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STATE OF NEW JERSEY

In the Matter of Clerk 3 (PC1165R),
Essex County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2800

Appointment Waiver

ISSUED: JUL 30 2014 (SLK)

Essex County requests permission not to make an appointment from the September 30, 2013 certification for Clerk 3 (PC1165R).

The record reveals that the appointing authority provisionally appointed Patricia Barone, Carol Colasurdo, and Virginia Salerno, pending open competitive examination procedures, to the subject title.¹ The examination was announced with a closing date of May 21, 2013. The examination initially resulted in an employment roster of four eligibles, Cynthia Andries, Barone, Colasurdo, and Lucia Lewandowska, which promulgated on September 26, 2013 and expires on September 25, 2016. It is noted that Salerno did not apply for the subject examination. On September 30, 2013, a certification was issued which contained the names of the four eligibles.

The appointing authority returned the certification on April 3, 2014, indicating that Andries was removed from the eligible list by the Division of Classification and Personnel Management (CPM) for not being employed in the announced unit scope, that Barone's, Colasurdo's, and Lewandowska's provisional appointments were terminated and no permanent appointment was made from the certification. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. See *N.J.A.C. 4A:10-2.2(a)1*. On May 15, 2014, the appointing authority requested an appointment waiver indicating that the provisional incumbents had been removed

¹ As the appointing authority subsequently changed Barone's, Colasurdo's, and Salerno's titles in CAMPS to Keyboarding Clerk 3, the dates of their provisional appointments are not indicated in the record.

from the title and there are no further incumbents serving in this position. Furthermore, it stated that the certification was generated due to an administrative error. Specifically, it presents that Ms. Barone, Ms. Colasurdo, and Ms. Lewandowska have a work history that shows them having been promoted through the Keyboarding Clerk titles and not the standard Clerk title. It maintains that at the time of their promotions, they were erroneously entered into CAMPS as Clerk 3 and not Keyboarding Clerk 3. Furthermore, it highlights that Andries, who is the candidate in the number one position on the certification, is not an employee of the Clerk's Office and should not have been eligible for promotion. On May 19, 2014, the Division of Appeals and Regulatory Affairs (DARA) acknowledged Essex County's request for a waiver of the appointment and the assessment of costs in the above matter. Moreover, it was advised that if an appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$2,048 and that the appointing authority could submit within 20 days from the receipt of this notice reasons why costs of the selection process should not be assessed. The appointing authority, despite being provided the opportunity, did not respond.

A review of agency records indicates that there are no other employees recorded as serving provisionally pending open competitive examination procedures in the subject title in Essex County.

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 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 subject title was generated as the result of the provisional appointments of Patricia Barone, Carol Colasurdo, and Virginia Salerno, to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that Barone, Colasurdo, and Salerno were removed from the subject title. Consequently, since there is no provisional serving in the title at issue, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, 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 for 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

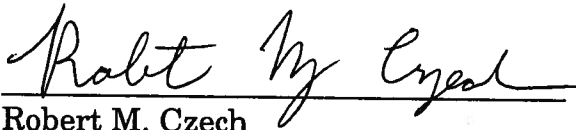
appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this regard, the change in title of provisionals is insufficient to support a waiver of the costs of the selection process. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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 30th DAY OF JULY, 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: Alan Abramowitz
Kenneth Connolly
Beth Wood
Joseph Gambino