

B-13



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Assistant Budget  
Officer (M0408P), Union City

Appointment Waiver

CSC Docket No. 2015-2358

ISSUED: **SEP 08 2015** (HS)

Union City requests permission not to make an appointment from the November 13, 2012 certification for Assistant Budget Officer (M0408P).

The record reveals that the appointing authority provisionally appointed William Mendyk, pending open-competitive examination procedures, to the title of Assistant Budget Officer, effective April 22, 2008. As a result of this provisional appointment, an examination for the title was announced with a closing date of June 11, 2012. Mendyk, a disabled veteran, and four other applicants, one of whom was also a disabled veteran, were admitted to the examination. The examination was processed as a qualifying examination, *i.e.*, applicants who met the announced requirements were given the same score, except that the disabled veterans were ranked first within the sub-lists by the applicable residency requirements. The resulting eligible list of five names promulgated on November 8, 2012 and expires on November 7, 2015. On November 13, 2012, the names of all five eligibles, including Mendyk as the fourth ranked disabled veteran, were certified from the eligible list. Initially, the appointing authority returned the certification indicating that no appointments had been made and only two eligibles were interested. The appointing authority had requested the removal of Steven Porzl, the fifth ranked non-veteran, on the basis of non-response to the certification notice. The former Division of Classification and Personnel Management (CPM)<sup>1</sup> sustained the appointing authority's request. Porzl appealed CPM's decision. However, in response to Porzl's appeal, the appointing authority acknowledged that it had

<sup>1</sup> CPM is now the Division of Agency Services.

requested Porzl's removal from the list in error; indicated that Porzl had actually been interested; and requested an appointment waiver. Based on the appointing authority's submission, the Division of Agency Services restored Porzl's name to the eligible list and referred the appointing authority's request for an appointment waiver to the Civil Service Commission (Commission). In its request, the appointing authority asserted that it no longer had any employee serving in the title of Assistant Budget Officer and that Mendyk had been terminated from the subject position.

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 argues that it should not be assessed the selection costs since Union City is receiving transitional aid from the Department of Community Affairs (DCA).

Agency records indicate that Mendyk was separated from employment, effective January 31, 2013. Agency records also indicate that currently there are no individuals serving in the subject title 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 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 subject title was generated as a result of the provisional appointment of Mendyk. After a complete certification was issued, the appointing authority requested an appointment waiver indicating that no appointment would be made and that Mendyk had been separated from employment. Moreover, there is no one currently serving in the subject title with the appointing authority. Accordingly, based on the foregoing, there is sufficient justification for an 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

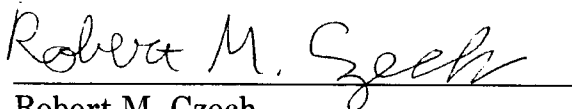
candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. In the instant situation, the appointing authority argues that since Union City is receiving transitional aid<sup>2</sup> from the DCA, it should not be assessed selection costs in the amount of \$2,048. Although the Commission is cognizant of Union City's receipt of transitional aid, the examination process was initiated by the appointing authority's provisional appointment of Mendyk, pending an open-competitive examination, to the subject title. However, since Union City is receiving transitional aid, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the total costs of the selection process. Rather, it is appropriate to assess partial costs in the amount of \$1,024. See *In the Matter of Community Service Worker, Bilingual in Spanish and English (M0464E)*, City of Hoboken (MSB, decided November 15, 2006) (Half of the selection costs assessed on the basis that Hoboken was a distressed city); *In the Matter of Director of Economic and Industrial Development (M6882A)*, City of Paterson (MSB, decided January 29, 2002) (Half of the selection costs assessed on the basis that Paterson was a distressed city).

### ORDER

Therefore, it is ordered that the appointment waiver be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed partial costs of the selection process in the amount of \$1,024 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 2<sup>ND</sup> DAY OF SEPTEMBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

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<sup>2</sup> The jurisdictions that receive transitional aid were previously known as "distressed cities."

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