



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Kyle Alleyne, *et al.*,
Irvington Township

Administrative Appeal

CSC Docket Nos. 2015-25, *et al.*

ISSUED: **AUG 14 2014** (SLD)

Irvington Township requests retroactive permanent appointment dates for Kyle Alleyne, Al-Jerome Burnett-Crawford, Patrick Cadet, Bao Ho, Brechner Jeannot, Terra Johnson, Andres Lebron, Albern Mondelus, Jamar Neal, and Michael Wayloo, all Police Officers. Since these matters address similar issues, they have been consolidated herein.

By way of background, the appointing authority laid off 20 Police Officers, including the appellants, and 10 Fire Fighters, effective May 21, 2010. However, the appellants, and one other individual, Herby Merisca, had not completed their 12-month working test period after their graduation from the Police Academy. Agency records indicate that the appellants and Merisca were appointed to the title of Police Officer, effective November 14, 2009. Therefore, at the time of their layoff, they had only completed eight months of their one year working test period. Consequently, their names could not be placed on the special reemployment list. Rather, the appellants and Merisca were notified that their names were to be restored to the Police Officer (S9999K) eligible list that they had originally been appointed from. See *N.J.A.C. 4A:4-5.5(b)*. Thereafter, the appointing authority returned the confirmation of the layoff and indicated that 19 Police Officers, including the appellants, were re-employed, effective July 7, 2010 and Merisca¹ was re-employed, effective August 4, 2010. However, their re-hire was considered unauthorized since the appointments needed a Department of Community Affairs (DCA) waiver, which was not provided. Moreover, the appointing authority failed to

¹ Merisca resigned in August 2010 and therefore, is not part of the instant request.

request certifications from the special reemployment list or from the Police Officer (S9999K) eligible list.

On January 5, 2011, the appointing authority submitted a new request for a layoff which included 32 Police Officers, including 19 Police Officers from the earlier layoff. However, in order to approve the request, the Division of Classification and Personnel Management (CPM) had to update their County and Municipal Personnel System (CAMPS) records. CPM recorded the appointments of the nine Police Officers who had originally completed their working test periods as conditional. CPM recorded the appointments of the appellants as provisional, pending open-competitive examination procedures, since they had not completed their working test periods. Thereafter, the 32 Police Officers were laid off, effective March 11, 2011.

On May 16, 2011, DCA gave approval for Irvington to hire 32 Police Officers, including the 19 Police Officers from the 2010 layoff. Thereafter, the nine Police Officers on the special reemployment list as a result of the 2010 layoff were appointed from the November 4, 2010 certification OL101125, effective November 20, 2010. However, because those nine Police Officers were also affected by the 2011 layoff, their records reflect that they were laid off, effective March 11, 2011. Subsequently, on May 16, 2011 a new certification (OL111410) was issued from the special reemployment list containing 21 names: the nine Police Officers affected by the 2010 layoff and the 12 Police Officers affected by the 2011 layoff. The appointing authority returned the certification appointing all 21 individuals. It is noted that the nine Police Officers from the 2010 layoff were appointed as follows, seven were appointed effective May 16, 2011, one was appointed May 17, 2011 and one was appointed May 31, 2011.

With regard to the appellants, the appointing authority was notified in July 2011 that because they were laid off in 2010, without completing their one year working test period, the appellants could be appointed from the Rice Bill as a result of changes to the Rice Bill which were effective December 9, 2010. *See N.J.S.A. 40A:14-180.1*. The appointing authority was also advised that in order to include time served from July 2010 to March 2011, it would need to request a rule relaxation via the Civil Service Commission (Commission). However, the appointing authority took no further action. A May 23, 2014 review of Irvington payroll records indicate that the appellants are still employed.

In a June 17, 2014 letter, the appointing authority requests that the Commission approve the retroactive appointments of the appellants, to May 16, 2011, from the Rice Bill. It notes that the May 16, 2011 date is the date approved by DCA. CPM supports the request.

CONCLUSION

N.J.S.A. 40A:14-180.1 Appointment of certain municipal Police Officers provides:

- a. The provisions of any other law to the contrary notwithstanding, the appointing authority of a municipality which, pursuant to *N.J.S.A. 40A:14-118*, has established and maintains a police force may reappoint as a member or officer of its municipal police department or force any person who:
 - (1) did not hold a permanent appointment, but was serving as a probationary officer or as an officer in a field working test period, as prescribed by the Police Training Commission, in the police department or force of that municipality;
 - (2) was, for reasons of economy, terminated as a law enforcement officer within 60 months prior to the reappointment; and
 - (3) was, at the time of termination, in good standing.
- b. A municipality may reemploy such a person notwithstanding that:
 - (1) Title 11A, Civil Service, of the New Jersey Statutes is operative in the municipality;
 - (2) the municipality has available to it an eligible or regular reemployment list of persons eligible for such appointments; and
 - (3) the appointed person is not on any eligible list. A municipality which has adopted Title 11A, Civil Service, may not reemploy such a person if a special reemployment list is in existence for the law enforcement title to be filled.
- c. A law enforcement officer reemployed pursuant to this section shall complete the remainder of any probationary or working test period not completed at the time of his termination for reasons of economy.

N.J.A.C. 4A:4-1.10(c) provides:

When a regular appointment has been made, the Commissioner may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

Generally, the award of a retroactive appointment date is for seniority purposes only and is limited to situations in which an appellant could have been appointed on the requested retroactive date, but as a result of an error on the part of either the appointing authority or this agency, he or she received a later appointment date.

In the instant matter, the record establishes that the appellants had not completed their 12-month working test period after their graduation from the Police Academy prior to their May 21, 2010 layoff and therefore, their names could not be added to the special reemployment list with the other Police Officers who were also laid off. Upon returning the layoff confirmation, the appointing authority indicated that 19 of the Police Officers, including the appellants, were re-employed, effective July 7, 2010. However, their re-hire was considered unauthorized since the appointments needed a DCA waiver, which was not provided and no certifications were requested. A second layoff which included the 19 Police Officers from the 2010 layoff occurred March 11, 2011. Subsequently, on May 16, 2011, DCA gave approval for Irvington to rehire all 32 Police Officers, including the appellants, who were laid off on March 11, 2011. As a result of DCA's approval, the nine Police Officers on the special reemployment list as a result of the 2010 layoff were appointed effective November 20, 2010. Their records still reflect their second layoff, effective March 11, 2011, and their appointment from the special reemployment list again in May 2011. Although the appointing authority requests that the Commission provide retroactive dates of appointment to the appellants, it indicates that the retroactive date should be May 16, 2011. However, not providing the same first retroactive appointment date of November 20, 2010 to the appellants that was provided to the other nine Police Officers who were laid off in 2010 seems unjust under these circumstances. Therefore, it is appropriate to retroactively appoint the appellants, from the Rice Bill, effective November 20, 2010, to allow them to complete their working test period as provided by *N.J.S.A.* 40A:14-180.1c. Since the record indicates that the appellants successfully served in the title of Police Officer from September 14, 2009 to May 21, 2010 and November 20, 2010 to March 11, 2011, they shall have been deemed to have completed their working test periods prior to the 2011 layoff. Therefore, at the time of the second layoff on March 11, 2011, the appellants would have completed the remainder of their working test period, and thus, their names should have been placed on the May 16, 2011 certification (OL111410) of the special reemployment list, thereby allowing the appellants' appointments, effective May 16, 2011. Accordingly, the appellants' records should be corrected to reflect their appointment from the Rice Bill, effective

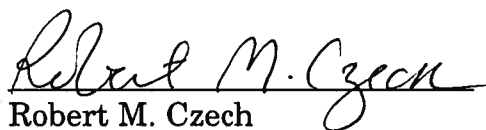
November 20, 2010, their layoff effective March 11, 2011, and their appointment from the special reemployment list, effective May 16, 2011.

ORDER

Therefore, it is ordered that this request be granted and the permanent appointments from the Rice Bill of Kyle Alleyne, Al-Jerome Burnett-Crawford, Patrick Cadet, Bao Ho, Brechner Jeannot, Terra Johnson, Andres Lebron, Albern Mondelus, Jamar Neal, and Michael Wayloo, to the title of Police Officer be recorded as November 20, 2010. It is further ordered that their appointments from the special reemployment list to the title of Police Officer be recorded as May 16, 2011.

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 13TH DAY OF AUGUST, 2014



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c: Kyle Alleyne (2015-25)
Al-Jerome Burnett-Crawford (2015-26)
Patrick Cadet (2015-27)
Bao Ho (2015-28)
Brechner Jeannot (2015-29)
Terra Johnson (2015-30)
Andres Lebron (2015-31)
Albern Mondelus (2015-32)
Jamar Neal (2015-33)
Michael Wayloo (2015-34)

Wayne Smith
Kenneth Connolly
Joseph Gambino