

B-15



STATE OF NEW JERSEY

In the Matter of Technical Assistant,
Land Use (M0225S), Newark

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1871

Appointment Waiver

ISSUED: SEP - 3 2015 (WR)

Newark requests permission not to make an appointment from the August 27, 2014 certification for Technical Assistant, Land Use (M0225S), Newark.

The record reveals that the appointing authority provisionally appointed Nancy Gould, pending open competitive examination procedures, to the subject title, effective January 6, 2014. The examination was announced with a closing date of May 5, 2015. Fifteen applicants, including Gould, applied for the subject examination. The resulting eligible list of nine names, including Gould as the seventh-ranked eligible, promulgated on August 21, 2014 and expires on August 20, 2017. 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 27, 2014 containing the names of all nine eligibles. The appointing authority returned the certification on November 24, 2014 and indicated that it would not make a permanent appointment since Gould was terminated, effective August 22, 2014. The appointing authority thereafter requested a waiver of the appointment requirement and of the costs because it was "under budgetary 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. No further arguments were received.

A review of agency records reveals that Gould's provisional service was terminated, effective August 22, 2014. Agency records also reveal there are

currently no other employees serving provisionally pending open competitive examination procedures in the subject title in 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 as the result of the provisional appointment of Gould to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver because the provisional had been terminated from the subject title. Therefore, since no one is currently serving provisionally, pending open-competitive examination procedures, in the subject title with the appointing authority, 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 the instant situation, the appointing authority merely stated that Gould had been terminated and that due to fiscal constraints, it requested that the costs of the selection process be waived. However, although the Commission is sympathetic to the appointing authority's situation, its economic problems, while serious, are no less than those encountered by many, if not most other New Jersey 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.

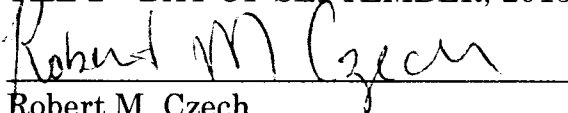
ORDER

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 2nd DAY OF SEPTEMBER, 2015



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