

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

Re: Request by Waltham Police Department to revive revoked eligible list for
Police Sergeant

E-23-020

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission allowed the request of the Waltham Police Department to revive the revoked eligible list for Police Sergeant after concluding that doing so is consistent with the effective maintenance of the merit system.

DECISION

On February 15, 2023, the Waltham Police Department (WPD) filed a request with the Civil Service Commission (Commission) to revive a revoked eligible list for Police Sergeant.

On March 7, 2023, I held a remote pre-hearing conference which was attended by the General Counsel of the state's Human Resources Division (HRD), the WPD's Police Chief and Deputy Police Chief and the President and other representatives of the local superior officers' union.

Based on the information provided prior to and at the pre-hearing conference, the following appears to be undisputed:

1. On September 21, 2019, HRD administered a promotional examination for Waltham police sergeant.
2. On May 20, 2020, HRE established an eligible list for Waltham police sergeant.

3. The WPD made five promotional appointments from the sergeant eligible list between May 14, 2021 and February 13, 2022.
4. The eligible list was set to expire on May 20, 2022, two years from when it was established. However, since no new eligible list was in place as of May 20, 2022, the eligible list, pursuant to HRD policy, was extended until September 1, 2022, three years from the first day of the month in which the eligible list was established (September 2019).
5. On September 1, 2022, HRD revoked the eligible list, along with many other eligible lists in other communities that had been established on the same date.
6. At the time that the eligible list was revoked, one name remained on the eligible list: Waltham Police Officer Joseph Rose.
7. On September 17, 2022, HRD administered statewide police promotional examinations, including for Waltham police sergeant. Officer Rose did not sit for that examination. The WPD estimates that “seven or eight” Waltham police officers sat for the September 17th examination.
8. On October 27, 2022, the Superior Court issued its decision re: [Tatum et al. v. Human Resources Division](#). In response to the Court’s Tatum decision, HRD decided to not score any of these September 2022 police promotional examinations. Instead, HRD, with the assistance of a stakeholders’ group, is working to establish and administer revised promotional examinations that address the issues raised in Tatum.
9. On January 9, 2023, a vacancy for police sergeant arose in the WPD.
10. Beyond this one vacancy, the WPD does not anticipate any additional sergeant vacancies prior to the establishment of a new eligible list.

Reasons for WPD's Request to Revive Revoked Eligible List

The WPD Police Chief, Deputy Police Chief, and the President of the local police superior officers' union jointly outlined the reasons for the instant request. They indicated that, consistent with the applicable collective bargaining agreement, vacancies must be filled within thirty days; that the City has never relied on provisional promotions and did not want to start now, particularly given that a new eligible list will not be established for months, as opposed to weeks. They also raised the potential complications regarding whether a provisional sergeant may be supervising members from the same bargaining unit. When asked if the police officers' union (as opposed to the superior officers' union) was supportive of this request, I was informed that the president of the police officers' union was aware of the instant request.¹ Counsel for HRD stated that HRD has no objection to the request and that the reasons put forth appear to justify reviving the eligible list.

Conclusion / Order

Based on the facts presented here, and for all the reasons stated above, I conclude that reviving the revoked eligible list for WPD Police Sergeant at this time is consistent with the effective maintenance of the merit system. For that reason, the WPD's request is hereby **allowed**. The Commission, pursuant to its authority under Chapter 310 of the Acts of 1993, hereby orders the following:

- 1) HRD shall revive the WPD eligible list for Police Sergeant revoked on September 1, 2022.
- 2) Upon its revival, the City shall have 30 days to make a permanent promotional

¹ This hearing was publicly posted by the Commission and no opposition was filed by the police officer's union.

appointment to WPD police sergeant after the creation of a certification from the revived eligible list.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on March 9, 2023.

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Waltham Police Chief Kevin O'Connell

Waltham Deputy Police Chief Steven Champeon

Superior Officer's Union President Sgt. Dan Hart

Michele Heffernan, Esq. (HRD)

Regina Caggiano (HRD)