



STATE OF NEW JERSEY

In the Matter of Deputy Police Chief
(PM0511W), Jersey City

CSC Docket No. 2019-933

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

Administrative Appeal

ISSUED: NOVEMBER 26, 2018

The City of Jersey City (Jersey City), represented by Peter J. Baker, Corporation Counsel, appeals the determination of the Division of Agency Services (Agency Services) denying its request to waive the promotional examination for Deputy Police Chief (PM0511W), Jersey City.

By way of background, the subject promotional examination was announced with a closing date of April 30, 2018. On May 16, 2018, Jersey City submitted a request to Agency Services to waive the examination requirement for PM0511W and permanently appoint as Deputy Police Chiefs all 13 candidates who had applied at that time for the examination. Upon review, on May 21, 2018, Agency Services requested that Jersey City provide a copy of its most recent ordinance establishing the rank of Deputy Police Chief and the number of positions. In response, on May 22, 2018, Jersey City indicated that there is no such ordinance and that there is no limit on the number of persons for each position. Thereafter, on May 23, 2018, Agency Services advised Jersey City that its request to waive the examination could not be granted as *N.J.S.A.* 40A:14-118 requires municipalities to establish the type/rank and number of police positions by ordinance.

Initially, the Deputy Police Chief (PM0511W) examination was open to employees who had one year of continuous permanent service in the title of Police Captain as of the announced closing date. However, in *In the Matter of Jersey City Police Promotional Appointments* (CSC, decided June 20, 2018) (*Jersey City Police Promotional Appointments*), the Civil Service Commission (Commission) determined that it was appropriate to amend the promotional announcement for

Deputy Police Chief (PM0511W) so that it would be open to incumbents in the title of Police Captain who have successfully completed their working test periods prior to the April 20, 2018 closing date. In *Jersey City Police Promotional Appointments, supra*, the Commission noted that Jersey City did not properly record numerous appointments, which resulted in several individuals failing to apply or were unable to apply for Deputy Police Chief (PM0511W) examination. Additionally, due to a planned restructuring of the Police Department, Jersey City anticipated at least six additional Deputy Police Chief positions. As such, the Commission granted Jersey City's request to amend the announcement to permit incumbents in the title of Police Captain who successfully completed their working test periods file for the examination. Consequently, this agency postponed the administration of the subject examination, which had been initially scheduled for June 12, 2018, and is now tentatively scheduled for the week of December 10, 2018 through December 14, 2018.

In its September 26, 2018 appeal, Jersey City asserts that Agency Services' May 23, 2018 denial of its request was improper because it is based on a misreading of *N.J.S.A. 40A:14-118*. In this regard, it states that while *N.J.S.A. 40A:14-118* may require the adoption of a Table of Organization for certain alternate forms of government when requesting a testing waiver, it does not apply in to Faulkner Act municipalities wherein the government can shift the power of appointment and promotions to the Mayor. Therefore, since *N.J.S.A. 40A:14-118* states that an ordinance adopted shall be in a manner consistent with the form of government adopted by the municipality, and, as Jersey City is governed by the Faulkner Act, the executive power to power of appointment and promotion is vested with the Mayor. See *Hawthorne PBA Local 200 v. Borough of Hawthorne*, 400 N.J. Super 51 (App. Div. 2008). Further, Jersey City notes the Mayor possess the authority to set salaries pursuant to the Falkner Act. While a Table of Organization is premised on City Counsel's obligation to establish a municipal budget, Jersey City asserts that the denial of its waiver requests inhibits the Mayor's authority to appoint and promote and transfers this authority to the Council. Additionally, it states that the denial of its request is contrary to the well-established practice of this agency deferring to the appointing authority's discretion to determine how many promotions are necessary and that this agency has previously approved requests to waive promotional examinations. See *In re Corbo*, Docket No. A-2275-12T2 (App. Div. October 20, 2014). As such, Jersey City maintains that its request should be granted.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) provides that an appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed, and *N.J.A.C. 4A:1-1.2(c)* provides that a rule may be relaxed for good cause.

N.J.A.C. 4A:4-2.7(a) states following the announcement of a promotional examination, the Chairperson or designee may authorize the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list if:

1. The employee has been successfully tested in the basic skills required for the promotional title;
2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;
3. The number of interested eligibles for the promotional examination referred to in (a) above does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

In the present matter, Jersey City's September 26, 2018 appeal was filed approximately four months after Agency Services' May 23, 2018 decision denying its request for a waiver of the promotional examination. In this regard, Jersey City notes in its September 26, 2018 appeal that it is appealing "the May 23, 2018 decision denying the City's request to waive the examination for Deputy Police Chief." However, there is nothing in Jersey City's appeal explaining why it did not appeal Agency Services' decision in a timely manner.

The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeal unreasonably exceeds that threshold of finality. Clearly, Jersey City was aware of the situation being appealed in May 2018, yet, without any explanation, it did not file an appeal with the Commission until more than four months after that notification. The responsibility to file a timely appeal rests solely with an appellant. Further, the filing of an appeal in a different forum does not toll the time to file an appeal with the Commission. *See In the Matter of Sandra Alexander* (MSB, decided March 9, 2005); *In the Matter of Richard Vogel* (MSB, decided March 9, 1999); *In the Matter of Jose Gonzalez* (MSB, decided June 23, 1998). Additionally, the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. *See Savage v. Old Bridge-Sayreville Med. Group*, 134 *N.J.* 241, 248 (1993) (Ignorance of the specific basis for legal liability did not operate to extend time to initiate legal action). As such, the Commission dismisses this appeal solely on the grounds that it is untimely.

Although this appeal is dismissed solely on the grounds that it is untimely, even assuming, *arguendo*, that Jersey City filed a timely appeal, the Commission could not grant its request. In this regard, while the Commission agrees that the Mayor of a Faulkner Act municipality may be authorized the power of appointment and promotion, *N.J.S.A.* 40A:14-118 still requires an ordinance adopted by the municipality for a line of authority relating to the police function. In *Reuter v. Brough Council of Borough of Fort Lee*, 167 N.J. 38 (2001), the Court indicated that a “line of authority” as used in *N.J.S.A.* 40A:14-118 requiring an ordinance to provide for a police department’s line of authority mean an organizational chart. In *Hawthorne, supra*, the court noted that *N.J.S.A.* 40A:14-118 evidence a legislative design for checks and balances and a sharing of power between the executive and legislative branches of a municipality. Indeed, in *In re Referendum Petition to Repeal Ordinance 04-75*, 388 N.J. Super. 405 (App. Div. 2006), the court construed the Faulkner Act and *N.J.S.A.* 40A:14-118 to permit the governing body to delegate the authority to appoint and promote police officers to the mayor consistent with these goals. However, the court in *Hawthorne, supra*, specifically indicated that its finding that the Borough Council did not have the authority to appoint and promote because it had delegated that authority to the Mayor was *not* inconsistent with the Court’s finding in *Reuter, supra*, that the **type and number of police positions must be created by ordinance**.

While *N.J.A.C.* 4A:4-2.7(a) speaks in terms of “appointments,” appointments are made to fill positions. Therefore, prior to waiving the promotional examination requirement for such a large number of positions that are to be classified by the second highest level police title, it is the Commission’s responsibility to ensure that such police positions are established in accordance with *N.J.S.A.* 40A:14-118. As Jersey City has not provided an ordinance creating the 17 Deputy Police Chief positions, the Commission is unable to determine if a basis exists to waive the promotional examination. This instant situation is unlike those found in *Corbo, supra*, where the Commission found that an appointing authority is in the best position to gauge its own needs regarding the number of promotions it makes in the context of a request for a waiver of a promotional examination. In *Corbo*, the positions at issue were within a county Sheriff’s Office and not subject to the requirements of *N.J.S.A.* 14-118.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

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
21ST DAY OF NOVEMBER, 2018

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