

B-43



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Management  
Specialist (M0973R), City of Ocean  
City

Appointment Waiver Request

CSC Docket No. 2015-1933

ISSUED: MAR 10 2015

(LDH)

The City of Ocean City requests permission not to make an appointment from the August 11, 2014 certification for Management Specialist (M0973R).

The record reveals that the appointing authority provisionally appointed Michael Rossbach, pending open-competitive examination procedures to the title of Management Specialist, effective October 1, 2013. As a result of the provisional appointment, an examination was announced with a closing date of November 11, 2013. Forty-nine applicants, including Rossbach were admitted to the written examination which was held on July 10, 2014. The resulting eligible list of 28 names promulgated on August 7, 2014 and expires on August 6, 2017. The appointing authority 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 August 11, 2014, the names of 14 eligibles, including Rossbach as the 14<sup>th</sup> ranked eligible, were certified from the subject eligible list. The appointing authority returned the certification and requested an appointment waiver as it had appointed Rossbach to the title of Director of Solid Waste Management, effective November 7, 2014. Moreover, the appointing authority asserted that between the time of the provisional appointment and the certification, Rossbach's duties had changed to almost exclusively in the area of solid waste management. Therefore, it requested an appointment waiver because Rossbach was no longer serving in the subject title.

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. In response,

the appointing authority asserted that upon a review of Rossbach's duties it was determined that he was misclassified, and that a more appropriate title for his duties was Director of Solid Waste Management. In this regard, it noted that after the Public Works Department was absorbed into Community Operations, there was a realignment of duties that were not clearly mapped out. Initially, it classified Rossbach as a Management Specialist but after a reassessment of his duties decided that Director of Solid Waste Management was the best fit. Moreover, it reiterated that it was unable to make an appointment to the title of Management Specialist since it did not have any vacancies. Finally, the appointing authority indicated that it was willing to pay the costs for the selection process.

Agency records reveal that Rossbach was provisionally appointed, pending open competitive examination procedures, to the title of Director of Solid Waste Management, effective November 7, 2014. Personnel records further reveal that there are no employees in the subject title serving provisionally, pending an open competitive examination, with the appointing authority.

A review of the job specification for Management Specialist reveals that an individual in that title assists the principal executive or administrative officer in the performance of managerial duties. A review of the job specification for Director of Solid Waste Management reveals that an individual in that title promotes, organizes and administers an effective solid waste management program including the determination of program goals, objectives, strategy, program emphasis, policies, procedures and plans.

## 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 Management Specialist was generated as a result of the provisional appointment of Rossbach. After a complete certification was issued, the appointing authority provisionally appointed Rossbach, pending open-competitive examination procedures, to the title of Director of Solid Waste Management, effective November 7, 2014. A review of the relevant job specifications indicates that an individual in the title of Management Specialist performs different duties than an individual in the title of Director of Solid Waste Management. Specifically, the Director of Solid Waste Management title requires an incumbent to perform managerial duties in the area of solid waste management.

Accordingly, based on the foregoing, there is sufficient justification for an appointment waiver.

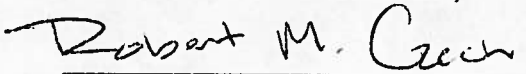
Although the appointment waiver is granted, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the 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. In the instant situation, the appointing authority requested that it be charged for the examination process since it was unable to utilize the title. Accordingly, although the request for a waiver is granted, it is appropriate that the appointing authority be assessed for the costs of the selection process.

### ORDER

Therefore, it is ordered that the appointment waiver 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 thirty days of the issuance of this decision.

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 4<sup>th</sup> DAY OF MARCH, 2015



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