



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Veterans Service
Officer (M0254R), Union City

CSC Docket No. 2014-1291

Appointment Waiver

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ISSUED: **AUG 01 2014** (WR)

Union City requests permission not to make an appointment from the July 31, 2013 certification for Veterans Service Officer (M0254R), Union City.

The record reveals that the appointing authority provisionally appointed Caonabo Reyes, pending open competitive examination procedures, to the subject title, effective October 26, 2011.¹ The examination was announced with a closing date of April 1, 2013. The examination resulted in an eligible list of four individuals, which promulgated on July 25, 2013 and expires on July 24, 2016. Reyes was found ineligible for the examination. 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. A certification was issued on July 31, 2013 containing all four eligibles. The appointing authority returned the certification on September 9, 2013 and indicated that it would not make a permanent appointment since Reyes was no longer serving in the title.

The appointing authority thereafter requested an appointment waiver and asserted that once Reyes was "terminated" from the subject position it determined that leaving the position vacant was in its "best interest." Moreover, as a transitional aid municipality, it receives financial assistance from the New Jersey Department of Community Affairs and therefore requests a waiver of the associated costs of the selection process.

¹ Agency records indicate Reyes was temporarily appointed to the subject position, effective January 28, 2010.

The appointing authority'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. No further arguments were received.

A review of official personnel records reveals that there are currently no other employees serving provisionally pending open competitive examination procedures in the subject title in Union City.

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 appointment of Reyes to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver because the provisional was no longer serving in the subject title. Therefore, since there are no employees serving provisionally in the subject title, the appointing authority has provided sufficient justification for an appointment waiver.

Although the appointing authority's petition for a 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 Civil Service Commission (Commission) 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 the Commission, 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 and efforts to take these examinations in hopes of being considered for a permanent appointment. Although the appointing authority has shown a valid reason for not making an appointment from the subject eligible list, it has failed to present a sufficient basis for not being charged for the costs of the selection process which produced it. However, as the Commission is cognizant of Union City's receipt of transitional aid, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the total costs of the selection process. Rather, it is appropriate to assess partial costs in the amount of \$1,024. See *In the Matter of Community Service Worker, Bilingual in Spanish and English (M0464E), City of Hoboken* (MSB, decided November 15, 2006) (Half of the selection costs assessed on the basis that Hoboken was a distressed

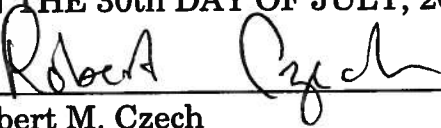
city); *In the Matter of Director of Economic and Industrial Development (M6882A), City of Paterson* (MSB, decided January 29, 2002) (Half of the selection costs assessed on the basis that Paterson was a distressed city).

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$1,024 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



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