



B-50

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Assistant Engineer
(M0611P), East Orange Water
Department

Appointment Waiver

CSC Docket No. 2015-147

ISSUED: APR - 2 2015 (CSM)

The East Orange Water Department (East Orange) requests permission not to make an appointment from the January 27, 2014 certification for Assistant Engineer (M0611P).

The record reveals that East Orange provisionally appointed Sean Andres, pending open competitive examination procedures to the title subject title. The examination was announced with a closing date of August 9, 2012. The examination resulted in an eligible list of nine individuals which promulgated on January 23, 2014 and expires on January 22, 2017. It is noted that Andres did not file an application for this examination. On January 27, 2014, the names of all nine eligible candidates were certified from the eligible list.

The appointing authority returned the certification on May 5, 2014, indicating that the provisional appointee's title was changed to Assistant Engineer Civil. The appointing authority explained that it has been in the process of seeking opportunities for improvement and was assessing the specific needs for each of its divisions in order to ensure alignment with its mission. Therefore, it determined that use of the title of Assistant Engineer Civil would best fit its needs and requested cancellation of 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.

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. However, the appointing authority did not provide any additional information for the Civil

Service Commission (Commission) to review. By letter dated September 15, 2014, staff from the Division of Appeals and Regulatory Affairs advised the appointing authority that agency records indicated that Andres was appointed to the title of Assistant Engineer Civil on March 31, 2014 after the issuance of the certification for Assistant Engineer. Therefore, it appeared that the appointing authority's explanation that the change in title "best fits the needs" of its agency was insufficient. Accordingly, staff requested further explanation as to why Andres was being retained in a similar title. Although provided this subsequent opportunity, the appointing authority did not provide any additional information for the Commission to review.

A review of agency records indicates that there are currently no employees serving provisionally pending open competitive examination procedures with the appointing authority.

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 Andres to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that it changed the provisional appointee's title to better suit its needs. Although provided the opportunity, the appointing has not provided any explanation as to why it retained Andres as an Assistant Engineer Civil. However, for the reasons explained more fully below, it appears that an Assistant Engineer Civil classification is consistent with the functions of the East Orange Water Department.

The job specification for Assistant Engineer states:

Under direction in one or more areas of engineering, performs routine field and office engineering work involved in the design, maintenance, and construction of structures and/or systems; may conduct field inspections of a variety of public works construction projects; does other related duties.

The job specification for Assistant Engineer Civil states:

Under direction, performs routine civil engineering work involved in the design, construction, inspection and maintenance of structures and facilities such as roads, bridges, dams, powerplants, water supply, sewage, and waste disposal systems, or similar facilities; does other related work.

It is noted that the requirements for Assistant Engineer are a Bachelor's degree in Civil, Mechanical, or Electrical Engineering and one year of engineering experience and the requirements for Assistant Engineer Civil are a Bachelor's degree in Civil Engineering and one year of experience in civil engineering. According to the United States Bureau of Labor Statistics Occupational Outlook Handbook, civil engineering involves the design, construction, supervision, operation, and maintenance of large construction projects and systems, including roads, building, airports, tunnels, dams, bridges, and *systems for water supply* and sewage treatment. Therefore, as the East Orange Water Department is responsible for a system of water supply, it is understandable as to how it could determine Assistant Engineer Civil is the most appropriate title for its engineering positions. As such, while the Commission is concerned with the appointing authority's failure to respond to its request for its basis for the title change, in conjunction with the fact that there are no Assistant Engineers provisionally serving, there is a sufficient justification for an appointment waiver.

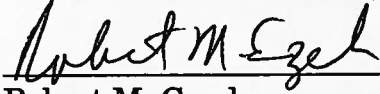
Although an appointment waiver is granted in this matter, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations 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 a provisional 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 1st DAY OF APRIL , 2015



Robert M. Czech
Chairperson

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: Michael Johnson, East Orange Water Department
Kenneth Connolly
Joseph Gambino
Beth Wood