

B-25



STATE OF NEW JERSEY

In the Matter of Architectural  
Assistant (M0410R), Newark School  
District

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2266

Appointment Waiver Request

ISSUED: OCT 24 2014 (CAG)

Newark School District requests permission not to make an appointment from the September 3, 2013 certification for Architectural Assistant (M0410R), Newark School District.

The record reveals that Newark School District provisionally appointed Paulinus Egu, pending open-competitive examination procedures, to the title of Architectural Assistant, effective October 29, 2012. As a result of the provisional appointment, an examination was announced with a closing date of May 8, 2013. The resulting list of eight eligibles, including Egu, promulgated on August 29, 2013 and expires on August 28, 2016. Newark School District took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. On September 3, 2013, the names of all eight eligibles were certified from the list. Newark School District returned the certification and requested a waiver of the appointment requirement and costs due to fiscal constraints. Specifically, it indicated that the provisional employee serving in this title was separated effective December 2, 2013. It also maintained that it was experiencing budgetary constraints and had no funded vacancies in this title that could be filled.

Newark School District's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, Newark School District reiterated its previous arguments and explained that due to the budgetary constraints it cannot afford to pay the assessment costs at this time.

In addition, it initiated a layoff action effective August 15, 2014. Therefore, it requested that the Civil Service Commission waive the appointment, assessment costs, and any future fine on the certification list.

The County and Municipal Personnel System (CAMPS) indicates that Egu was separated from the title effective December 2, 2013.

### CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the title of Architectural Assistant was generated as a result of the provisional appointment of Egu. After a complete certification was issued, Newark School District indicated that Egu had been separated from employment and that due to budgetary constraints it would not make an appointment. Accordingly, based on the foregoing, there is sufficient justification for an appointment waiver.

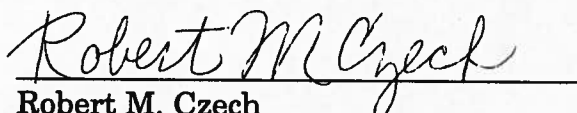
Although the appointment waiver is granted, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. In the instant situation, Egu was still serving provisionally at the time of the certification. Newark School District maintains that due to fiscal constraints, it should not be charged for the costs of the selection process. Although the Commission agrees that it would not be appropriate to assess Newark School District for the total costs of the selection process due to its layoff, it is appropriate to assess Newark School District partial costs in the amount of \$1,024. *See e.g., In the Matter of Senior Clerk Typist (M1200H) & (M1576J), Borough of South Plainfield* (CSC, decided January 13, 2010) (Partial costs assessed as South Plainfield had undergone a recent layoff); *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).

**ORDER**

Therefore, it is ordered that the appointment waiver be granted. Additionally, the Civil Service Commission orders that Newark School District be assessed for the costs of the selection process in the amount of \$1,024 to be paid within 30 days of the issuance 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 22<sup>ND</sup> DAY OF OCTOBER 2014**



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