



STATE OF NEW JERSEY

In the Matter of Custodian
(M2134N), Newark School District

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-410

Appointment Waiver Request

ISSUED: DEC 19 2014 (CAG)

Newark School District requests permission not to make an appointment from the October 2, 2013 certification for Custodian (M2134N), Newark School District.

The record reveals that Newark School District provisionally appointed, pending open competitive examination procedures, Bernard Zeigler, effective January 19, 2010, and Daniel Davis, Marvin Eure, Ernest Jackson, and Steve Pierre-Louis, effective March 28, 2011 to the subject title. As a result of the provisional appointments, an examination was announced for the subject title (M2134N) with a closing date of June 28, 2011. The resulting eligible list of 31 eligibles, including Davis, Eure, and Jackson, promulgated on April 19, 2012 and expires on April 18, 2015. Zeigler failed the written examination and Pierre-Louis 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 October 2, 2013, the names of 31 eligibles, including Davis, Eure, and Jackson, were certified from the eligible 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 there are no provisional employees serving in this title and there are currently no funded vacancies for this title. It maintained that it had initiated an impending layoff on August 15, 2014.¹

¹ Personnel records indicate that Newark School District underwent a layoff effective August 15, 2014.

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 there are no provisional employees serving in this 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 all five employees, Davis, Eure, Jackson, Pierre-Louis, and Zeigler, were separated from the title effective August 20, 2012.

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 Custodian was generated as a result of the provisional appointments of Davis, Eure, Jackson, Pierre-Louis, and Zeigler. After a complete certification was issued, Newark School District indicated that there are no provisional employees serving in this title 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. However, the Civil Service Commission notes that the subject eligible list (M2134N) does not expire until April 18, 2015. Thus, utilization by the appointing authority is

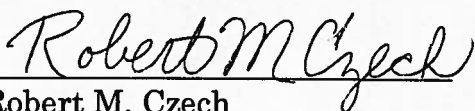
probable. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections* (MSB, decided 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 April 18, 2015, 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 17TH DAY OF DECEMBER 2014


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