



B-43

STATE OF NEW JERSEY

In the Matter of Natalie Ogonowski,  
Police Sergeant (PM2677L),  
Hillside

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-91

Administrative Appeal

ISSUED: **AUG 02 2015** (EG)

Natalie Ogonowski, Police Officer, Hillside, represented by Daniel J. Zirrieth, Esq., appeals her non-appointment from the Police Sergeant (PM2677L), Hillside eligible list.

The appellant passed the subject examination and appeared in the second position on the July 23, 2013 certification of the resultant eligible list. The appointing authority appointed the number one eligible. The Police Sergeant (PM2677L), Hillside, eligible list expired on June 2, 2014.

In the instant appeal, the appellant argues that that she had been employed as a Police Sergeant in an acting capacity since October 7, 2012, pursuant to a personnel order issued by the Chief of Police. In support of this contention, the appellant submits a letter dated October 5, 2012 indicating her assignment to an "Acting" position and an organization chart showing that she was an Acting Police Sergeant. The appellant claims that she was assigned to this position to fill a vacancy. Additionally, the appellant asserts that due to the appointing authority's failure to permanently appoint her to Police Sergeant, she filed a classification appeal. A determination was issued on May 4, 2014, finding that the appellant's duties were commensurate with those of a Police Sergeant. The determination also indicated that the appellant was considered to be serving provisionally in the title of Police Sergeant effective April 5, 2014. Further, the appellant states that this agency issued the appointing authority a salary disapproval letter for the use of an "Acting" Police Sergeant and two letters for not timely disposing the July 23, 2013 certification. Moreover, the appellant argues that while, subsequently, her Police

Sergeant duties were removed, the appointing authority improperly replaced her with another officer put in an acting capacity. In this regard, the appellant submits a certified statement in which she asserts that Terence Clerk, Timothy O'Neill, and Peter Corvelli were appointed to Acting Police Sergeant positions and that Lashonda Burgess was appointed to an acting Police Lieutenant position. The appellant argues that the appointing authority is improperly utilizing acting positions to fill vacancies when there was an active eligible list. She adds that due to the retirement of several officers, vacancies have existed in the title of Police Sergeant for several years. Furthermore, the appellant argues that the appointing authority should be ordered to make permanent appointments to fill the vacancies. In this regard she contends that she should be appointed as she was the next on the eligible list.

In response, the appointing authority, represented by Robert F. Varady, Esq., argues that the appellant was removed from her provisional position as a Police Sergeant and returned to her Police Officer position in the spring of 2014. It also states the July 23, 2013 certification was returned and a permanent appointment was made.

### CONCLUSION

In the instant matter, the appellant argues that the appointing authority has vacancies in the Police Sergeant position and that it should make permanent appointments from the eligible list. In this regard, the Civil Service Commission (Commission) has consistently found that nothing in Civil Service law or rules requires that an appointing authority fill all of its budgeted positions. *See In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005); *See also, In the Matter of Todd Sparks* (MSB, decided April 6, 2005).

Further, the appellant has argued that she served in an "Acting" capacity. She also states that while she is no longer serving in a provisional position or "Acting" Police Sergeant position, others were named to "Acting" positions even after a Salary Disapproval letter was issued. Official records do not indicate that any of the individuals mentioned by the appellant are currently provisionals in any title. Records also indicate that O'Neill is serving as a Police Sergeant on an interim appointment. Moreover, the appellant has not provided any substantive evidence that shows that the individuals she named were in "Acting" positions. However, the appellant has provided documentary evidence that she had served in an "Acting" capacity. Furthermore, the appointing authority has not denied the use of "Acting" positions. In this regard, the Commission notes that the appointing authority's use of an "Acting" title was improper as there is no such designation as an "Acting" appointment under Civil Service rules. *N.J.S.A. 11A:4-13* and *N.J.A.C. 4A:4-1, et seq.*, provide for regular, conditional, provisional, interim, temporary, and emergency appointments. *See In the Matter of Russell Davis* (MSB, decided August

10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Therefore, the Commission cautions the appointing authority from utilizing the "Acting" designation in the future.

The appellant also argues that due to the vacant positions and the use of "Acting" designations, she should receive a permanent appointment to Police Sergeant. In this regard, the Commission notes that none of the individuals on the subject list possessed a vested right to an appointment. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Therefore, regardless of the appointing authority's improper use of "Acting" positions, neither the appellant nor any other candidate on the eligible list was entitled to an appointment. The appellant was on certifications and was considered for appointment. All the certifications from the PM2677L eligible list were returned<sup>1</sup>, and in each case, an eligible with a higher rank was permanently appointed to Police Sergeant.

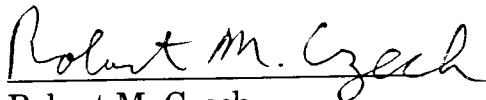
Accordingly, based on the foregoing, the Commission denies the appellant's appeal.

#### ORDER

Therefore, it is ordered that this appeal be denied

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 29TH DAY OF JULY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

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<sup>1</sup> The July 23, 2013 certification was returned June 3, 2014.

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and  
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