

B-18



STATE OF NEW JERSEY

In the Matter of Technical Assistant
3 (M0115R), Newark School District

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-414

Appointment Waiver Request

ISSUED: DEC 19 2014 (CAG)

Newark School District requests permission not to make an appointment from the December 31, 2013 certification for Technical Assistant 3 (M0115R), Newark School District.

The record reveals that Newark School District provisionally appointed Velisse Veras, pending open-competitive examination procedures, to the title of Technical Assistant 3, effective December 31, 2012. As a result of the provisional appointment, an examination was announced for the subject title (M0115R) with a closing date of February 13, 2013. The resulting eligible list of 29 eligibles, including Veras, promulgated on December 26, 2013 and expires on December 25, 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 December 31, 2013, the names of 29 eligibles 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 all provisional employees serving in this title were separated from the title and there are currently no funded vacancies for this title. It maintained that it had initiated an impending layoff on 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 all provisional employees serving in this title 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 Veras was separated from the title effective December 30, 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 Technical Assistant 3 was generated as a result of the provisional appointments of Veras. After a complete certification was issued, Newark School District indicated that all provisional employees serving in this title were separated from the 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 (M0115R) does not expire until December 25, 2016. 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

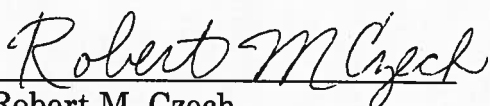
expiration date). Nevertheless, in the event that the appointing authority fails to utilize the list by its expiration date of December 25, 2016, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made. See e.g., *In the Matter of Supervising 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


Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Vanessa Rodriguez
Kenneth Connolly
Diane Lukasewycz
Joseph Gambino

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Centered heading or title, possibly "CHAPTER" or "SECTION".

Second line of faint, illegible text.

Third line of faint, illegible text.

Text on the right side of the page, possibly a list or a specific section.

Large block of faint, illegible text in the lower middle section of the page.

Faint text at the bottom right of the page, possibly a signature or footer.