



STATE OF NEW JERSEY

In the Matter of Cashier, Bilingual
Spanish and English (M0330R),

: FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-939

Newark

Appointment Waiver

ISSUED: JUL 1 7 2015 (JET)

Newark requests permission not to make an appointment from the August 13, 2013 certification for Cashier, Bilingual in Spanish and English (M0330R), Newark.

The record reveals that the appointing authority provisionally appointed Josie Osorio, pending open competitive examination procedures, to the subject title, effective September 19, 2011. The examination was announced with a closing date of April 24, 2013. It is noted that Osorio did not appear for the subject examination. The resulting list of seven eligibles promulgated on August 8, 2013 and expires on August 7, 2016. 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. A certification was issued on August 13, 2013 (OL131069) which contained the names of the seven eligibles. The appointing authority returned the certification and indicated that it would not make a permanent appointment since Osorio was no longer serving in the title. It is noted that Osorio's provisional appointment was discontinued effective July 11, 2014. The appointing authority thereafter requested a waiver from the appointment requirement since the provisional was no longer serving in the title and due to budgetary contraints.

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. No further arguments were received.

A review of agency records reveals that there are currently no employees serving provisionally, pending open competitive examination procedures, in the subject title with Newark.

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 due to Newark's provisional appointment of Osorio to the subject title. However, after a complete certification was issued, the appointing authority requested cancellation of the certification due to fiscal constraints and agency records revealed that Osorio is no longer serving in the subject title. Consequently, since there is no provisional serving in the title at issue, there is 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 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 matter, the appointing authority requests that the cost of the selection process be waived due to its fiscal constraints. However, although the Commission is sympathetic to its situation, the appointing authority's economic problems, while serious, are no less than those encountered by many, if not most Jersev county and municipal governments. Furthermore. reimbursement of selection costs pursuant to N.J.S.A. 11A:4-5 and N.J.A.C. 4A:10-2.2(a)2 does not place an undue burden on the appointing authority or prohibit it from looking towards other cost saving measures. 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 the request for a waiver of the appointment requirement be granted. Additionally, the 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 15th DAY OF JULY, 2015

Robert M. Czech

Chairperson

Civil Service Commission

Inquiries

Henry Maurer

and

Director

Correspondence

Division of Appeals and Regulatory Affairs Civil Service Commission Written Record Appeals Unit

P.O. Box 312

Trenton, New Jersey 08625-0312

c: Michael E. Greene

Kecia Daniels Kenneth Connolly Joseph Gambino Beth Wood