

B-35



STATE OF NEW JERSEY

In the Matters of John Bak and Paul Nemeth, Road Repair Supervisor (PM2199R), Rockaway Township

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket Nos. 2014-2567 and 2014-2568

Examination Appeals

ISSUED: OCT 24 2014 (JET)

John Bak and Paul Nemeth appeal the determinations of the Division of Selection Services (Selection Services) that they did not meet the experience requirement for the promotional examination for Road Repair Supervisor (PM2199R), Rockaway Township. Since these matters concern similar issues, they have been consolidated herein.

The examination at issue was announced with specific requirements that had to be met as of the December 21, 2013 closing date (see attached). Seven applicants applied for the subject examination that resulted in a list of three eligibles with an expiration date of April 16, 2017. It is noted that no certifications have been issued from the list.

A review of Bak's application reveals that he served as a Heavy Equipment Operator from July 2003 to December 2013, as an Equipment Operator from May 2000 to July 2003, as a Senior Road Repairer from January 1998 to May 2000, as a Road Repairer from March 1992 to January 1998, and as a Laborer from August 1989 to March 1992. Selection Services credited him with 22 years and 11 months of applicable general experience, but Selection Services determined that Bak lacked one year of lead worker experience.

A review of Nemeth's application indicates that he served as a Heavy Equipment Operator from April 1992 to December 2013. Official personnel records indicate that Nemeth served as a Heavy Equipment Operator from September 2006

to the closing date, as a Road Repairer 2 from November 2000 to September 2006, as a Road Repairer 1 from February 1997 to November 2000, and as a Laborer 1 from April 1992 to February 1997. Selection Services credited him with 21 years and 9 months of applicable general experience for that work, but Selection Services determined that Nemeth lacked one year of lead worker experience.

In their appeals, the appellants argue that they have been performing lead worker responsibilities while serving in their various positions. In support, the appellants' supervisor, Ed Hollenbeck, Director of Public Works, provides letters indicating that that Bak has been performing lead duties since January 1998, and Nemeth has been performing lead duties since November 2000. Moreover, the appointing authority also provides letters in support of the appellants' appeals.

It is noted that the three eligibles on the list were admitted to the subject examination solely on the basis of their permanent service in a title to which the examination was open, but they did not meet the open competitive requirements for the title under test. Accordingly, they were each awarded a base score of 70.

### CONCLUSION

*N.J.A.C.* 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations with open-competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process.

Initially, it is noted that Selection Services could not credit the appellants with any lead worker experience as it would be considered out-of-title work for incumbents serving in the Heavy Equipment Operator title. On appeal, the appellants argue that they are qualified for the examination since they have been performing lead duties while serving in their various titles. In support, the appellants' supervisor and the appointing authority indicate that the appellants have been performing lead duties out-of-title since January 1998 and November 2000. In prior matters, the Civil Service Commission (Commission) has generally accepted out-of-title experience where there is evidence that the already promulgated list is incomplete or the number of eligibles awaiting the examination would likely yield an insufficient number of eligibles.

Although neither is the case in this situation, the Commission finds that there is an ample basis on which to accept the appellants' documented out-of-title work under the unique circumstances of this case. As previously noted, none of the eligibles on the list had their experience evaluated for scoring credit because it was determined that they did not meet the open competitive requirements. Rather, they

were admitted to the examination solely on the basis of their service in a title to which the examination was open. In accordance with long standing policy, education and experience are not evaluated for additional credit above the base score of 70.000 when the candidate is admitted to the examination based solely on permanent service in a title to which the exam is open, but who does not satisfy the complete open competitive requirements. *See In the Matter of Linda Berezny et al.* (MSB, decided May 22, 2001) (It was proper to score candidates with a base passing score of 70.000 because they were admitted to examination based on service in titles to which the examination was open, but they did not possess the required supervisory and professional experience). This methodology permits individuals serving in titles listed on a promotional announcement an opportunity to compete in a promotional examination even though they do not satisfy the open competitive requirements for the promotional title.

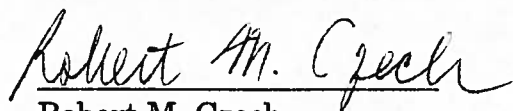
In other words, all of the eligibles on the list do not satisfy the open competitive requirements for the examination, but the appellants would satisfy the open competitive requirements if their out-of-title work were accepted. The Commission is ever mindful that the public policy of this State is to select and advance employees on the basis of their relative knowledge, skills, and abilities. *See N.J.S.A. 11A:1-2(a)*. Thus, accepting the appellants' out-of-title work in this unique situation is clearly consistent with that Legislative mandate. Under these circumstances, good cause exists to relax the provisions of *N.J.A.C. 4A:4-2.6(a)* and accept the totality of the appellants' experience, for eligibility and scoring purposes, and admit them to the examination for Road Repair Supervisor (PM2199R), Rockaway Township.

### ORDER

Therefore, it is ordered that these appeals be granted and the appellants' applications be processed for prospective employment opportunities only.

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



Robert M. Czech  
Chairperson  
Civil Service Commission

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and  
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**c: John Bak  
Paul Nemeth  
Gregory V. Poff  
Dan Hill  
Joseph Gambino**

NEW JERSEY CIVIL SERVICE COMMISSION  
COUNTY AND MUNICIPAL GOVERNMENT SERVICES  
**PROMOTIONAL ANNOUNCEMENT**



**\$25.00 PROCESSING FEE REQUIRED**  
Make Check/Money Order Payable to NJCSC

SYMBOL: PM2199R

WEIGHT CODE: \*

TITLE: ROAD REPAIR SUPERVISOR

SALARY: \$70,687.00 - \$89,424.00

ISSUE DATE: December 01, 2013

CLOSING DATE: December 21, 2013

TITLE CODE: 06654/ XBRPR1

JURISDICTION CODE: N14350005

JURISDICTION: ROCKAWAY

DEPARTMENT: PUBLIC WORKS AND UTILITIES

RETURN COMPLETED APPLICATIONS TO: **ONLY ON LINE APPLICATIONS  
WILL BE ACCEPTED  
FOR THIS ANNOUNCEMENT**

**Open to employees in the competitive division who have an aggregate of one year of continuous permanent service as of the closing date and are currently serving in the following title(s):**

**Road Repairer 2 03567  
Road Repairer 3 06655**

**Or to employees in the competitive division who have an aggregate of one year of continuous permanent service as of the closing date in any competitive title and meet the requirements listed below:**

**Experience:** Four (4) years of experience in the construction, repair, and maintenance of roads or streets which may have included work involving installation and maintenance of traffic lines and traffic signs, one (1) year of which shall have been in a lead worker capacity.

**License:** Appointees may be required to possess a driver's license valid in New Jersey only if the operation of a vehicle rather than employee mobility, is necessary to perform the essential duties of the position.

Appointees are required to possess a valid Commercial Driver's License (CDL), Class B, with air brakes and applicable endorsement.

The responsibility for ensuring that employees possess the required motor vehicle license, commensurate with the class and type of vehicles they operate, rests with the Appointing Authority.

**NOTE:** As of December 1, 2013, applications must be completed and submitted by 4:00 pm on the closing date.

Updated 12/5/2013

**IMPORTANT INFORMATION**

1. NJAC 4A:4-2.6 states that all requirements listed must be met as of the closing date, including assignment to jurisdiction/department, and satisfying the permanent status requirement.
2. **YOU MUST COMPLETE YOUR APPLICATION IN DETAIL.** Your score may be based on a comparison of your credentials with the job requirements. Failure to complete your application properly may lower your score or cause you to fail.
3. This examination is open to full-time and part-time permanent employees. If an employment list results from this announcement, it may be certified to fill both full-time and part-time positions. If 35- and 40-hour positions are used within the department, the resulting list may be used to fill either work week position.
4. NJAC 4A 4-1.5 states that any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his/her title **SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.**
5. In accordance with Public Law 2010 c 26, Veterans pay a reduced application fee of \$15.00 if they have previously established Veterans Preference with the DMAVA (as defined by N.J.S.A. 11A:5-1 et seq.), or your claim is approved by DMAVA at least 8 days prior to the issuance of this eligibility list. **PLEASE NOTE THIS REDUCED FEE DOES NOT APPLY TO PUBLIC SAFETY TITLES (i.e. Police, Fire, Corrections and Sheriff)**
6. **SAVE ON POSTAGE! GO PAPERLESS! RECEIVE IMMEDIATE CONFIRMATION THAT YOUR APPLICATION HAS BEEN RECEIVED!** You can now file an application for this examination on-line. Visit the Civil Service Commission website at <http://info.csc.state.nj.us/epoa>. Select the promotional announcement and click on the link, "Click Here to file Online" at the top of the announcement. You can now complete and submit your application and payment on-line to the Civil Service Commission and you will receive an immediate receipt confirmation!

DPF-256A \* Revised 03/09

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