

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

RE: Request for Investigation against the Human Resources Division (HRD) by Petitioners The Professional Firefighters of Massachusetts (PFFM), The Boston Firefighters Union Local 718 (Local 718), and Twenty Taxpayers regarding HRD’s decision to cancel the November 19, 2022 examinations for statewide Fire Lieutenant and Fire Captain Promotional Examinations and Boston (City) District Fire Chief Promotional Examination.

Tracking Numbers: I-22-149 (Local 718)
I-22-150 (PFFM)

Appearance for Petitioners:

Leah Barrault, Esq.
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Appearance for Human Resources Division:

Michele Heffernan, Esq.
Human Resources Division
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Boston, MA 02114

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

Petitioners’ Filing of Request for Investigation with the Commission and Request for Injunctive Relief with the Superior Court

On November 9, 2022, The Professional Firefighters of Massachusetts (PFFM), The Boston Firefighters Union Local 718 (Local 718), and twenty of their respective members (collectively, “Petitioners”), filed requests for investigation with the Civil Service Commission (Commission) pursuant to G.L. c. 31, § 2(a). Specifically, the Petitioners requested that the Commission “investigate the legality of the Massachusetts Human Resources Division (HRD)’s recent actions in abruptly canceling the November 19, 2022, statewide written Lieutenant and

Captain promotional exams [and written City of Boston (City) District Chief promotional re-examinations] that [were] scheduled to be held on November 19, 2022.”

Separately, the Petitioners filed Motions for Injunctive Relief in Suffolk Superior Court seeking a temporary injunction to enjoin HRD from canceling the November 19th examination, which the Court has now denied.

Civil Service Commission’s Statutory Authority to Conduct Investigations

The Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity that is not affiliated with HRD or its civil service unit. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law’s provisions to decide whether and to what extent an investigation might be appropriate. Further, Section 72 of Chapter 31 provides for the Commission to “ ... investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings *and methods of promotion in such services.*”¹ (*emphasis added*)

Show Cause Conference

In response to the Petitioners’ request for an investigation, the Commission held a [public show cause conference](#) and heard from the Petitioners and HRD. HRD stated that, after conducting a proper job analysis and incorporating input from the Court’s decision in [Tatum et al v. Human Resources Division](#), HRD planned on administering a revised fire promotional examination by the end of March 2023. At the conclusion of the show cause conference, HRD

¹ Further, G.L. c. 7, § 4I states that the Commission may “ ... require in connection with the activities authorized by law any official or employee of the human resources division to give full information and to provide all papers and records relating to any official act performed by [HRD].”

agreed to submit a more detailed plan to the Commission that included more substantive benchmarks and the creation of a committee with relevant stakeholders to ensure a partnership and cooperative effort moving forward.

HRD's Submission

On November 22, 2022, HRD submitted a plan to the Commission. The components of that plan include:

1. Detailed project management calendars outlining each of the steps and milestones required to ensure that the fire promotional examinations are administered during the last week of March 2023.
2. Refunding all fire promotional examination fees for the November 19, 2022 examinations.
3. Waiving the application fee for the examinations to be administered in March 2023.
4. Creation of a Stakeholders Committee which includes representatives from the PFFM, Local 718, the Massachusetts Fire Chiefs Association, the Society of Vulcans of Boston, the Civil Service Commission, and the Executive Office of Public Safety.

Commission's Response

The Commission has received well over 100 comments from firefighters who were scheduled to take the November 2022 promotional examinations that have now been canceled.² Those comments provide a detailed account of the hundreds of hours and heavy personal sacrifices required to prepare for these examinations and the hardship created by the cancellation of these examinations. Put simply, there is no alternative plan that can restore the time or opportunity costs incurred by these firefighters.

The detailed plan put forth by HRD, however, is a far better option at this time than the

² The Commission acknowledges that the cancellation of the Boston District Fire Chief examination created an even longer delay for examination applicants, given the rescission of a prior examination that was held in May 2022.

Commission initiating an investigation which could have the unintended consequence of further delaying the administration of these examinations. HRD's plan includes detailed benchmarks with timeframes that are ambitious but achievable, and which will result in the administration of promotional examinations for statewide and Boston Fire Lieutenant and Captain and Boston District Fire Chief during the last week of March 2023. Importantly, the plan provides for the creation of a committee that will allow the various stakeholders to provide real-time feedback and advice that will help avoid any slippage in meeting each of the established benchmarks.³ Finally, although it provides small consolation to the impacted firefighters, HRD has appropriately decided to waive the examination fees for the March 2023 promotional examinations.

The Commission endorses HRD's alternative plan and looks forward to joining with the other stakeholders over the next several weeks to ensure that each of the benchmarks is met in a timely manner, thus averting the need to initiate an investigation at this time.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

So ordered by a 3-0 vote of the Civil Service Commission (Bowman, Chair; Stein, Tivnan, Commissioners) on November 28, 2022.

Notice to:
Leah Barrault, Esq. (for Petitioners)
Michele Heffernan, Esq. (for HRD)

³ Among other things, this crucial channel for direct communication between stakeholders minimizes the risk of miscommunications such as the one referenced in a November 28 email exchange between HRD's general counsel and counsel for the union petitioners. HRD has clarified that, while it has yet to complete a job analysis for the fire officer titles that will be the subject of the March 2023 examinations, it had previously undertaken one important component of that analysis, thereby shortening the time frame necessary to complete the entire analysis this winter.