



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Assistant Executive
Director, Office on Aging (C0980R),
Union County

Appointment Waiver Request

CSC Docket No. 2015-2592

ISSUED: MAY 20 2015

(LDH)

Union County requests permission not to make an appointment from the September 15, 2014 certification for Assistant Executive Director, Office on Aging (C0980R).

The record reveals that the appointing authority provisionally appointed Natalie Zarrillo, pending open-competitive examination procedures to the title of Assistant Executive Director, Office on Aging, effective September 14, 2013. As a result of the provisional appointment, an examination was announced with a closing date of November 12, 2013. The resulting eligible list of four names, including Zarrillo as the third ranked eligible, promulgated on September 11, 2014 and expires on September 10, 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 September 15, 2014, the names of four eligibles, including a disabled veteran¹ as the first ranked eligible, were certified

¹ The disabled veteran had filed an appeal to the Division of Agency Services on November 28, 2014, concerning her November 26, 2014 interview for the subject position. She asserted, in part, that the interviewer was dismissive of her Bachelor's degree in Accounting and stated that some changes may take place within the office and a Master's degree in Social Work may be needed. The disabled veteran indicated that in response, she replied she would try to obtain the Master's, and the interviewer stated they wouldn't want to wait two or three years for her to obtain the degree. The interviewer also asked her why she was there with only a degree in Accounting. However, the disabled veteran was notified that her appeal was premature and the matter was closed.

from the subject eligible list. The appointing authority returned the certification and requested an appointment waiver as it was unable to make an appointment due to fiscal constraints.

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 asserts that it cannot make an appointment because of financial reasons. It states that because of reduced federal and State appropriations, it has seen its funding for the Office on Aging reduced. As a result, it feels that a management title is no longer in the best interest of service for its residents. Therefore, it asserts that it eliminated the position of Assistant Executive Director, Office on Aging and reclassified the position. It maintains that the reorganization of the office will bring the level of case management staff up to allow them to increase the number of clients served, and the administrative aspects of the position will be reassigned to staff working in other titles within the Office of Aging. Lastly, it states that paying any costs associated with this request defeats its overall intent in maximizing the funds to serve its senior citizens and disabled residents.

Agency records reveal that Zarrillo was provisionally appointed pending open competitive examination procedures to the competitive title of Coordinator of Long Term and Alternate Care for the Elderly, effective January 1, 2015. Agency records further reveal that there are no employees serving in the subject title with the appointing authority.

A review of the job specification for Coordinator of Long Term and Alternate Care for the Elderly reveals that an individual in that title implements activities involved in providing assistance to the elderly and their families in identifying and making use of non-institutionalized alternative care services on a long term basis. A review of the job specification for Assistant Executive Director, Office on Aging reveals that an individual in that title assists in providing leadership in the development and implementation of the work of a local Office on Aging.

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 Assistant Executive Director, Office on Aging was generated as a result of the provisional appointment of Zarrillo. After a complete certification was issued, the appointing authority indicated that Zarrillo was appointed to the competitive title of Coordinator of Long Term and Alternate Care for the Elderly. A review of the job specification reveals that the competitive title of Coordinator of Long Term and Alternate Care for the Elderly performs significantly different duties than an individual in the title of Assistant Executive Director, Office on Aging. Accordingly, based on the foregoing, there is sufficient justification for an appointment waiver.

However, *N.J.S.A.* 11A:3-1 and *N.J.A.C.* 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned to a job title. *N.J.A.C.* 4A:3-3.3(d) provides that positions in the career, unclassified and senior executive service shall be subject to job audit to ensure accurate classification and compliance with Titles 11A and 4A. Moreover, *N.J.A.C.* 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. In the instant matter, Union County asserts that Zarrillo's proper classification should be Coordinator of Long Term and Alternate Care. However, based on the allegations raised by the first ranked disabled veteran, and Union County's assertion that the management duties of the position of Assistant Executive Director, Office on Aging were reassigned, it is also appropriate to refer the classification of Zarrillo's position to the Division of Agency Services (Agency Services) for a classification review. If Agency Services determines that the position is properly classified as an Assistant Executive Director, Office on Aging, a certification from the (C0980R) eligible list should be immediately issued against the position.

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 not be charged for the examination process because of a reduction in funding to the Office on Aging by federal and state agencies. However, the Commission notes that the list in question will not expire until September 10, 2017. Further, as noted above, the list is to be immediately certified if Agency Services determines that Zarrillo's position is properly classified as an Assistant Executive Director, Office on Aging. Accordingly, under the particular circumstances of this matter, it would not be appropriate to

assess Union County for the costs of the selection process at this time. *See In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided April 11, 2007).*

Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of September 10, 2017, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided April 11, 2007) (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).*

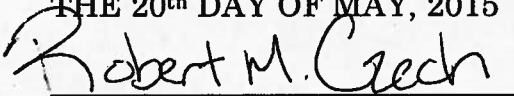
ORDER

Therefore, it is ordered that the appointment waiver be granted and no selection costs presently be assessed.

It is further ordered that the Division of Agency Services complete its classification review and issue its decision to Union County, Natalie Zarrillo, and the Civil Service Commission within 60 days of the receipt 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 20th DAY OF MAY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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: Frank Guzzo
Natalie Zarrillo
Kenneth Connolly
Diane Lukasewycz