

B-142



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Police Captain
(PM7521P), Jackson

CSC Docket No. 2015-1925

Court Remand

ISSUED: FEB 09 2015 (JH)

The Superior Court of New Jersey, Appellate Division, has remanded *In the Matter of Police Captain (PM7521P), Jackson* (CSC, decided June 5, 2013) to the Civil Service Commission (Commission) for further review regarding the issue of scope of eligibility. A copy of the Commission's decision is attached.

By way of background, the subject announcement was issued on June 1, 2012 with an application filing deadline of June 21, 2012 and open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the Police Lieutenant or Police Sergeant title as of the closing date of August 31, 2012. Only one individual, John Decker, a Police Lieutenant, applied for and was admitted to the subject test. On appeal, Raymond Milewski, a Police Lieutenant, presented that he was approached by another Police Lieutenant who asked if he had received a Notification to Appear for the subject test. Mr. Milewski indicated that the only promotional announcement he had observed was for Police Lieutenant. However, the Police Lieutenant stated that there was a notice posted on one of the departmental bulletin boards. Subsequently, he and the Lieutenant walked over to the bulletin board where the Police Lieutenant pointed out the announcement for Police Lieutenant. Mr. Milewski removed the announcement from the bulletin board and discovered that two other sheets of paper were attached: the announcement for the subject test and an application deadline information sheet. Steven Laskiewicz, a Police Lieutenant, asserted that he was unaware that the subject test had been announced until the test administration date, September 27, 2012. He and Brian Geoghegan, a Police Sergeant, explained that previously, the Jackson Township Police Department would notify eligible officers of an announcement and require them to sign for it, but this was not done

for the subject test. Mr. Decker maintained that any claim by Messrs. Milewski, Laskiewicz and Geoghegan that they were not notified or made aware of the subject test was "unacceptable." He argued that the subject announcement was "observed by various levels of police personnel in at least five (5) separate locations throughout the building . . ." The Chief of Police was contacted regarding this matter and indicated that there was "an absence of the usual local procedures for test announcements. There was no individual notification, no requirement that eligibles sign for test announcements, and no condition that proof of the notices was provided to the personnel office or appointing authority, only for the position of Police Captain. In this instance, for this particular test, contrary to all the recent, prior testing cycles which I recall, the usual procedures were not requested of the police department by the appointing authority, and they therefore did not occur." In addition, a review of the record found that at least 12 officers, including Mr. Decker, would have met the time in grade requirement as of the August 31, 2012 closing date. The Commission determined that the lack of applicants suggested that there was a flaw in the posting process. Based on the foregoing, the Commission found that good cause existed to amend the application filing date of the subject announcement and that any eligible candidates filing timely applications should be tested in the 2013 testing cycle. Subsequently, 11 additional timely applications were received. The following nine names¹ appear on the resultant eligible list for PM7521P, which issued on March 26, 2014, in rank order: Christopher Parise, Steven Laskiewicz, Thomas Hratko, John Decker, John Giovanetti, Edward Bennett, Denis Campbell, Brian Geoghegan and John McBride.

Thereafter, John Decker, Thomas Hratko,² Steven Laskiewicz and Raymond Milewski,³ represented by Lauren Sandy, Esq., pursued an appeal with the Appellate Division. They contend that two issues were presented in the initial matter: "1. Whether the subject posting [sic] announcement was properly posted, and 2. Who was eligible to take the Captain's examination."⁴ They maintain that

¹ Three applicants did not appear to take the subject test.

² It is noted that prior to the instant matter, Mr. Hratko had not submitted any appeal to the Civil Service Commission regarding the subject announcement.

³ Mr. Milewski retired effective December 31, 2013.

⁴ Although the appellants do not specify to which portions of their appeals they refer, a review of the original appeals submitted by Messrs. Decker, Laskiewicz and Milewski finds the following. In his letter dated November 24, 2012, Mr. Decker refers to the announcement which, as noted above, indicates that it is open to employees who had an *aggregate of one year* of continuous permanent service in the Police Lieutenant or Police Sergeant title. He claims that "based on my own knowledge of the word aggregate as well as supported documentation from dictionary sources," there are no Police Sergeants eligible to sit for the subject promotional examination. In this regard, he explains that all of the current Lieutenants received a regular appointment date of November 14, 2011 "and as a result, all hold the same time in grade and met the qualifications on the announcement." However, he presents that "not one Police Sergeant in this organization has served in the title of Police Lieutenant within the last 12 months up to an including the closing date of the

the Commission did not make a determination regarding the second issue. They refer to email correspondence between the Division of Classification and Personnel Management staff and Jackson Personnel staff in which it was "stated that the year in grade would be waived and that the Captains examination would only include Lieutenants."⁵ They maintain that "the past practice within the Township has also always been that promotional examinations were offered only to the next lower in-series title used in the local jurisdiction." They argue that *In the Matter of Police Chief (M2010P), South Orange Village, 266 N.J. Super. 101 (App. Div. 1993)*, which while it "dealt more with the determination of whether an open competitive examination was proper, as opposed to a promotional examination, issues with regard to eligibility were addressed by the [c]ourt."⁶ They indicate that "in a

announcement." He maintains that those Police Sergeants who possessed a year in grade as of the closing date would only be eligible for the Police Lieutenant examination. Mr. Laskiewicz, in his letter dated September 28, 2012, notes that "as per the eligibility for promotional examination ([N.J.S.A.] 4A:4-2.6(a)1), I believed that we had to have one year of continuous permanent service immediately preceding the closing date. I have since learned that for the Captain exam, a combination of time as a Sergeant and Lieutenant were to be included. As I never had the opportunity to see the exam announcement, I was not aware of this. In early Spring 2012, I spoke with Chief Matthew Kunz and asked if there was to be a Captain's Exam announcement, as the department currently did not have an active Captain's list, would I be eligible to take the exam and I was advised that I would need a 'year in grade' as a Lieutenant to take the exam and would not be eligible." In a subsequent submission, dated January 2, 2013, Mr. Laskiewicz refers to N.J.S.A. 4A:4-2.6 and indicates that he "believed that I did not have the required time to test for Captain. I then spoke with Chief Kunz and asked him if he was aware if the town had filed to test for Captain and he informed me that the town would not be testing for Captain because there would be nobody eligible to take the exam. I then updated Lt. Decker with what I had found out and the conclusion was that we were not eligible to take any test." In a letter dated January 5, 2013, Mr. Milewski indicates that "Lt. Decker explained to me that according to the notice, CSC was now opening the Police Captain Promotional Exam to Lieutenant[s] with an aggregate of one year of continuous service as both a Lieutenant and Sergeant, as of the closing date. He explained that it appeared that the CSC was combining our time as a Lieutenant, and as a Sergeant, and allowing us to test for the position as Police Captain."

⁵ However, there is nothing in the record indicating that Jackson presented a formal written request clearly indicating its reasoning for the request. The only request is an email exchange between Jackson Personnel staff and agency staff and the original request to the Division of Selection Service from the Division of Classification and Personnel Management requesting the announcement only be open to Lieutenants who completed their working test period. Neither the email nor the document provided specifics. Compare, *In The Matter of John Lenge, Deputy Police Chief (PM3587G), Middletown Township*, Docket No. A-1060-06T5 (App. Div. October 19, 2007) (Reduction to completion of working test period permissible, but this agency should require appointing authority to provide a reasonably complete statement of reasons why it is seeking this relief). Moreover, there is no evidence in the record that the appointing authority contacted the Division of Selection Services to object to the scope of eligibility of the subject announcement. Furthermore, it is noted that the appointing authority did not file an appeal regarding this issue.

⁶ Curiously, the appellants refer to this case to support their argument. However, it supports the proposition that promotional examinations may be open to the next two lower in-line titles. It is noted that the court ordered that a new examination for Police Chief be open to "present captains and lieutenants in the South Orange Police Department." *Id.* at 111. In this regard, they cite the following:

footnote in *South Orange*[,] the [c]ourt addressed an argument that was never brought up by the municipality or the Board”⁷ and conclude that “Sergeants should be precluded from consideration for the Police Captain” since “different training and qualifications are required of Police Captains that are not within the realm of Sergeants[] tasks.” They further argue that “Civil Service did not oppose the Township of Jackson’s request to waive the year in grade requirement, nor did they oppose the Township’s request to make the Captain’s examination only available to the next lower title of Lieutenant.”

On appeal, they argue that Jackson requested that the subject announcement only be open to the next lower in-series title, *i.e.*, Police Lieutenant, and that the year in grade requirement be waived. They maintain that Jackson “has always only offered promotional examinations to the next lower in-series title” and that “prior decisions have held that the past practice in the local jurisdiction controls.” In this regard, they refer to *In the Matter of Police Chief (M2010P), South Orange Village, supra*. They present that “correspondence between the Civil Service Commission and the Township confirms that the Captain[]s examination was only going to be offered to Lieutenants.”

It is noted that although provided with the opportunity, the appointing authority did not submit additional information or arguments.

In this case, a list of three clearly could have been secured from the next two ‘lower titles’ unless the lieutenant title was excluded because it was not ‘appropriate.’

How then should the Merit System Board have determined whether to open the examination to the next lower title or the next two lower titles? The first factor obviously would be whether a sufficient list can be created from the next lower title. If there were numerous captains, all eligible to take the examination, the Commissioner or Board might well determine not to open the test to lieutenants, thereby preserving the usual promotional sequence from lieutenant to captain to chief. If no list could reasonably be established in the next lower title, the second lower title should have been used. *Id.* at 107-108.

⁷ Although the appellants do not provide the footnote number or page number in which the footnote appears, it appears that they are referring to footnote number 6 on page 108 which states:

Item five could theoretically have justified a factual finding by the Commissioner that applicants should not be drawn from the second lower title of lieutenant. The Commissioner would have been required to find that there was some ‘special, technical or professional training or qualifications’ required in the chief’s position that were present in the rank of captain, but not in the rank of lieutenant. No one, however, has made such an argument, and in fact the eventual examination was opened to lieutenants.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations must have one year of continuous permanent service for an aggregate of one year preceding the closing date in a title or titles to which the examination is open. *N.J.A.C.* 4A:4-2.6(g) provides:

The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons.

The Commission is responsible for the review and determination of requests to reduce the one-year service requirement to the completion of the working test period. Such requests are at the discretion of the appointing authority. While an appointing authority may initiate a request, this request may be denied by the Commission if it does not meet the criteria pursuant to *N.J.A.C.* 4A:4-2.6(g).

In the instant matter, at the time of the announcement, four individuals, Messrs. Decker, Hratko, Laskiewicz and Milewski, were serving in the Police Lieutenant title, all of whom received regular appointments to that title effective November 14, 2011. Pursuant to *N.J.A.C.* 4A:4-4.2(c), it is beneficial to insure that a full and complete roster of eligibles is in existence for the three year duration of the list. In this regard, *N.J.A.C.* 4A:4-4.2(c)2 provides that an appointing authority is entitled to a complete certification, which consists of the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment, for consideration in making a permanent appointment. Thus, while four individuals were serving in the Police Lieutenant title, it was not clear how many would apply for the subject test, how many would appear to take test, or how many would pass the test. Indeed, if the Commission had not determined that there was a flaw in the posting process in *In the Matter of Police Captain (PM7521P), Jackson, supra*, the resultant eligible list would have contained only one name.

Accordingly, the Division of Selection Services determined that the announcement should appropriately be open to the next two lower in-series titles. *N.J.A.C.* 4A:4-2.4(a) provides:

If a title which is the subject of a promotional examination is part of a title series, then the examination shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;
2. The next two lower in-series titles used in the local jurisdiction; or
3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

Thus, opening of the subject announcement to the next two lower in-series title in this particular instance provided the appointing authority with the greatest chance of having a complete eligible roster. Furthermore, requiring the appellants to compete with more of their peers is consistent with civil service principles.

With respect to Mr. Decker's claim that none of the Police Sergeants are eligible for the subject test, as noted previously, the announcement was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the Police Lieutenant or Police Sergeant title. In other words, employees who were serving in either the Police Lieutenant title or Police Sergeant title and possessed an aggregate of one year of continuous permanent service could apply. Essentially, a Police Lieutenant would be considered eligible if he or she served continuously for more than one year as a Lieutenant or, as was the case here, served continuously as a Lieutenant for less than one year, but, when combined, as either a Sergeant or Lieutenant continuously for more than one year. The Police Sergeants were eligible if they were currently serving as a Sergeant for more than one year as of the closing date.

With respect to the appellants' contention that the qualifications required for a Police Captain are "not within the realm of Sergeants tasks," a basic tenet of the Civil Service Act and its implementing rules is that appointments and promotions are awarded based on merit and fitness which is measured by competitive examinations. Thus, any concerns regarding the qualifications of individuals who are serving in the Police Sergeant title would be addressed during the testing process, and, upon appointment, during the working test period.⁸ Accordingly, the Civil Service Commission finds that the Police Captain (PM7521P), Jackson examination was properly open to the next two in-series titles of Police Sergeant and Police Lieutenant.

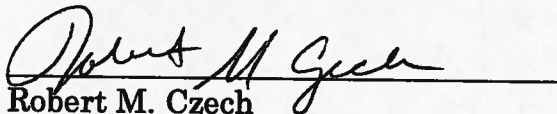
⁸ Additionally, Civil Service examinations in varied jurisdictions have previously be open to the next two lower in-line titles, including examinations for higher level police titles. See e.g., *In the Matter of Police Chief (M2010P), South Orange Village, supra*.

ORDER

The Civil Service Commission finds that the Police Captain (PM7521P), Jackson examination was properly open to the next two in-series titles of Police Sergeant and Police Lieutenant.

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 4TH DAY OF FEBRUARY, 2015**



Robert M. Czech
Chairperson
Civil Service Commission

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and
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ORDER ON MOTION

IN THE MATTER OF POLICE CAPTAIN
(PM7521P), JACKSON

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005629-12T3
MOTION NO. M-002708-14
BEFORE PART H
JUDGE(S): JOSE L FUENTES
AMY O'CONNOR

MOTION FILED: 12/08/2014
ANSWER(S) FILED: 12/19/2014

BY: CIVIL SERVICE COMMISSION
BY: J DECKER

SUBMITTED TO COURT: December 30, 2014

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
5th day of January, 2015, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION FOR REMAND

GRANTED AND OTHER

SUPPLEMENTAL:

Appeal is remanded for 45 days. This Court retains jurisdiction.
Appellate Clerk will restore appeal to active status at the end of remand
period.

FOR THE COURT:



JOSE L FUENTES, P.J.A.D.

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STATE OF NEW JERSEY

In the Matter of Police Captain
(PM7521P), Jackson

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2013-1056,
2013-826, 2013-828 and 2013-1434

Examination Appeal

ISSUED: JUN 05 2013 (JH)

Brian Geoghegan, Raymond Milewski and Steven Laskiewicz appeal their eligibility for the promotional examination for Police Captain (PM7521P), Jackson Township. Additionally, John Decker maintains that the subject announcement was properly posted. These appeals have been consolidated due to common issues presented by the appellants.

By way of background, the announcement for the subject examination was issued on June 1, 2012 with an application filing deadline of June 21, 2012. The subject examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the Police Lieutenant or Police Sergeant title as of the closing date of August 31, 2012. The subject test consisted of two parts, a written portion, which was administered on September 27, 2012, and an oral portion, which was administered on December 1, 2012. It is noted that only one individual, Mr. Decker, applied for and was admitted to the subject test. It is also noted that the resultant eligible list has been held pending the outcome of this matter.

On appeal, Mr. Geoghegan, a Police Sergeant, asserts that the Jackson Township Police Department has "always used the practice of hand-delivering the test announcement to all eligible candidates and requiring them to sign for the announcement . . . However, none of us ever received notice from the Township regarding our eligibility to test for the position of Police Captain."

Mr. Milewski, a Police Lieutenant, presents that after reporting for duty on September 21, 2012, he was approached by another Police Lieutenant who asked if he had received a Notification to Appear for the subject test. Mr. Milewski indicated that the only promotional announcement he had observed was for Police Lieutenant, which was posted near the mail boxes. However, the Police Lieutenant stated that there was "a notice posted on a departmental bulletin board located near the Officers Mail boxes (Basement Level)." Subsequently, he and the Lieutenant then walked over to the bulletin board, which "can be best described as cluttered and unorganized," and the Police Lieutenant pointed out the announcement for Police Lieutenant. Mr. Milewski removed the announcement from the bulletin board and discovered that two other sheets of paper were attached: the announcement for the subject test and an application deadline information sheet. He asserts that no promotional announcements were posted on the other departmental bulletin board, which is located in the lunch room on the main floor of police headquarters. He argues that the announcements "should have been posted side by side, and clearly visible . . . An individual should not have to search, rearrange, remove, or flip over other bulletins to locate Promotional Announcements. An individual should not have to guess which bulletin board a Promotional Announcement might be on." In support of his appeal, he submits additional documentation including photographs of the bulletin board in the basement containing the subject announcement.

Mr. Laskiewicz, a Police Lieutenant, presents that he was unaware that the subject test had been announced until the test administration date, September 27, 2012. He explains that police headquarters has three floors and his office is on the top floor. After speaking with Mr. Milewski, he discovered that the subject announcement was posted only in the basement near the mailboxes, which is "one of the farthest points in the building from my office" and he "rarely go[es] down to the area" since he has a mailbox outside of his office. He explains that previously, "eligible officers have been notified to respond to the Chief's office to personally pick up a copy of the announcement/application" but this was not done for the subject test. He adds that in Spring 2012, he spoke with the Chief of Police as to whether there would be an announcement for the Police Captain title. He was informed that he would not be eligible since he would not have the requisite year in grade. He further explains that based on his conversation with the Chief and given that he was not notified to pick up a copy of the announcement, he believed that he was not eligible.

In a letter dated October 16, 2012, Matthew Kunz, Chief of Police, indicates that "in a typical testing cycle, the Township of Jackson usually provides very specific information regarding a pending examination, and requests that the police department provide individual notices to all 'eligibles', with written verification of such notices required, to ensure all appropriate personnel receive testing notices. That is done in addition to the posting of the CSC announcement flyers." He

further indicates that for the subject test, his office received an e-mail from the Business Administrator's office, with an attachment labeled, "On-Line PromoFlyer_Police June 2012," which instructed his office to "please post the attached announcements by June 1". Chief Kunz contrasts this from the e-mail received for the Police Sergeant (PM0715P) examination, which provided, "Please email this posting to all Police Officers, as well as post it on the bulletin board. Also please send me a confirmation when everything has been distributed/posted." He also notes that "the e-mail attachment for the sergeants exam was clearly labeled as such." He explains that for the e-mail which contained the "On-Line PromoFlyer_Police June 2012" attachment, "my secretary set about posting the flyer, and neither of us gave particular attention to the content, as we are frequently requested to post administrative notices . . . Had the testing notice garnered our attention, we may have observed that the testing was opened up to those ranks and personnel which ordinarily would not have been eligible to test for police captain. But again, the pedestrian nature of the 'PromoFlyer' e-mail title led to the notice being posted in rote fashion without a review." Chief Kunz notes that when it came to his attention that several eligible officers did not file or sit for the subject test, an investigation found that "one flyer remained posted, yet 'buried' under other posted materials, while no other posted flyer was found, suggesting that it was surreptitiously removed." Based on these circumstances, he requests that those officers who wish to participate in the subject examination be permitted to do so.

In a letter postmarked November 28, 2012,¹ Mr. Decker initially sets forth that "based on my own knowledge of the word aggregate as well as supported documentation from dictionary sources," there are no Police Sergeants eligible to sit for the subject promotional examination. In this regard, he presents that "not one Police Sergeant in this organization has served in the title of Police Lieutenant within the last 12 months up to and including the closing date of the announcement." He maintains that those Police Sergeants who possessed a year in grade as of the closing date would only be eligible for the Police Lieutenant examination. Furthermore, he argues that if the Police Sergeants sat for the subject test rather than for the Police Lieutenant test, there would be no viable list for Police Lieutenant.² He asserts that "this information was confirmed with the Personnel Manager of Jackson Township" and with staff from the Division of Selection Services. Mr. Decker presents that any claim by Messrs. Geoghegan, Milewski and Laskiewicz that they were not notified or made aware of the subject test is

¹ Mr. Decker indicated that at the time of writing this letter, he did not have access to the appeals from Messrs. Geoghegan, Milewski and Laskiewicz. It is noted that during the appeal process, Mr. Decker was provided with copies of the appeals and the letter dated October 16, 2012 from Chief Kunz.

² The promotional examination for Police Lieutenant (PM5023P), Jackson Township, had the same announcement issue date, application filing deadline, closing date and test administration date as the subject test.

"unacceptable." He argues that the subject announcement was "observed by various levels of police personnel in at least five (5) separate locations throughout the building . . . as well as being posted on the watch commander[']s clipboard which is utilized by every patrol supervisor on a daily basis for over three (3) weeks." He avers that Mr. Laskiewicz contacted him before June 1, 2012 to inform him that the announcements for Police Captain and Lieutenant had "come out." He also claims that Mr. Laskiewicz frequently walked by locations where the subject announcement was posted, and "he also attended a Bravo 2 shift briefing at which point I made direct reference to the promotional announcement and placed the three (3) page document in front of him . . ."³ He argues that "there is absolutely no possible way that [Mr. Milewski] did not see the announcement" given that Mr. Milewski has access to the same areas as he does and is responsible for covering "all the material on the watch commander's clipboard on a daily basis." He asserts that upon showing Mr. Milewski a copy of the subject announcement on September 21, 2012 and "explain[ing] the aggregate issue," Mr. Milewski said "something to the effect, 'I miss[ed] that and must have read it wrong.'" Mr. Decker adds that given that applications for the subject test had to be submitted online, there was no application to sign for and thus, this process is no longer necessary.⁴

In reply, Chief Kunz emphasizes that his "interest lies in ensuring fairness for the entire agency. Understandably, Lt. John Decker's appeal would serve only his interests . . ." Chief Kunz also "strongly reiterate[s] that there was an absence of the usual local procedures for test announcements. There was no individual notification, no requirement that eligibles sign for test announcements, and no condition that proof of the notices was provided to the personnel office or appointing authority, only for the position of Police Captain. In this instance, for this particular test, contrary to all the recent, prior testing cycles which I recall, the usual procedures were not requested of the police department by the appointing authority, and they therefore did not occur." He emphasizes that it is not his intention to "demean Lt. Decker, or his subjective assessment of the announcement process, . . . but rather to ask the Commission to recognize the shortcomings in this particular instance, and as a matter of fundamental fairness, afford all eligibles an opportunity to test for the position of Police Captain." Chief Kunz adds that his secretary posted the subject announcement in the basement on the bulletin board; in the records room "on a clip for 'administration'; in the main floor kitchen lounge, on a bulletin board with a thumb tack; and one copy was left on the Watch Commanders desk." Chief Kunz states that "no follow up was conducted to ensure that any copies remained in place" and "in hindsight, those posting locations would not have guaranteed that all eligible personnel would have viewed the postings."

³ Mr. Decker does not indicate the date on which the Bravo 2 shift briefing took place.

"The subject announcement informed candidates, "ONLY ON-LINE APPLICATIONS WILL BE ACCEPTED FOR THIS ANNOUNCEMENT." However, it is noted that Messrs. Geoghegan and Laskiewicz and Chief Kunz indicate that it was past practice for candidates to sign for the test *announcement* rather than the application.

Mr. Geoghan maintains that Mr. Decker has incorrectly interpreted the word "aggregate" as used in the announcement in that aggregate refers to the requisite year in grade rather than the eligible titles. He presents that he showed Mr. Decker's letter to the Jackson Township Personnel Manager who advised him that Mr. Decker's "portrayal of their conversation is not accurate." He notes that a notice regarding the Lieutenant exam was hand-delivered to him, which is typical "for every other promotional examination I have been eligible and tested for." However, a notice for the subject test was not provided to him. He also notes that "there still remains a question as to whether the notices were posted on bulletin boards throughout the building." In this regard, he indicates that he has yet to be provided with the "record of such posting."

Mr. Laskiewicz claims that many of the statements made by Mr. Decker are incorrect and misleading. In this regard, he indicates that in mid-April 2012, he "observed a letter from the Civil Service Commission dated April 19, 2012 titled '2012 Police Promotional Announcement and Exam Cycle' . . . After seeing that letter, I did contact Lt. Decker (in mid April) to advise him of it and we both did not know what to make of it" given that they had recently been promoted to the Police Lieutenant title and would not have the requisite year in grade by the closing date. Subsequently, he spoke with Chief Kunz who informed him that the Township would not be announcing for the subject title "because there would be nobody eligible to take the exam." In addition, he asserts that had the Police Chief or his administrative secretary been aware of the changes made in the eligibility requirements for the subject title, he would have been notified. He explains that past practice has been to either place an announcement in eligible officers' mailboxes or have them report to the Chiefs office where they were provided with one. He maintains that he spoke with "multiple officers in the agency when I saw the Promotion Exam Announcement for Sergeant and Lieutenant posted, but it appears that nobody other than Lt. Decker was aware of the Captain's exam announcement." Mr. Laskiewicz adds, "it appears that because of mistakes and miscommunications, the proper exam announcement was not provided to those who believed that there was nobody eligible to take the Captain's Exam. Officers who believed they were not eligible, were now made eligible and never properly notified of the change."

CONCLUSION

N.J.A.C. 4A:4-2.1(b) provides that notices of promotional examinations and applications shall be provided to eligible employees by the Civil Service Commission or through the appointing authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such postings.

In the present matter, Chief Kunz indicates that the department did not utilize its usual procedures for promotional announcements with respect to the subject announcement. In this regard, he emphasizes that the department did not provide individual notification or require eligibles to sign for the subject test announcement. In addition, Chief Kunz notes that the locations where the subject announcement was posted would not necessarily afford all eligibles the opportunity to see the postings. Further, Chief Kunz states that there was no follow up to ensure that the subject announcements remained posted and/or visible during the entire filing period. Moreover, a review of the record finds that at least 12 officers, including Mr. Decker, would have met the time in grade requirement as of the August 31, 2012 closing date. Given this, the lack of applicants suggests that there was a flaw in the posting process.

Based on the foregoing, good cause exists to amend the application filing date of the subject announcement. It is noted that the announcements for the 2013 Police Captain testing cycle were issued on June 1, 2013 and have an application filing deadline of June 21, 2013.⁵ Accordingly, the subject announcement should be amended to permit a period for application filing and any eligible candidates filing timely applications should be tested in the 2013 cycle.⁶ Furthermore, applicants should be directed to refer to the 2013 Police Captain Orientation Guide in order to prepare for the subject test.

Finally, the Commission notes that promotional examinations for law enforcement titles are announced and given according to established schedules for each title group. In this regard, the County and Municipal Police Promotional Processing 2012 Schedule, which was published to the Commission website, indicated that for the Police Captain title, announcements would be issued on June 1, 2012. Moreover, public safety promotional announcements are posted to the website.⁷ While it remains the responsibility of the appointing authority to properly post promotional announcements pursuant to *N.J.A.C. 4A:4-2.1(b)*, there is a wealth

⁵ It is noted that in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), the New Jersey Supreme Court ordered the Civil Service Commission, for future exams, to "administer make-up exams that contain substantially different or entirely different questions from those used in the original examination." *Id.* at 66. As a result, public safety candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered. In this regard, the make-up test is typically the same as that to be taken by candidates who apply for the next cycle of announcements and make-up candidates are directed to refer to the Orientation Guide associated with the next cycle of tests.

⁶ The County and Municipal Police Promotional Processing 2013 Schedule, which was published to the Commission website, indicates that the tentative month for the written portion is September 2013 and December 2013 for the oral portion.

⁷ Beginning with announcements issued after July 2006.

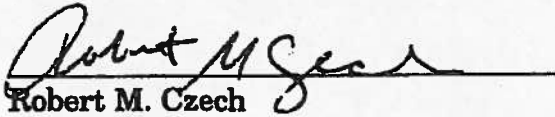
of candidate resources available on the Commission website. However, it is the candidate's responsibility to access these resources.

ORDER

Therefore, it is ordered that the subject announcement be amended to extend the application filing deadline.

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 5TH DAY OF JUNE, 2013**



Robert M. Czech
Chairperson
Civil Service Commission

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and
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