



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Robert Campbell, Jr.,
Police Captain (PM0838S),
Atlantic City

CSC Docket No. 2015-256

Administrative Appeal

ISSUED: MAR 09 2015 (DASV)

Robert Campbell, Jr., represented by D. William Subin, Esq., requests that the one-year time-in-grade requirement for the Police Captain (PM0838S), Atlantic City, examination be reduced to the working test period for Police Lieutenant.

By way of background, the Police Captain (PM0838S), Atlantic City, examination was announced with a closing date of September 30, 2014 and was open to employees in the competitive division who possessed an aggregate of one year of continuous permanent service in the title of Police Lieutenant by the closing date. The petitioner was permanently appointed as a Police Lieutenant, effective December 16, 2013, and filed for the examination. However, he was found ineligible since he lacked the required one year of permanent service in the title of Police Lieutenant.¹ It is noted that 11 eligibles were admitted to the examination. The written portion of the examination was held on October 23, 2014 and the oral portion was administrated on December 13, 2014. The eligible list has not yet been issued.

In his request, the petitioner states that he has been employed with the Atlantic City Police Department for approximately 21 years and only missed the one-year service requirement by 77 days. The petitioner has successfully completed the working test period for Police Lieutenant. It is his understanding that the appointing authority will not be making promotions until 2015 or 2016 due to budgetary issues. By then, he states that he will have completed a full year of

¹ It is noted that the petitioner did not file a separate appeal of his ineligibility.

service as a Police Lieutenant. Further, the petitioner indicates that there are two Police Lieutenants remaining on the current Police Captain (PM7500P), Atlantic City, eligible list² and asserts that the union and the appointing authority do not object to his request. Moreover, he argues that the Civil Service Commission (Commission) has previously accepted "post-closing experience" or reduced the time-in-grade requirement when warranted. The petitioner notes that the Police Captain examination announcement "was a surprise" since neither the appointing authority nor the Police Department requested the test. His jurisdiction was supposed to participate in the 2015 testing cycle, not the 2014 cycle. As a result, the petitioner states that he is the only Police Lieutenant not eligible to take the Police Captain test. Therefore, the petitioner maintains that his circumstances justify reducing the one-year time-in-grade requirement to completion of the working test period pursuant to *N.J.A.C. 4A:4-2.6(g)*.

It is noted that the appointing authority, represented by Anthony A. Swan, Assistant City Solicitor, was provided with the opportunity to respond to the petitioner's request. In response, the appointing authority, contrary to the petitioner's assertion, "objects" to the petitioner's request and asks that the Commission enforce *N.J.A.C. 4A:4-2.6(a)1* and deny his petition.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. *N.J.A.C. 4A:4-2.6(g)* states that:

The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons as determined by the Chairperson of the [Commission] or designee.

The Commission is responsible for the review and determination of requests to reduce the one-year service requirement to the completion of the working test period. Such requests are at the discretion of the appointing authority. Nonetheless, while an appointing authority may initiate a request, this request may

² This eligible list promulgated on February 28, 2013 and expires on February 27, 2016.

be denied by the Commission if it does not meet the criteria set forth in *N.J.A.C. 4A:4-2.6(g)*. However, in the instant matter, the appointing authority did not request a waiver of the one-year service requirement. Rather, contrary to the petitioner's representation, the appointing authority objects to a reduction of the time-in-grade requirement. It is emphasized that appointing authorities are responsible for making appointments and are in the best position at the time of the announcement to assess personnel needs and make determinations regarding promotions. Individuals have standing to appeal any issue wherein their rights were impinged, including appealing that the time-in-grade was not reduced; however, they cannot make the initial request to reduce the time-in-grade. See *In the Matter of Peter Corbo, et al.* (CSC, decided September 15, 2012), *aff'd on reconsideration* (CSC, decided December 19, 2012), *aff'd on appeal, In the Matter of Peter Corbo, Sheriff's Officer Captain (PC0989N) and Sheriff's Officer Lieutenant (PC0993N), Essex County, A-2275-12T2* (App. Div., October 20, 2014) (In affirming the decision of the Commission to deny the request of officers for a waiver of the one year time-in-grade requirement, the Appellate Division noted that that the determination by the Sheriff's Office not to seek a waiver was critical since "the appointing authority is in the best position to gauge its needs and to decide when and how many promotions to offer.")

Furthermore, in the present case, there were 11 eligibles who met the one-year time-in-grade requirement and who were admitted to the subject examination, despite the fact that only two Police Lieutenants remain on the current Police Captain (PM7500P), Atlantic City, eligible list. Thus, even assuming that the appointing authority requested a waiver, the conditions of *N.J.A.C. 4A:4-2.6(g)1* have not been met. Moreover, with regard to the requirement of *N.J.A.C. 4A:4-2.6(g)2*, the record is devoid of any indication as to the number of vacancies to be filled. The Commission cannot base its decisions on future contingencies. Nevertheless, there is no statutory or regulatory provision that requires an appointing authority to fill a vacancy. See *In the Matter of Gertrude Remsen, Department of Human Services, A-1126-96T3* (App. Div., January 17, 1997). The determination as to whether a vacancy exists and/or will be filled is generally left to the discretion of the appointing authority. See *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). See also, *In the Matter of Todd Sparks* (MSB, decided April 6, 2005); *In the Matter of Deputy Fire Chief (PM3654F), Borough of Roselle* (MSB, decided March 23, 2005); *In the Matter of Institution Fire Chief* (MSB, decided January 12, 2005). In addition, promotional opportunities are not entitlements based on employee longevity, but are based on factors such as the needs of the appointing authority to fill a vacancy subject to fiscal and other considerations, which include merit and fitness. See *In the Matter of Gerard Tarino* (CSC, decided September 24, 2008). Additionally, individuals whose names merely appear on an eligible list do not have a vested right to appointment. See *Nunan v. New Jersey Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Therefore, pursuant to *N.J.A.C. 4A:4-2.6(g)3*, a valid reason has not been presented

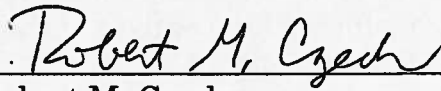
to reduce the time-in-grade requirement for the Police Captain (PM0838S), Atlantic City, examination.

ORDER

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 4TH DAY OF MARCH, 2015


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