Division, and the CIVIL SERVICE COMMISSION" (the Pratt Action), which, among other things, enjoined HRD "from issuing eligibility lists for the promotion of police officers in score bands rather than in the manner in which it has been doing so until a final resolution of this matter on its merits." (*Administrative Notice of Civil Action SUCV2009-01254*)

15. As of the date of this Decision, the Pratt Action remains pending on the merits and the preliminary injunction issued by the Superior Court remains in effect. (*Administrative Notice of Civil Action SUCV2009-01254; HRD 5/21/09 Motion*)

16. As a result of the preliminary injunction in the Pratt Action, on May 15, 2009, HRD established eligibility lists that did not band scores for the October 2008 police promotional examinations. HRD has stated: "HRD is planning on moving forward with rulemaking for score banding in the future. . . . An applicant's ranking on the 2008 [police officer] promotional list will be based on their exam raw score." To date, HRD has proposed no rulemaking for score banding. (*Administrative Notice of HRD 5/13/2009*

Update & 5/20/2009 Update, 2008 Police Sergeant, Police Lieutenant & Police Captain Departmental Promotional Examinations, www.mass.gov/hrd)

CONCLUSION OF THE MAJORITY

Summary

These Motions to Dismiss require the Commission to decide whether a bypass occurs when an appointing authority selects a candidate whose numerical point score on a written civil service test is lower than an appellant's point score, but both candidates' test "scores" fall within the same "score band". The Appellants rely on the Commission's decisions and HRD rules and prior practice to claim that any selection of a candidate having received a higher exam point score is a bypass that must be justified with sound and sufficient reasons. HRD and BPD argue that, by introducing banding, a candidate's "score band", not a candidate's numerical test result, is now the only relevant measure of equality and, since all candidates here fall within the same score band, the candidates are all tied, no bypass has occurred and the Commission lacks jurisdiction over the appeal.

As a case of first impression, and in view of the current climate of judicial uncertainty and the imminent rulemaking changes expected soon from HRD concerning score banding, the Commission majority concludes it is not appropriate to change the previously established and familiar basis of using relative exam point scores to establish bypass jurisdiction and, in these appeals, will apply the civil service law and rules in bypass cases as in the past. Accordingly, if the Appellants test scores on the May 2007 entry-level police officer examination are higher than any of the six selected candidates from Score Band 9 who took that examination, the Appellants have stated valid grounds for appeal. The Motions to Dismiss are denied at this time.

Applicable Law and Regulations

G.L.c.31, §25, ¶1 provides:

> "The administrator [HRD] shall establish, maintain and revise eligible lists of persons who have passed each examination for appointment to a position in the official service. *The names of such persons shall be arranged* on each such list, subject to the provisions of section twenty-six[1], where applicable, *in the order of their marks on the examination* based upon which the list is established.[2] *Each such list shall be established or revised as soon as such marks are determined by the administrator*, except that if such determination is made by the use of a written examination, the establishment or revision of the list shall be completed no later than six months after the date of the examination. All persons who have taken an examination shall be notified of the results thereof not later than sixty days after the date of such examination." (*emphasis added*)

G.L.c.31,§27 provides, in relevant part:

> "[I]f the administrator [HRD] certifies from an eligible list the names of three persons who are qualified for and willing to accept appointment, the appointing authority, pursuant to the civil service law and rules, may appoint only from among such persons. . . .
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> "*If an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest.* Such an appointment of a person whose name was not highest shall be effective only when such statement of reasons has been received by the administrator. The administrator shall make such statement available for public inspection at the office of the department." (*emphasis added*)

In addition, HRD promulgated Personnel Administration Rules (PAR), effective as of February 28, 2003, bearing on the issues presented here. PAR.09, following the statutory mandate of Section 25 above, establishes the so-called "2n+1" rule, i.e., when "the number of appointments or promotional appointments actually to be made is n, the appointing authority may appoint only from the first 2n+1 persons named in the

[1] G.L.c.31,§26 prescribes certain priorities granted to veterans and other designated applicants in their placement on eligible lists.

[2] Requests for HRD (and limited Commission) review of the "marking" of an applicant's examination questions and/or training and experience credit or whether the examination was a "fair test", is permitted under the provisions of G.L.c.31, §§22-24.

certification willing to accept appointment. . . .” Thus, if one appointment is to be made, it must be made “only from among the first 3 . . . persons named in the certification willing to accept”; two appointments must be made from the first 5 names, and so forth.

PAR.02 defines a “bypass” as “the selection of a person or persons whose name or names, *by reason of score*, merit preference status, court degree, decision on appeal from a court or administrative agency, or legislative mandate *appear lower* on a certification than a person or persons who are not appointed and whose names appear higher on said certification.” (*emphasis added*)

PAR.07 states:

> “(1) *The examination papers* of persons examined for appointment and promotion *shall be marked and graded, and the results recorded*. . . . .
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> . . .
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> “(4) *The examination marks shall be presented on eligible lists in whole numbers.”* (*emphasis added*)

PAR.08 states:

> “(1) Whenever any appointing authority shall make requisition to fill a position, the Personnel Administrator [HRD] shall, if a suitable eligible list exists, certify the names standing highest on such list in order of their place on such list, except as otherwise provide by civil service law or rules. . . .
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> . . .
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> “(3) *Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule .02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reasons for selecting another person or persons, lower in score or preference category*. Such statement shall indicate all reasons for selection or bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission. *The certification process will not proceed, and no appointments or promotions will be approved, unless and until the Personnel Administrator approves reasons for selection or bypass*.” (*emphasis added*)

Discussion

It is well established under the applicable civil service laws and rules that a bypass means the appointment or promotion of a candidate to an official service position from a "certification" prepared from an "eligible list" established according to the candidates' relative ranking on a competitive civil service examination, when the successful candidate's *score* was lower than the *score* of the unsuccessful candidate, and the appointing authority is able to justify the bypass for "sound and sufficient reasons" which must be approved by HRD. G.L.c.31, §26; PAR.02; PAR.08(3). See, e.g., Cotter v. City of Boston, 323 F.3d 160 (1st Cir.), cert.den., 540 U.S. 825 (2003); Thompson v. Civil Service Comm'n, Middlesex C.A.No. MICV1996-5742 (Sup.Ct.1996). An unsuccessful, lower ranked candidate who is bypassed is entitled to appeal to the Commission for a de novo review of the sufficiency of the reasons for the bypass pursuant to G.L.c.31,§2(b). See, e.g., See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 461-62 (2001); MacHenry v. Civil Service Comm'n 40 Mass.App.Ct. 632, 635, 666 N.E.2d 1029, 1031 (1995), rev.den., 423 Mass. 1106, 670 N.E.2d 996 (1996)

When candidates' scores on a written examination are "tied", neither one is considered to be ranked "higher" or "lower" than the other; therefore, selection of either candidate is not a bypass and does not require HRD approval of sound and sufficient reasons or permit the unsuccessful candidate to appeal non-selection to the Commission. See, e.g., Edson v. Town of Reading, 21 MCSR 453, 455 (2008) (decision of the minority, citing Cotter and Thompson); Schena v. City of Haverhill, 20 MCSR 504 (2007); Zielinski v. City of Everett, 20 MCSR 257 (2007); Bianco v. Newton Fire

Department, 20 MCSR 241 (2007); Kallas v. Franklin School Dep't, 11 MCSR 73 (1996); Baptista v. Department of Public Welfare, 6 MCSR 31 (1993)

In every such case, the Commission's reference to tied scores unambiguously mean a person's numerical whole number point score achieved on an examination. See also Troxell v.City of Brockton, 21 MCSR 376 (2008) ("The term 'Bypass', refers to the . . . [exam] score"); Fasano v. City of Quincy, 17 MCSR 79 (2004) (for bypass purposes, candidates with the same exam point score are "tied', notwithstanding the fact that a bypassed candidate's name appears "higher" on the eligibility list because the names of candidates with the same exam point score are arranged alphabetically for administrative convenience). Indeed, the Commission's decisions uniformly use the word "score" exclusively in the context of the point score achieved on a civil service test (expressed in whole numbers as a percentage or on a scale from 1 to 100). See, e.g., Barry v. Town of Lexington, 21 MCSR 589 (2008) ("The Appellant's name appeared in the first position with a score of 88"); Gibbons v. City of Woburn, 21 MCSR 525 (2008) ("Appellant took and passed the promotional examination . . . achieving a score of 91"); Dockery v. City of Waltham, 20 MCSR 483 (2007) (scores of 80, 76 [bypassed candidates] and 75 [selected candidate]); Lipka v. Department of Correction, 20 MCSR 414 (2007) (78 was lowest score of selected candidates; appellant scored 73); Lindgren v. Department of Correction, 20 MCSR 253 (2007) (Appellant scored 91.00; selected candidates scored 98%); Sheehan v. Town of Hudson, 19 MCSR 17 (2006) (scores of 90.00 [appellant], 78.00 and 75.00); Sabourin v. Town of Natick, 18 MCSR 79 (2005) ("On the exam, Sabourin scored an 86 and Brien scored a 79"); LaRoche v. Department of Correction, 14 MCSR 169 (2001) (appellant with exam score of 86% bypassed for candidate who scored 85%); McGonagle v. Massachusetts Parole Bd, 14 MCSR 154 (2001) (Appellant with score of 95%

bypassed for candidate who scored 94%); Reilly et al v. Lawrence Police Dep't, 13 MCSR 144 (2000) (bypassed candidates scored 75 on the exam; selected candidate scored 73)

The common use of the term "score" to mean the point score or marks received on an examination is also confirmed by the practice concerning statutory provisions for preferences and credits based on veteran's status (e.g., Section 26) and training and experience (e.g., Sections 22 & 59). These allowances have traditionally been incorporated by factoring in additional points to the point score achieved on the written exam, leading to a "final" point score that establishes an applicant's place on the eligible list. See, e.g., Edson v. Town of Reading, 21 MCSR 477 (2008) (training and experience marks added to exam score marks to produce a "final score"); DeFrancesco v. Human Resources Division, 21 MCSR 662 (2008) (adding two points to civil service exam score for police officers with 25 years service per G.L.c.31,§59); Condez v. Town of Dartmouth, 17 MCSR 40 (2004) (education and experience credits included in "final grade") So far as the Commission is informed, these practices remain in effect, which tends to suggest that the historically applied meaning of the term "score", i.e. an exam point score, remains a viable, indeed, necessary, concept.

In sum, until now, the historical and current practice of the Commission and HRD has defined a bypass as the selection of a candidate with a lower exam point score over a qualified candidate who achieved a higher point score on the same exam. That said, however, the question remains whether or not, taking into account HRD's introduction of "score bands", the traditional interpretation of a bypass case can and should be discarded in favor of a system that restricts bypass requirements to cases in which candidates from a lower "score band" are selected over those in a "higher" score band, and treats all

candidates within a score band as "tied" without regard to their relative individual exam scores. The Commission majority declines to do so for three reasons.

First, the preliminary injunction entered in the Pratt Action specifically prohibits HRD from issuing (and the Commission from allowing) the use of "eligibility lists for promotions of police officer in score bands rather than in the manner in which such score[s] have been reported up to the time of this proposed change." *Memorandum of Decision and Order on the Plaintiff's Motion for A Preliminary Injunction*, at p.11, Pratt et al v. Paul Dietl, et al, Superior Court Civil Action No. SUCV2009-01254 (April 15, 2009) While the injunction, on its face, applies only to the police promotional exam, the Superior Court's findings clearly implicate the use of banding, generally, given the Superior Court's critique of the significant structural changes banding brings to the civil service landscape. The Superior Court Memorandum and Order states:

> "The practice of banding scores represents a significant departure from the way scores have been reported in the past. While the proposed banding will be reported in whole number bands, the scoring is very different than what appears to have been intended by the requirement that scores be reported in whole numbers. The scoring bands are a significant change in the manner of scoring and establishing the eligible lists and that change should have been put in place using the procedure established by the Legislature for making a significant change in the rules. G.L.c.31,§4.
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> . . .[T]he new score bands will impact the bypass and appeal procedures established by the statute and regulations enacted pursuant thereto. . . . [A]ll officers within a score band will be viewed [by HRD] as being tied and thus no bypass will occur unless a promotion is made from a lower band when candidates remain unselected from a higher band. That is also a significant change from the practice which has been in place for decades. . . .
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> . . .
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> The proposed banding may well prove to be a better and fairer approach to assessing candidates for promotion within the civil service framework . . . however, such a significant alteration in the manner in which scores are reported and in which eligibility lists are established should have been put through the review process set out by the Legislature in c.31,§4.
>
> Given that the HRD banding method was established without the requisite review process called for by the statute, the plaintiffs have a reasonable likelihood of success on the merits of their claims."

Id. at pp. 9-10.

Following the Superior Court decision in the Pratt Action, HRD announced in May 2009 that it is planning on moving forward with rulemaking for score banding "in the near future". Thus, given the present legal uncertainty surrounding score banding and the imminence of specific rulemaking proposals in this area, the Commission majority concludes that the preferred course is to preserve the familiar structure for bypass and appeal cases that previously applied for decades, pending the results of the judicially-mandated rulemaking process through which all interested parties will have the opportunity to advocate on behalf of whatever changes to the status quo may appear necessary and proper.[3]

Second, the Commission majority notes that changes to the process for assessing bypass cases are more problematic under basic merit principles than the overall issue (which is not directly presented here) as to whether to allow score banding in any form. As a different majority of the Commission noted in the CSC Araica Decision [22 MCSR 183], many sound reasons can be found to support the use of a score banding system. One of the principal reasons espoused for its use, particularly apt to enhancing the chances for diversity in civil service appointment, is the fact that score banding enables the appointing authority to consider a broader group of candidates than a system based solely on exam scoring under the 2n+1 system. However, if the methodology also enables a larger group of candidates than under current law to be ***passed over without justification***, the overall result could actually ***increase the risk*** that score banding would

[3] While it has not yet been presented with any of the details, the Commission majority understands that banding can take a variety of different forms, such as fixed bands vs. sliding bands, and there may be diverse views concerning the appropriate methodology for establishing bandwidth. In addition, there are statistically acceptable alternatives to banding, for example, combining exam point scores with other forms of controlled evaluation tools such as physical abilities testing and "assessment center" testing, some of which could preserve the use of exam point scores as a part of the system. Thus, the ultimate shape of the future rule changes and their implications for bypass decision-making should not be prejudged until the opportunity for public input and appropriate agency review has run its course. See generally, Bradley v. City of Lynn, 443 F.Supp.2d 145,174-77 (D.Mass.2006) (describing various alternative practices that would pass Title VII muster)

lead to more discrimination and favoritism, rather than vice-a-versa, in contravention of the merit principle of the civil service law. See, e.g., Kelly v. City of New Haven, 275 Conn. 580, 619-621, 881 A.2d 978, 1003-1004 (Conn. 2005). In other words, the design of an appropriate score banding system does not necessarily preclude, and may well be complemented by, preservation of something close to the existing bypass paradigm, i.e. the presumption that non-selection of a person with a higher exam score must be supported by "sound and sufficient" reasons, subject to impartial review by HRD and appeal to the Commission.

In this regard, the Commission majority is mindful that taking a decision which closes the door to bypass appeals (such as here, no one could question the BPD's 2007 Spanish-speaking officer selection process) can be a slippery slope with potentially broader consequences beyond the direct impact on individual candidates to contest their own non-selection. Should HRD and the Commission be divested of jurisdiction over future bypass cases, the reduced systemic scrutiny that an appointing authority would then enjoy, in the long run, could become a tempting invitation, in some cases, to cut corners or otherwise compromise merit principles in the selection process with no effective oversight to discern if that has happened or safeguards to remedy violations when it does happen. Accordingly, the Commission majority will not be quick to embrace discretionary changes that would appear to curtail dramatically the civil service rights of potentially large numbers of candidates who aspire to public service.

Third, the Commission majority finds no practical justification to abandon the status quo. The Commission majority acknowledges that allowing an appointing authority to select anyone within a band, regardless of their relative exam scores, without stating the reasons for selection (or non-selection) or requiring HRD approval, does lessen the

burden on the appointing authority and HRD, who would need to justify selections in far fewer cases than required presently. Here, for example, applying the BPD/HRD approach, the BPD can pick (or un-pick) any of the twenty Band 10 candidates or any of the fifty-three Band 9 candidates, without giving any reasons, with no candidate able to challenge their non-selection and precluding any non-selected candidate from asserting a bypass appeal to the Commission. The merit principle, however, trumps administrative convenience in this case. Deciding to make changes to the system because they will lighten the load of appointing authorities or the regulator is not a sufficient reason to risk undermining a basic tenet of the civil service law. See generally, Bardascino v. City of Woburn, 19 MCSR 25 (2006) ("A civil service exam score is the primary tool in determining the relative ability, knowledge and skills and in taking a personnel action grounded in basic merit principles"); Sabourin v. Town of Natick, 18 MSCR 79 (2005) (same)

Finally, while the current economic situation does not mean that all original police and firefighter entry-level hiring is necessarily at a stand-still, it is safe to state that relatively few requests for certifications for original appointments can be expected in the near future or before the rule-making changes necessary to properly integrate banding into the Massachusetts civil service system become known.

Untimely Appeal

The Commission majority briefly addresses the second grounds for HRD's motion to dismiss on the grounds that the Appellants' appeals are untimely. This argument suggests that the Appellants' claims are subject to the "fair test" appeal requirements set forth in G.L.c.31,§22-§24, which requires a request for review by HRD immediately after receiving the test results as a condition to further limited right of appeal to the

Commission. The Commission majority agrees with the Appellants that the provisions of Section 2(b), not Sections 22 through 24 govern this appeal. The gravamen of the Appellants' claims has nothing to do with the marking of their examination papers or whether the examination was a "fair test" for the entry-level police officer position. In fact, the Appellants received a conditional offer of employment from BPD based on their passing the written exam. Moreover, the Appellants only knew of their grievance after receiving their respective "bypass" notification letters from HRD in December 2008. It would be illogical to imagine that this grievance was subject to the short statute of limitations prescribed for a fair test appeal, which would have required the Appellants to seek review months before they knew they were aggrieved.

Accordingly, for the reasons stated above, the HRD and BPD Motions to Dismiss are denied at this time and the appeals will proceed to be scheduled for full hearings.

As a procedural matter, HRD or BPD is permitted to renew the Motions to Dismiss within 30 days of the effective date of this Decision upon filing documentation showing the exam point scores for the six successful candidates in Score Band 9 on Certification No. 271117 and proof that none of those scores were lower than the exam point scores of one or both of the Appellants, Jose Araujo or Obdulio Rodriguez. If such documentation is not filed within 30 days of this Decision as to an Appellant, however, the Appellant(s) exam score(s) will be deemed to be higher than at least one of the six successful candidates, and HRD and BPD will be precluded from claiming otherwise at the full hearing or otherwise claiming that the Appellant(s) lack standing to pursue the appeal(s) on the merits.

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 September 10, 2009

A True Record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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:
Leah M. Barrault, Esq. (for Appellants)
Amanda E. Wall, Esq (for Appointing Authority)
Suzanne L. Shaw, Esq, (HRD)