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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Maintenance Worker
3 Grounds (C0432S) and (C0052T),
Salem County

Reconsideration

CSC Docket No. 2017-2227

ISSUED: **MAR 15 2017** (SLK)

Salem County, represented by Michael M. Mulligan, Esq., requests reconsideration of the decision rendered on November 10, 2016, which ordered Salem County to be assessed selection costs in the amount of \$2,048 after granting it permission to not make an appointment from the May 19, 2015 certification for Maintenance Worker 3 Grounds and a fine of \$1,000 for noncompliance.

By way of background, the appointing authority failed to make an appointment from the complete May 19, 2015 (OL150645) certification of the subject list. The Division of Agency Services (Agency Services) indicated that the reason the appointing authority stated, that the applicants did not possess a Commercial Driving License (CDL), was not acceptable since there was no indication in its records that the announcement for either symbol required applicants to possess a CDL. Thereafter, the Division of Appeals and Regulatory Affairs (DARA) advised the appointing authority that any failure on its part to return the certification could subject it to the assessment of costs, charges and fines pursuant to *N.J.A.C. 4A:10-2.1(a)2* and *N.J.A.C. 4A:10-2.2(b)*. In response, the appointing authority stated that it required the employee holding the title provisionally to possess a CDL. Additionally, it noted that the announcements only indicated that applicants *may* be required to possess a CDL. Further, it maintained that some of the equipment to be used by the person in the position requires a CDL.

Thereafter, staff from DARA wrote the appointing authority stating that it was Agency Services' understanding that the appointing authority's provisional

appointee did not have a CDL license at the time these announcements were issued. Therefore, DARA requested that the appointing authority provide an explanation and supporting documentation to indicate why a CDL was not required at the time these announcements were issued and why it was now requiring it. In a letter dated May 25, 2016, the appointing authority requested an appointment waiver due to budgetary constraints, stating that it has instituted a hiring freeze and vacated the position. However, it did not provide a response to the requested information. In the prior decision, the Civil Service Commission (Commission) granted the appointing authority's request for an appointment waiver as the provisional appointment was discontinued and no other employees were serving provisionally in the subject title. However, it assessed the appointing authority the selection costs in the amount of \$2,048 and a fine in the amount of \$1,000 for its noncompliance in providing an explanation regarding the CDL requirement.

On reconsideration, the appointing authority does not dispute that Agency Services' records did not indicate that it required a CDL for the subject examinations. Further, it does not dispute that although Agency Services and DARA requested that it provide an explanation for its actions, it did not do so in a timely fashion. However, the appointing authority asserts that a CDL was mandatory given the nature of the assignments and it submits documentation to show that the provisional always held a CDL. Additionally, it submits documentation that Agency Services approved layoffs in Salem County effective September 18, 2014, September 4, 2015, and August 31, 2016. Further, it submits a resolution that its hiring freeze was re-confirmed in 2016. Therefore, the appointing authority asserts that reason dictates that it be held to have exhibited excusable neglect and that the costs and fines in this matter be waived.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.A.C. 4A:10-2.1, states, in pertinent part, that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission may assess costs, charges and fines not to exceed \$10,000.

N.J.A.C. 4A:10-2.2(a) states that when the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

N.J.A.C. 4A:10-2.2(a)2 states that an appointing authority may, for valid reasons such as fiscal restraints, petition the Commission not to make a permanent appointment. The petition may grant such a petition, but may order the appointing authority to reimburse the Commission for the costs of the selection process.

N.J.A.C. 4A:10-2.2(b) states in addition to the actions which the Commission may take in (a) above, the Commission may take any action set forth in *N.J.A.C.* 4A:10-2.1. Prior to any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

With respect to the assessment of selections costs in the amount of \$2,048, in its May 25, 2016 letter, the appointing authority indicated that it wished to vacate the subject title due to budgetary constraints and that it had instituted a hiring freeze. On reconsideration, it provides further support for its request by submitting documentation that it had layoffs effective September 18, 2014, September 4, 2015, and August 31, 2016. Therefore, since Salem County underwent layoffs due to fiscal constraints, the Commission finds that it would not be appropriate to assess it for the total costs of the selection process. However, it is appropriate to assess Salem County partial costs in the amount of \$1,024. *See e.g., In the Matter of Mechanic Helper (C0733L), Burlington County* (CSC, decided August 18, 2010) (Partial costs assessed as Burlington had submitted a layoff plan that had been approved for the elimination of 113 positions with effective dates of June 11, 2010, September 1, 2010 and October 1, 2010); *In the Matter of Housing Assistance Technician (M1259H), City of Orange Housing Authority* (MSB, decided January 16, 2008) (Partial costs assessed due to a recent layoff).

In regard to the \$1,000 fine issued against Salem County for its noncompliance, the appointing authority has not met the standard for reconsideration. On April 8, 2016, staff from DARA wrote the appointing authority indicating that it was Agency Services' understanding that the provisional appointee in the subject title at the time of these announcements did not possess a CDL. Therefore, it requested an explanation and supporting documentation as to why a CDL was not required at the time of these announcements and why it was requiring it now. Further, the letter stated that if a CDL was now required, to provide documentation that the provisional appointee possessed the required CDL. The response was to be submitted by April 29, 2016. However, as stated above, the appointing authority did not respond until May 25, 2016. Further, its response did not provide any explanation regarding the CDL requirement nor did it provide documentation that the provisional had a CDL license. It is only now, on reconsideration, that the appointing authority is providing the requested information. As stated in the Commission's November 10, 2016 decision, Salem County had not provided the requested explanation and Agency Services and DARA spent considerable resources on the enforcement of this matter. Therefore, Salem

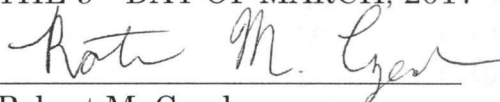
County was appropriately assessed a fine of \$1,000 for noncompliance under N.J.A.C. 4A:10-2.1.

ORDER

Therefore, it is ordered that the appointing authority's request for reconsideration be granted in part and that the appointing authority be assessed partial selection costs in the amount of \$1,024 to be paid within 30 days of the issuance of this decision. However, the request to waive the fine for noncompliance is denied. Accordingly, the Commission orders that the fine in the amount of \$1,000 be remitted within 30 days of the issuance date of this decision.

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 ON
THE 9th DAY OF MARCH, 2017



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