

B-13



STATE OF NEW JERSEY

In the Matter of Cafeteria Manager  
(M2106N) & (M0909R), Newark  
School District

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-412

Appointment Waiver Request

ISSUED: DEC 19 2014 (CAG)

Newark School District requests permission not to make an appointment from the April 30, 2014 certification for Cafeteria Manager (M2106N)<sup>1</sup> & (M0909R), Newark School District.

The record reveals that Newark School District provisionally appointed Jayson Shaw and Richard Charles, pending open-competitive examination procedures, to the title of Cafeteria Manager, effective June 3, 2011. As a result of the provisional appointments, an examination was announced for the subject title (M0909R) with a closing date of October 22, 2013. The resulting eligible list of 20 eligibles promulgated on March 27, 2014 and expires on March 26, 2017. Shaw and Charles did not apply for the subject examination. 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 April 30, 2014, the names of 11 eligibles, two eligibles from the M2106N examination and nine eligibles from the M0909R examination, were certified from the eligible lists. 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 employees serving in this title were separated effective June 16, 2014. It

<sup>1</sup> An examination (M2106N) was announced with a closing date of June 3, 2011. The resulting eligible list of seven eligibles, promulgated on August 25, 2011 and expired on August 24, 2014. Three appointments were made from this eligible list from an August 26, 2011 certification.

maintained that it had initiated an impending layoff on August 15, 2014,<sup>2</sup> which resulted in the termination of Shaw and Charles' provisional appointments.

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 indicated that the provisional employees, Shaw and Charles, were separated from the title and there are currently no funded vacancies for this title. It also explained that, due to the budgetary constraints, a layoff plan was approved June 17, 2014, with an effective layoff date of August 15, 2014. In addition, it stated that it returned the subject certification list without making an appointment with the understanding that a future appointment will be made when the budget stabilizes. Therefore, it requested that the Civil Service Commission waive the appointment and assessment costs, and any future fine on the certification list.

The County and Municipal Personnel System (CAMPS) indicates that Shaw and Charles were separated from the title effective June 16, 2014.

### 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 Cafeteria Manager was generated as a result of the provisional appointments of Shaw and Charles. After a complete certification was issued, Newark School District indicated that Shaw and Charles had been terminated 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

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<sup>2</sup> Personnel records indicate that Newark School District underwent a layoff effective August 15, 2014.

candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. However, the Civil Service Commission notes that the subject eligible list (M0909R)<sup>3</sup> does not expire until March 26, 2017. Thus, utilization by the appointing authority is probable. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. See e.g., *In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections* (MSB, decided March 22, 2006) (Not appropriate to assess the Department of Corrections for the costs of the selection process since it indicated its intention to utilize the eligible list prior to its expiration date). Nevertheless, in the event that the appointing authority fails to utilize the list by its expiration date of March 26, 2017, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made. See e.g., *In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections* (MSB, decided April 11, 2007) (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).

### ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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 17<sup>TH</sup> DAY OF DECEMBER 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

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<sup>3</sup> Since the other eligible list (M2106N) was utilized during the life of the eligible list, the appointing authority is not responsible for the costs of the selection process for that eligible list (M2106N).

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