



**STATE OF NEW JERSEY**

In the Matter of Eric Sudak and  
David Wojtach, Police Sergeant  
(PM2526W), Jefferson

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

CSC Docket Nos. 2022-1941 and  
2022-2009

List Bypass Appeals

**ISSUED: JUNE 20, 2022 (SLK)**

Eric Sudak and David Wojtach appeal the bypass of their names on the Police Sergeant (PM2526W), Jefferson eligible list. These appeals have been consolidated due to common issues presented.

By way of background, Sudak and Wojtach, who are nonveterans, appeared on the PM2526W eligible list, which promulgated on November 21, 2019 and expires on November 20, 2022. Initially, a total of 12 names, including Sudak and Wojtach, were certified on September 8, 2020, (PL200799), for a position in the subject title that resulted in the first ranked candidate being appointed. Thereafter, a total of 11 names were certified on March 30, 2021, (PL210267), where Wojtach, the first ranked candidate was bypassed and R.M., the second ranked candidate, was appointed. Sudak was the third ranked candidate. The certification's disposition was recorded on April 20, 2021, and Wojtach did not appeal his bypass. Subsequently, a total of 10 names were certified on May 11, 2021, (PL210431), where Wojtach, the first ranked candidate was bypassed, Sudak, the second ranked candidate was bypassed, and B.M., the third ranked candidate was appointed. The certification's disposition was recorded on June 4, 2021, Wojtach and Sudak did not appeal their bypasses. Thereafter, a total of five names were certified on August 12, 2021, (PL210867), where Wojtach, the first ranked candidate was bypassed, Sudak, the second ranked candidate was bypassed, and M.C., the third ranked candidate was appointed. The certification's disposition was recorded on December 28, 2021, and Wojtach and Sudak appealed their bypasses.

On appeal, Sudak presents that this is the second time that he has been bypassed for a position in the subject title on the subject eligible list as described above. He indicates that the subject position became available on July 1, 2021, when a Police Sergeant retired. Sudak believes that the appointing authority delayed filling the position to allow M.C. sufficient time to prove his ability as a supervisor. He indicates that the Mayor put out a personnel order on September 1, 2021, which informed everyone of M.C.'s promotion to a position in the subject title, effective immediately. Sudak states that he was never given a reason for his two bypasses. He notes that he is a 24-year veteran and has held many positions with the union. Sudak indicates that he has had some minor incidents that did not result in suspensions. He believes that his numerous citizen interactions, evaluations and positive performance comments far outweigh any negatives in his record. Sudak presents that he holds additional certifications within his department including First Aid, CPR, AED Instructor, Field Training Officer, and he assists with the firearms program as an armorer for its Lancer rifles and shotguns. Sudak indicates that during his interview, the Police Chief asked if he could separate himself from the union. However, he contends that the Chief disliked his answer where Sudak responded that the union is a major component for empowering and protecting employees while creating a better work environment. Sudak opines that the Chief held his union positions, especially his being a State Delegate, against him and comments that the Chief takes their disagreements and questions regarding his decisions as a personal attack. He believes that M.C. should not have been promoted as he has a major discipline stemming from a domestic violence incident where the County Prosecutor's Office was involved, which led to M.C. being required to sign for his weapon at the start and end of every shift for months. Also, Sudak asserts that M.C. is a sick time abuser and quite often would joke by sending pictures to officers of himself sitting in his hot tub smoking a cigar. He presents that it was brought to his attention that during M.C.'s interview, his past incidents were overlooked, and his interview focused on what he is presently doing for the department, while Wojtach and Sudak were scrutinized about past incidents during their interviews. Sudak asserts that most of the department does not respect M.C. based on his lack of knowledge and work ethic. He submits documentation to show awards, training, and positive feedback that he has received.

Wojtach presents that although he was the first ranked candidate, he was bypassed three times without any explanation. He states that after the second time he was bypassed, several of his colleagues asked the Chief why he was bypassed, and he responded that per Civil Service rules, he did not need to provide an explanation. Further, when Wojtach asked a Police Captain why he was bypassed, he indicated that he did not know why, and he thought that his interview went well. He claims that when other employees asked the Captain, he responded that the Chief does not like Sudak, but really hates Wojtach. Wojtach states that the Chief and Mayor are not only best friends, but have several businesses together. Wojtach states that he was told that M.C. was given the summer of 2021 to prove himself in a trial period. He indicates that M.C. has received several major and minor disciplines. Wojtach

claims that M.C. is a marginal employee with minimal job knowledge who is known as a “yes man” and is best friends with the Captain. Therefore, he states that it was shocking when the Mayor announced that M.C. was being promoted to Police Sergeant on September 1, 2021. He highlight the domestic violence incident that Sudak cites above. Wojtach contends that most police personnel think M.C. is a sub-par officer. He indicates that he was advised that due his seniority, he was to be the officer in charge in the Police Sergeant’s absence. Wojtach responded that he did not understand how he could be in charge if his superiors did not think he should be promoted to Police Sergeant. He estimated that he would need to be in charge of about 15 to 20 shifts per year. Wojtach indicated to his superiors that he still wanted to be promoted and his superiors nodded their head indicating that they understood what he was saying. He contends that M.C.’s promotion shows that he is being bypassed for personal reasons and not job performance. Wojtach presents that he has filled in as an act “acting” Sergeant for six years without incident. He understands, by speaking with retired officers, that there had been only one bypass in the past 40 years. Therefore, Wojtach states that past practice meant that promotions were based on test scores and not personality or popularity contests. He believes that since he has been bypassed three times, his bypasses indicate that there is a personal issue with the Chief and his bypasses were not job related. Wojtach submits a letter of recommendation from a Police Sergeant and documentation that show positive comments about his performance.

In response, the appointing authority, represented by Anthony G. LoBrace, Esq., presents that the interview panel consisted of the Mayor, who is also the Director of Public Safety, the Chief, the Township Administrator, and the Captain. It indicates that all the candidates were asked the same open-ended questions to determine their ability to supervise and provide leadership to subordinate officers and their knowledge of laws, regulations, rules, policies, procedures, and local ordinances. The panelists each made assessments and the Mayor also reviewed each candidate’s file before a final determination.

In reference to the promotion of R.M., the appointing authority presents that he has been a Police Officer for 13 years, the first five years were with Sparta. It states that he exemplified exceptional community relations and has built a trusting relationship with the community and his fellow officers. The appointing authority indicates that he received several commendations and he received five outstanding performance evaluations and two positive performance evaluations. He also received several citizen contact appreciations notices, has very minimal use of force reports, and had no prior disciplines. It highlights that he took the initiative to become a field training officer and firearms instructor, participates in the Department’s DARE program, and teaches at the Public Safety Training Academy. The appointing authority states that R.M. is recognized by his peers as having a positive and energetic attitude, which it believes lends itself to leading others and communicating with the public. It presents that he has been in the Department’s Community Services role for eight years with positive feedback from school district staff and the

public. Further, outside of work, R.M. regularly visits the local soccer fields to speak with the Township's youth and has come up with several ways to connect with the younger generation. The appointing authority states that he was well prepared for the interview and he convinced the panel that he a genuine desire to continue to benefit the Township through a supervisory role. It found him to be an excellent individual and police officer, during both work and off-duty hours, and was the most qualified.

Concerning the promotion of B.M., the appointing authority presents that he has been a Police Officer for eight years, including the first three years in the County Sheriff's Office. It states that he has exhibited exceptional communication and community relations skills and has a trusting relationship with his fellow officers. The appointing authority notes that B.M. has received several commendations, excellent performance evaluations, several citizen contact appreciation notices, and no prior discipline. It indicates that he received Baton Instructor and CPR certifications and earned a Bachelor's degree in Communications, which lends itself to his positive rapport with officers and the community. The appointing authority presents that B.M. represents the Department at the Police Academy as an instructor in many different areas and he serves as a Field Training Officer and Resiliency Officer. The appointing authority states that he has demonstrated a proven ability to mentor young police officers. It indicates that B.M. excelled during his interview as he was well prepared and expressed a sincere desire to help the Department reach its goals. Therefore, the appointing authority found that he was best qualified to be promoted to Police Sergeant.

Regarding the promotion of M.C., the appointing authority presents that he has been with the Department for 26 years, including being a Corporal since 2015. It indicates that as a Corporal, he gained invaluable supervisory experience as a Senior Officer, Officer in Charge, and shift supervisor, including successfully leading his squad members on several high-profile cases. The appointing authority states that M.C. received numerous commendations and citizen contact appreciation notices. While it acknowledges that he did receive written reprimands and a suspension in the past, the appointing authority notes that these incidents occurred over 15 years ago and believes that these incidents do not reflect on his current ability to lead others. The appointing authority highlights that M.C. recently served on another Sergeant's squad who gave him positive reviews. Further, after that Sergeant transferred to the Detective Bureau, the Captain kept M.C. in charge of that Sergeant's former squad and he successfully served as the shift supervisor for several months without issues. Based on M.C.'s years of service, it believes that he has the most supervisory experience of any of the candidates. It notes that the Captain and other supervisors supported his promotion, highlighting his excellent communication skills which allows him to interact with the public and deescalate high-stress situations. The appointing authority emphasizes that M.C.'s outstanding interview was the deciding factor as he demonstrated a demeanor that showed an appreciation and genuine excitement for the subject opportunity.

Referencing Sudak, the appointing authority asserts that he provides no evidence to support his claim that the Chief holds animus against him due to his union status. Further, Sudak fails to explain how the Chief's alleged animus towards him impacted the Mayor's ultimate decision. The appointing authority highlights that B.M., who was promoted to Police Sergeant, is the local union's treasurer. It states that the Chief questioned Sudak regarding his union involvement during the interview because Sudak expressed reluctance to follow established departmental procedures which might negatively impact union members, such as an instance where he did not want to engage internal affairs investigation procedures after a citizen filed a complaint with the Department concerning a union member. As such, the Chief's questions regarding Sudak's union membership were solely to determine whether he would faithfully perform the obligations and functions of a superior officer even if doing so could come at the expense of a union member, which was clearly an appropriate consideration. Therefore, despite Sudak's performance on the Civil Service test, the appointing authority found that M.C.'s passion for the job, vision, attitude, demonstrated leadership ability, commitment to professional growth, established rapport with fellow officers, and compatibility with the Chief and the Department's existing command rendered him a preferable candidate.

Concerning Wojtach, the appointing authority asserts that his appeal is untimely as the final promotion that he takes issue with was announced on September 1, 2021, and his appeal is dated February 19, 2022, which is more than five months after he knew of his most recent bypass. Regarding the merits, while Wojtach bases his appeal on alleged personal issues with the Chief, he fails to specify how or why these alleged personal issues arouse between himself and the Chief, he fails to provide any specific instances of such personal issues, and fails to explain how these alleged personal issues impacted the Mayor's determination to promote others over him aside from his bare assertion that the Chief and the Mayor are "best friends." Also, to the extent that these alleged personal issues are true, which the Township denies, it believes this only provides an additional reason to support the bypass as Wojtach's inability to maintain a professional and effective work relationship with the individual to who he would ultimately reports suggests that he would not have made a complimentary addition to the Department's command center. It argues that Wojtach has failed to make a *prima facie* case as he only provides unsupported and conclusory allegations against the appointing authority. The appointing authority reiterates its claims that those promoted were based solely upon legitimate, merit-based considerations related to the promoted officers' performance, character, attitude, allegiance to the Department, and compatibility with the Department's current command. It emphasizes that M.C.'s interview was stellar while Wojtach's interview went so poorly that the appointing authority provided him with an opportunity to better prepare and return for a second interview. However, the appointing authority states that Wojtach's second interview went essentially the same as the first. Further, it asserts that because it gave him a second interview, this cuts against his contention that the appointing authority harbored some personal animus against him. Regarding Wojtach's claim that it is inconsistent that he be

placed in a supervisory role when the Police Sergeant is absent, but not promoted, the appointing authority presents that Wojtach was placed in a supervisory role in the absence of the Police Sergeant, based on his seniority and the collective negotiations agreement and it has no bearing upon his claims. However, it argues that Wojtach's admitted disagreement and discontent with serving as the Officer in Charge when the appointing authority and the Chief needed him clearly speaks volumes to his dedication to the Department and its needs and his inability to subjugate his own personal interest to those needs. The appointing authority also indicates that even if it did not bypass applicants in the past, this does not limit its ability to currently or in the future use the Rule of Three.

In reply<sup>1</sup>, Wojtach asserts that his appeal was timely. Specifically, he submitted his appeal on September 8, 2021, which was well within the 20-day period; however, he was advised that his appeal was premature since the subject certification had not been recorded. Thereafter, he spoke with this agency on November 15, 2021, and was advised to follow-up in February 2022, if he had not received notice that the certification was recorded. Subsequently, since he had not received any notice, he called this agency on February 15, 2022, where he was advised that the subject certification was recorded on December 28, 2021, and he mailed his appeal four days later. Regarding his second bypass, R.M.'s promotion, he chose not to appeal after his legal counsel advised him that although it was his right to appeal, it would be better to not "rock the boat," and see if he would get promoted with the third promotional opportunity. Concerning the appointing authority accusing him of being discontent and unwilling to subjugate his own personal interests for the betterment of the Department, he finds this accusation to be disgraceful and disrespectful. Wojtach states that he has been a substitute supervisor for the past six years and has always changed his own hours for the betterment of the Department. He indicates that he simply questioned the Chief and the Captain on how if they felt he could not be promoted to supervisor that he could be an officer in-charge as needed, regardless of the collective negotiations agreement, and he reiterated that his question had nothing to do with his interest in being promoted, which they agreed. Therefore, Wojtach believes that after 16 years of dedicated service, the appointing authority's attempt to smudge his name demonstrates that the lack of promotion was based on a personal vendetta and not job performance. He indicates that he was advised that not all the candidates were asked the same questions, as some candidates were asked generic questions, which turned into casual conversation on topics such as pets, family, and other matters. Wojtach states that it is false that he was asked to come back for a second interview because his interview was so poor as he was never asked to come back and re-interview for the three positions. He indicates that the candidates were informed that there would be one interview for the three positions. Wojtach presents that the only other time he was asked to interview was for one Police Sergeant position the year before in 2020, where he was then the second ranked candidate on the list and the first ranked candidate was appointed. He states

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<sup>1</sup> Sudak did not submit a reply.

that the 2020 interview was not as pleasant as the 2021 interview. Wojtach indicates that after the 2021 interview, he asked the Captain what his feelings were, and he said that in the prior interview the Chief really went after him. Wojtach responded that it was obvious that the Chief did not like him, and the Captain agreed. However, the Captain indicated that the 2021 interview was “day and night” as Wojtach answered all questions and told the Chief that he really wanted to put the past behind and looked forward to working with him

In further response to Wojtach, the appointing authority presents that he has no first-hand knowledge regarding the other candidates’ interviews and all candidates were asked essentially the same questions, although there were circumstances where it needed to tailor follow-up questions based on responses., which in no way affects that validity of the interviews or promotion procedures. Further, the appointing authority indicates that Wojtach was initially interviewed in September 2020. Based on his interview performance, it recommended that he attend a supervisor training course and then reapply. Wojach completed the course in April 2021 and shortly thereafter was interviewed again. Additionally, while Wojtach believes that his April 2021 interview was “day and night,” the appointing authority still found that he was unable to effectively articulate what he learned through attending supervisory training, what he would bring to the table if he was promoted, and why he was the most qualified candidate for a promotion to Police Sergeant. Most importantly, the appointing authority argues that Wojtach has not provided any basis to find that his bypass was discriminatory, retaliatory, or otherwise based on an unlawful motive.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days either the appellant has notice or should reasonably have know of the decision, situation, or action being appealed.

*N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7 and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive or promotional list provided no veteran heads the list. Additionally, *N.J.A.C.* 4A:2-1.4(c) provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority’s decision to bypass the appellant from an eligible list was improper.

In cases of this nature where dual motives are asserted for an employer’s actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. *See Jamison v. Rockaway Township Board of Education*, 242 *N.J. Super.* 436 (App. Div. 1990). In *Jamison, supra* at 445, the court outlined the burden of proof necessary to establish discriminatory or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a

preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-discriminatory or non-retaliatory reason for the decision. If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the discriminatory or retaliatory motive. In a case such as this, where the adverse action is failure to promote, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

Initially, it is noted that the Civil Service Commission (Commission) finds that Sudak's and Wojtach's appeals of their bypasses in favor of M.C.'s promotion, are timely. The record indicates that although the appointing authority announced on September 1, 2021, M.C. was promoted to Police Sergeant, the subject certification's disposition was not recorded until December 28, 2021. Further, Sudak's appeal was received by this agency in September 2021. Additionally, while Wojtach's appeal was not received until February 2022, he explains that he initially contacted this agency in September 2021 to appeal his bypass, only to be advised that his appeal was premature since the subject certification was not recorded. Also, he indicates that in November 2021, after following-up with this agency, he was advised to follow-up again in February 2022 if he had not received notice that the subject certification was recorded. Subsequently, Wojtach states that he contacted this agency in February 2022, where he first learned that the subjected certification had been recorded on December 28, 2022. Therefore, the Commission finds that Wojtach's appeal in February 2022 was timely based on these circumstances.

Concerning the merits, the Commission finds that Sudak and Wojtach have not established a *prima facie* case as they have not provided one scintilla of evidence, such as a document, statement from a third-party or other evidence, that their bypasses were based on union involvement, personal animus, or any other illegal or invidious motivation. Mere allegations, without evidence, is insufficient for the Commission to conclude that their bypasses were improper or an abuse of the appointing authority's discretion. *See In the Matter of Chirag Patel* (CSC, decided June 7, 2017). Concerning Sudak's allegation that he was bypassed due to his union involvement, the appointing authority presents that another candidate who also had significant union involvement was promoted on the list. Further, it indicates that the Chief questioned Sudak about his union involvement for legitimate business reasons as there was a prior incident where he failed to engage internal affairs investigation procedures when a complaint was filed against a union member. Regarding Wojtach's allegation that he was bypassed due to the Chief's personal animus against him, the appointing authority presents that it was the Mayor and not



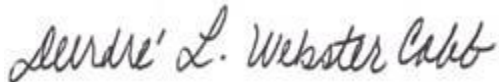
the Chief who made the decision, Wojtach interviewed poorly the first time and was given the opportunity to attend supervisory training and, thereafter, a second chance to interview where he still interviewed poorly, he was assigned supervisory duties when the Police Sergeant was absent based on his seniority and the collective negotiations agreement and not based on its belief that he had sufficient supervisory skills, and his refusal to accept supervisory duties as needed demonstrated his lack of commitment to the Department. Moreover, the appointing authority explained why it believed that M.C. was a superior candidate, and even assuming, *arguendo*, that Sudak and Wojtach are more qualified, under the Rule of Three, it was within the appointing authority's discretion to appoint any reachable candidate as long as such appointment was not based on any discriminatory, illegal, or invidious reasons. Mere disagreements about who is the better candidate is insufficient to support the appeal of one's bypass. Finally, even if it is true that the appointing authority's past practice was to not bypass candidates, there is nothing in Civil Service law or rules which prevents the appointing authority from exercising its discretion under the Rule of Three in the current matter or in the future.

### ORDER

Therefore, it is ordered that these appeals 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 15<sup>TH</sup> DAY OF JUNE 2022




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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission

Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Eric Sudak (2022-1941)  
David Wojtach (2022-2009)  
Debra Millikin  
Anthony G. LoBrace, Esq.  
Division of Agency Services  
Records Center