

B-666



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Campus Police
Officer (S9999M), Newark School
District

CSC Docket No. 2015-680

Appointment Waiver

ISSUED: MAY 08 2015 (DASV)

The Newark School District requests permission not to make an appointment from the June 26, 2013 certification for Campus Police Officer (S9999M).

By way of background, in November 2005, the Newark School District first sought to make appointments to the Special Law Enforcement Officer title. However, the Division of State and Local Operations (SLO) advised that *N.J.S.A. 40A:14-146.9, et seq.*, prohibited the use of the title. The statute only permits the use of the title by municipalities, not school districts, to meet increased public safety needs in cases of emergency, special events, or where such needs increase on a seasonal basis. Notwithstanding this instruction, the appointing authority appointed 10 individuals to serve in an unrecognized title of "Special Police Officer" and attempted to record their appointments as permanent appointments to a noncompetitive title. The matter was subsequently referred to the Civil Service Commission (Commission). Upon review, the Commission agreed with SLO, finding that *N.J.S.A. 40A:14-146.9, et seq.*, did not authorize the use of Special Law Enforcement Officers for the school district. Consequently, the Commission ordered that the appointing authority cease making such appointments. It also ordered that the appointments of the 10 individuals currently serving be recorded as provisional Campus Police Officers, pending the certification of the Campus Police Officer (S9999K) eligible list. In addition, the appointing authority was fined \$1,000 for its willful disregard of Civil Service law and rules.¹ The Commission noted that had the appointing authority complied with the advice in 2005 regarding the

¹ The appointing authority paid the fine in March 2010.

appropriate title to utilize, it could have prevented the likely disruption of the employment of the 10 individuals. The Commission further cautioned the appointing authority that any failure or undue delay in complying with the certification process would result in further fines. *See In the Matter of Special Law Enforcement Officers, Newark School District* (CSC, decided January 13, 2010).

Thereafter, the Division of Classification and Personnel Management (CPM)² requested reconsideration of the part of the Commission's decision ordering the certification of the Campus Police Officer (S9999K) eligible list which had expired on June 9, 2011.³ CPM explained that the order of the Commission could not be timely fulfilled due to technical complications in recording the provisional appointments and subsequent certification issues. It is noted that the provisional appointments were eventually recorded with an effective date of January 14, 2010. Therefore, CPM requested that a make-up examination be granted to the provisional employees, who had not had the opportunity to take the then current Law Enforcement Examination (LEE) (S9999M)⁴ but were still serving as Campus Police Officers. Personnel records indicated that there were nine remaining provisional employees, and of these nine employees, three individuals did not appear on the (S9999M) eligible list. However, two of the three employees had the opportunity to take the LEE (S9999M), with one employee failing the examination and the other failing to appear for the examination. As such, the Commission found it appropriate, pursuant to *N.J.A.C. 4A:4-2.9(c)*, to provide a make-up examination for the LEE (S9999M) to the one remaining employee who had not filed for the examination. Upon completion of the foregoing examination process, the Commission directed that a certification be issued to the appointing authority from the Campus Police Officer (S9999M) eligible list against the nine provisional appointments. Lastly, the Commission noted that its decision did not guarantee the provisional employees permanent appointments. *See In the Matter of Special Law Enforcement Officers, Newark School District* (CSC, decided June 5, 2013).

On June 26, 2013, a certification of the Campus Police Officer (S9999M) eligible list was issued against the following nine provisional employees: Iris James-Philson; Darryl Johnson; Twanda Jones; Abdul R. Muhammad; David R. Paige; Akhia Scott; Brian Sharif; Charles Weathers; and Felix West. However, the provisional employees were not certified, as they either did not appear on the subject eligible list as set forth above or had ranks lower than the eligibles on the subject certification. It is noted that the certification contained the names of 50 eligibles, with 34 disabled veterans and veterans heading the list. The provisional employees are not veterans. The certification was due to be disposed of on or before December 26, 2013. The due date was then extended to February 26, 2014. However, the appointing authority did not return the certification. Consequently,

² CPM is now known as the Division of Agency Services.

³ The (S9999K) eligible list promulgated on December 24, 2008.

⁴ The (S9999M) eligible list promulgated on June 10, 2011 and expired on May 1, 2014.

CPM issued a notice of violation on March 31, 2014 and a salary disapproval order on May 5, 2014. The appointing authority did not respond to these actions. Thereafter, the matter was referred to the Commission for enforcement.

By letter dated October 9, 2014, the appointing authority requested an appointment waiver, stating that "it no longer has a need for the position of Campus Police Officer." The appointing authority's request for an appointment waiver was acknowledged, and it was informed that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. At the time of the request, the provisional employees remained in the subject title. However, the appointing authority indicated that it was currently in the process of separating the employees.

After several attempts by this agency's staff to resolve the matter, the appointing authority eventually advised in a letter, dated March 24, 2015, that the provisional employees had been separated. It also stated that there were no currently funded vacancies for the subject title. Moreover, the appointing authority requested "that the Commission waive the appointment assessment costs, and any future fine on this certification list." It submitted that the Newark School District had undergone a recent reduction in force to meet budgetary demands, and if it is assessed fines, it "will be placed in further debt and financial restraint." Agency records indicate that the last layoff occurred on August 15, 2014. The appointing authority also returned the subject certification, indicating its request for cancellation due to budgetary constraints, and noting that Johnson, Jones, Muhammad, Paige, Scott and Weathers were "removed" from their provisional positions, Sharif was "terminated," and James-Philson and West resigned from their positions. The County and Municipal Camps System reveals that the provisional appointments of Johnson, Jones, Muhammad, Paige, Scott and Weathers were terminated effective March 22, 2015. Sharif's provisional appointment was terminated on August 16, 2014. Further, James-Philson and West resigned in good standing effective March 22, 2015. They possessed underlying permanent status as a Senior School Clerk and Security Guard, respectively.

CONCLUSION

In the instant matter, as a result of the appointing authority's attempt to appoint individuals to a title which could not be utilized by school districts and to an unrecognized title, the Commission had ordered the conversion of the appointments to provisional appointments pending the certification of the Campus Police Officer (S9999K) eligible list. However, the eligible list expired prior to the implementation of the Commission's order. Reconsideration was granted and the Commission directed that the Campus Police Officer (S9999M) eligible list be certified against the provisional appointments. The Commission also ensured that all of the provisional employees had the opportunity to take the LEE (S9999M). A

complete certification was then issued, and the appointing authority failed to return the certification after the extended disposition due date. The appointing authority eventually requested an appointment waiver, maintaining that, due to budgetary constraints, it was no longer in need of the subject positions. Furthermore, agency records reveal that the provisional employees are no longer serving in the subject title. Accordingly, based on the foregoing, the appointing authority has presented sufficient justification for the 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. Nonetheless, the appointing authority indicates that it suffers from financial constraints. Agency records confirm that a layoff in the Newark School District occurred on August 15, 2014. Further, the eligible list was generated from a pool of eligibles (S9999M) and was utilized by other appointing authorities. Moreover, the provisional employees in this matter have been separated. Therefore, under these circumstances, it would not be appropriate to assess the appointing authority for the costs of the selection process.

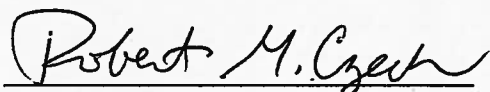
Nevertheless, the Commission notes that it is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2*. See *In the Matter of Fiscal Analyst (M1351H), Newark*, Docket No. A-4347-87T3 (App. Div. 1989). In this matter, as noted above, the appointing authority failed to return the subject certification by its extended due date of February 26, 2014. It also did not respond to the notice of violation on March 31, 2014 and a salary disapproval order on May 5, 2014. Moreover, the appointing authority was not timely in resolving this matter after it requested an appointment waiver. Eight of the nine provisional employees remained in the subject title until March 22, 2015. Furthermore, the appointing authority was already fined \$1,000 for its willful disregard of Civil Service law and rules and was cautioned that any failure or undue delay in complying with the certification process would result in further fines. See *Special Law Enforcement Officers, supra*. Accordingly, under these circumstances, it is appropriate to assess \$2,000 in compliance costs.

ORDER

Therefore, it is ordered that an appointment waiver be granted and no selection costs be assessed. It is further ordered that the appointing authority be assessed \$2,000 in compliance costs, to be remitted within 30 days of 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 6TH DAY OF MAY, 2015



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