

In the Matter of Police Sergeant Promotional Examination 2013

CSC Docket Nos. 2013-3160, 2013-3352, 2013-3356, 2013-3346, 2013-3398, 2013-3274, 2013-3404, 2013-3334, 2013-3357, 2013-3374, 2013-3382, 2013-3301, 2013-3351, 2013-3333, 2013-3304, 2013-3350, 2013-3300, 2013-3383, 2013-3305, 2013-3376, 2013-3299, 2013-3348, 2013-3371, 2013-3388, 2013-3332, 2013-3359, and 2013-3306

(Civil Service Commission, decided March 13, 2014)

Labeeb Abdullah, Portia Allen, Mark Armstead, Nicole Ashbey-Sattaur, Barry Baker, Jeffrey Bouie, Kyle Bowman, Lawrence Brown Jr., Darryl Cheeks, Michael Clegg, Debra Cole-Granger, Daren Coley, Racheda Conyers, Edwin Cooper, Timothy Danzey, Bernard Davis, Elliott DeLoach Jr., Gene Etchison, Shukirra Ferguson, Alfredy Fletcher, Richard Flounoy, Arthur Frazier, Rajhan Gordon, Deidre Gully, George Hines, Levi Holmes, II, Bernadette Holmes, Danny Johnson, Tammie King, Tanetta Manderville, Douglas Marshall, Louis Medina, Robert Moore, Tyrone Morton, September Phillips, Stacy Pickett, Anthony Roberts Jr., Janell Robinson, Eric Rollack, Renay Shiggs, Lucinda Simmons, Tyrone Singletary, Ercelle Spellman, Derek Spencer, Russell Thomas, Richard Warren, II, Anthony Williams, Kiva Williams, Wyhidi Wilson, and Kevin Wright (PM5107M), Newark, represented by Levi Holmes, II, President, Newark Bronze Shields; Joseph Careccio (PM5158N), Teaneck; Alexander Castellon (PM0618N), Passaic; David Cavagnaro Jr., (PM5165N), Vineland; Michael Gray (PM5110M), Ocean City; Kenneth Kuzicki (PM5124M), Vernon; and Michael Scarpa (PM5120N), Jersey City; appeal the lack of adequate notice for the promotional examinations for Police Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented.

By way of background, 5000 candidates, from 148 different law enforcement public employers, were scheduled to compete in the promotional examinations for Police Sergeant that were administered on June 1, 2013. The appeals in this matter come from promotional announcements for Police Sergeant issued to seven different jurisdictions. The promotional examinations for Police Sergeant (PM5107M), Newark, Police Sergeant (PM5110M) Ocean City, and Police Sergeant (PM5124M) Vernon were initially announced on September 1, 2010. The promotional examinations for Police Sergeant (PM5120N) Jersey City, Police Sergeant (PM0618N) Passaic, Police Sergeant (PM5158N), Teaneck, and Police Sergeant (PM5165N) Vineland were initially announced on September 1, 2011. A total of 50 candidates for Police Sergeant (PM5107M), Newark and one candidate from each of the remaining announcements appealed the sufficiency of the notice they received scheduling the examination.

In order to address these appeals, it is necessary to provide a brief background as to the situation involving promotional examinations for Police Sergeant developed and administered by this agency. In January 2010, the United

States Department of Justice (DOJ) brought a lawsuit against the State and the Civil Service Commission (Commission) alleging, among other things, that the State's use of a Police Sergeant written examination and certification of candidates in descending rank order resulted in a disparate impact upon African-American and Hispanic candidates. Subsequently, in September 2010, the promotional examinations for Newark, Ocean City, and Vernon were announced with a closing date of November 30, 2010. With respect to the examination date, those promotional announcements specifically indicated:

Note: The Police Sergeant examination is tentatively scheduled to be administered early in 2011. For information regarding the Police Sergeant Orientation Guide, please refer to our website at www.state.nj.us/csc/public_safety/pro-law-enforce_opp.htm. Applicants admitted to the examination will be mailed notice(s) of the date, time and place of the examination at least two weeks prior to the test date.

However, due to the ongoing litigation, the promotional examinations for the 2010 Police Sergeant announcements were not administered in 2011. Since the examinations had not been conducted and additional employees in those jurisdictions would meet the eligibility requirements if the closing date were amended, the Commission amended the closing date for the 2010 Police Sergeant promotional examinations to November 30, 2011. *See In the Matter of Police Sergeant Promotional Lists* (CSC, decided August 17, 2011). Accordingly, on September 1, 2011, amended announcements for Newark, Ocean City, and Vernon along with initial promotional announcements for Jersey City, Passaic, Teaneck, and Vineland were issued with a closing date of November 30, 2011. These announcements indicated:

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On November 22, 2011, a Consent Decree was approved between the DOJ and the State and the parties began working together to develop a new Police Sergeant promotional examination. Accordingly, this agency posted on its website information regarding the DOJ litigation, the Consent Decree, and the delays in the administration of the promotional examinations. Thereafter, in July 2012, information on how to prepare for the promotional examination was posted on the Commission's website. On August 1, 2012, amended announcements for all of the previously announced exams along with initial announcements to new jurisdictions for the 2012 Police Sergeant promotional announcements were issued with a closing

date of September 30, 2012. It is noted that the Commission approved amendments to the 2010 and 2011 Police Sergeant promotional examination announcements to permit individuals who would meet the requirements as of September 30, 2012 file applications for those examinations. *See In the Matter of Police Sergeant Promotional Lists* (CSC, decided September 19, 2012). The second amended announcements indicated:

Note: The Police Sergeant test date has not been set. Please continue to check the Civil Service Commission website at www.state.nj.us/csc for updated information concerning test dates and other information concerning the testing process. Applicants admitted to the examination will be mailed notice(s) of the date, time and place of the examination at least two weeks prior to the test date.

In February 2013, the 2013 Police Sergeant Orientation Guide (Orientation Guide) was posted on the Commission's website and listed May/June 2013 as the tentative test administration date. In a presentation to delegates at the New Jersey State Policemen's Benevolent Association (PBA) convention in Atlantic City on March 7, 2013, the Director of Selection Services announced, for the first time, June 1, 2013 as the tentative test administration date. Thereafter, on March 8, 2013, the June 1, 2013 tentative test administration date was posted on the Commission's website.

Notices to Appear for the various Police Sergeant promotional examinations on June 1, 2013 were scheduled to be mailed to the over 5,000 candidates' home addresses on May 9, 2013.¹ On May 13, 2013, the Orientation Guide on the Commission's website was updated and directed candidates to check the Commission's website for information to help them better understand the testing process and the type of questions that the candidates would encounter on the new Police Sergeant exam. On May 14, 2013, the June 1, 2013 test administration date was posted on the Commission's website. However, this agency began receiving telephone inquiries from candidates, stating that they had not received their written notices. Therefore, on May 21, 2013, Selection Services followed up with the HUB Data Center (HUB), the printing service provider for the State that is part of the Office of Information Technology (OIT) tasked with issuing the notifications, and learned that HUB did not have a record of completing the work of mailing the roughly 5,000 test notices. Upon learning this information, a second set of notices were mailed to the individual candidates at their home addresses on May 22, 2013. Additionally, on May 23, 2013, this agency updated its website and provided

¹ Due to the need for DOJ approval of the new Police Sergeant examination, as well as other factors such as securing multiple testing facilities across the State, scheduling 150 staff members to administer the test, and securing and preparing video equipment to administer the video portion of the examination at the various sites, it was not possible to set a definitive test date until early May 2013.

candidates for the Police Sergeant promotional examinations with the ability to look up their specific test time and location on the Commission's website. Further, on May 23, 2013, this agency e-mailed Police Chiefs and appointing authorities information concerning the test date and informing them that candidates could look up their scheduled test location and time on the Commission's website.²

In its appeal dated May 24, 2013, the Newark Bronze Shields state that its members did not receive two to three weeks written notice for the "upcoming Police Sergeant [p]romotinal [e]xamination scheduled for June 1, 2013." It asserts that without proper notice, its members are not in a position to succeed. Further, it submits affidavits from each of the appellants stating that he or she did not receive the 2-3 weeks written notice to take the examination and requesting an alternate date to sit for the examination with the 2-3 weeks written notice. The Newark Bronze Shields argue that in light of historical pre-existing issues affecting African-American and Hispanic Police Officers³ involving promotional examination and scoring, the lack of adequate written notice for the current Police Sergeant promotional examination was inexcusable, unexplainable, and unacceptable. Therefore, the Newark Bronze Shields request a new test day for the Police Sergeant promotional exam to give its members "2-3 week written notice, as provided by the [Commission's] past practices, policies, and procedures."

On the June 1, 2013 test administration date, several candidates submitted appeals at their respective test sites stating that they did not receive adequate written notice along with other administration issues that they are appealing.⁴ Specifically, Messrs. Careccio, Castellon, Cavagnaro, Coley, Gray, Kuzicki, Medina, Scarpa and Ms. Robinson all argue that they received their notifications between four and eight days prior to the June 1, 2013 scheduled exam. Also, Mr. Careccio states that that he did not receive any written notice of the study material. Mr. Coley states that he had no way of obtaining the study material due to the late notification. Mr. Spellman states that he was not notified of the exam or the study materials. Ms. Robinson asserts that she was adversely impacted by not receiving two to three weeks notification as stated in the Orientation Guide. Mr. Cavagnaro states that that his department was unable to allow officers to receive time off to enable sufficient sleep prior to the examination. Further, he claims that officers in his department received an unfair advantage compared to him in taking the exam.

² After May 23, 2013, the Commission only received a handful of telephone calls from candidates regarding notification.

³ On May 31, 2013, the National Coalition of Latino Officers filed a petition for preliminary injunction of the Police Sergeant promotional examination in the Superior Court of New Jersey – Appellate Division. As part of the complaint, the certification of Levi A. Holmes, II, President of the Newark Bronze Shields, and 31 affidavits from its members stating that they did not receive "the 2-3 weeks written examination notice to take the exam" were submitted. The petition for interim relief was denied by the court on May 31, 2013.

⁴ The candidates' other issues regarding the test administration are being addressed in a separate decision.

After the test administration date, several members of the Newark Bronze Shields filed separate appeals and signed affidavits in order to appeal the 2013 Police Sergeant promotional examination due to a lack of proper notification. In summary, the affidavits state that prior to the test administration date, the Newark Bronze Shields sent a letter and accompanying affidavits requesting that members of the organization receive a new test date since they were not given two to three weeks written notice as provided by past practices, policies, and procedures. However, the organization never received a response to the request and therefore its members were required to sit for the examination without adequate notification. Although its members understood that tentative dates for the subject examinations were posted on the Commission's website, including the June 1, 2013 date, due to prior postponements and rescheduling of this exam, its members were awaiting the receipt of the two to three weeks written notification to confirm the actual test date. The Newark Bronze Shields' members assert that if they had received two to three weeks written notice with a definitive test date, they would have been better situated to take the promotional examinations. Therefore, its members are appealing the 2013 Police Sergeant promotional examinations and request a make-up exam after receiving proper and adequate notification of the definitive test administration date.

CONCLUSION

N.J.A.C. 4A:4-2.8(b) provides that candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

N.J.A.C. 4A:4-2.9(c) provides, in pertinent part, that make-ups for police examinations for promotional examinations may be authorized only in cases of:

1. Death in the candidate's immediate family;
2. Error by the Commission or the appointing authority; or
3. A catastrophic health condition or injury.

N.J.A.C. 4A:4-6.3(b) provides, in pertinent part, that the appellant shall have the burden of proof on an examination administration appeal.

In the present matter, the appellants are not entitled to a new examination as they were notified of the test date in an appropriate manner. Essentially, the appellants argue that they should receive a new test date because they did not receive two to three weeks written notice as indicated on the promotional announcements and based on past practices. The Commission disagrees. Initially,

the Notices to Appear for the subject examinations were scheduled to be mailed to each of the candidates on May 9, 2013, more than three weeks prior to the June 1, 2013 scheduled examination. However, *N.J.A.C. 4A:4-2.8(b)* does not mandate that a candidate receive two to three weeks written notice for an examination. The only requirement is that candidates be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancelations. The record clearly evidences that Selection Services complied with this rule and ensured that all of the appellants were notified of the time and place of the examination.

Nevertheless, staff of this agency had no reason to believe that the Notices to Appear were not sent out on May 9, 2013 until it began receiving inquiries from some candidates stating that they had not received a notice. In response to these inquiries, Selection Services promptly investigated these concerns and discovered that the agency tasked with printing and mailing the notifications did not have a record of completing the work. Upon learning this information, a second set of notices were immediately mailed to the individual candidates at their home addresses on May 22, 2013. This was followed up by contacting Police Chiefs and appointing authorities, advising them of the examination date and of the enhancement to the Commission's website so candidates could look up their scheduled test location and time. Moreover, in March 2013, Selection Services informed delegates to the PBA convention that the tentative test date was June 1, 2013 and updated the agency website at that time to reflect the same. Further, at least eight days prior to the June 1, 2013 test administration date, the Newark Bronze Shields, as demonstrated by its May 24, 2013 letter to the Commission, had the ability to notify its members of the test administration date. Therefore, it is clear that Selection Services took appropriate steps to ensure that all candidates were promptly notified of the date of the examination.

Several of the appellants concede that they understood that the tentative date for the subject examination was June 1, 2013, but due to prior postponements and rescheduling, they were awaiting the receipt of the two to three weeks written notification to confirm the actual test date. However, none of these appellants state that they did not receive a notice to appear prior to the examination. Rather, these appellants, who all appealed after taking the test, argue that they would have been better situated to take the examination if they had received two to three weeks written notification. Indeed, the original promotional announcements issued on September 1, 2010 noted that the examination was tentatively scheduled to be administered in early 2011, the first amended announcement indicated that the examination was tentatively scheduled to be administered in January 2012, and the second amended announcements indicated that no test date had been set, but notices would be mailed scheduling candidates for the test at least two weeks prior to the actual test date. However, the tentative test dates are provided as a courtesy to candidates so that they may set dates aside as times where they do not schedule a vacation or other activities and are not meant to provide sufficient notice for a

candidate to prepare for a test. *See In the Matter of Craig Matthews* (MSB, decided March 9, 2005),

In this case, these appellants, like all of the appellants in this appeal, applied for the subject examinations from as early as September 2010 up to September 2012. Thus, each one of the candidates expected to take the examination and could have started studying when he or she applied for the test. Therefore, the argument that any candidate did not have a sufficient opportunity to study and was disadvantaged is misplaced. *See In the Matter of Kevin Milley* (MSB, decided June 11, 2003) and *In the Matter of Joseph Shastay* (MSB, decided August 14, 2001). Moreover, as noted above, *N.J.A.C. 4A:4-2.8(b)* does not mandate that candidates be provided written notice in a specific timeframe prior to the administration of an examination. The only requirement is that candidates be notified in an appropriate manner of the time and place of the examination. This is clearly what occurred in this situation.

With respect to the appellants' concerns about test preparation, in February 2013, the Orientation Guide was posted on the website which advised candidates that the tentative test administration date for the promotional examinations was May/June 2013. The Orientation Guide also provided information to help a candidate prepare for the exam. For example, the Orientation Guide advised candidates to go to a link on the Commission's website to review the General Multiple-Choice Exam Orientation Guide. Additionally, the Orientation Guide suggested that candidates may find it helpful to review potential sources of material that included the Constitution of the United States and Amendments, Past and Current United States and New Jersey Court Decisions (Case Law), New Jersey Criminal Code 2C, Motor Vehicle and Traffic Laws Title 39, and New Jersey Attorney General Guidelines/Directives. Further, the Orientation Guide specifically advised candidates that the text Common Sense Police Supervision: Practical Tips for the First-Line Leader – 4th Edition by Gerald W. Garner would be used to develop questions related to Police Supervision and/or Police Management. Also, the Orientation Guide, a 37 page document, suggested that the candidates should review the document itself to prepare for the promotional examinations and that the candidates should check the Commission's website for updates regarding the promotional examinations.

In other words, at the latest, each candidate was notified by August 1, 2012 via promotional announcement that the primary source of information regarding the promotional examinations was the Commission's website, that a test date was not yet set as of the date of each promotional announcement, and that information concerning the test date and other information would be updated on the Commission's website. Further, by August 1, 2012, based on the information posted on the Commission's website in July 2012, each candidate should have known that a significant amount of study was needed to prepare for the promotional

examinations. Further, through the Orientation Guide posted on the Commission's website in February 2013, a candidate was put on notice that he/she needed to be prepared for the promotional examination to be administered as early as May 1, 2013. Additionally, as early as March 8, 2013, through communication at the PBA's convention and the Commission's website, the candidates were put on notice that they needed to prepare for a tentative June 1, 2013 test administration date. Additionally, as early as May 14, 2013, which is over two weeks prior to the test administration date, the Commission's website was updated to reflect the June 1, 2013 test date. Finally, approximately eight days prior to the exam, based on the May 22, 2013 mailing to individual home addresses, emails to Police Chiefs and appointing authorities on May 23, 2013 regarding specific candidate information that was available on the Commission website, and the Newark Bronze Shields' letter dated May 24, 2013, reasonable steps were taken to make all the candidates aware of the June 1, 2013 test date. Therefore, the Commission's notification to the candidates regarding the test administration date was done in an appropriate manner under the circumstances.

The Commission notes that the issue of written notice appears to have impacted all candidates for the promotional examinations and not just the Newark Bronze Shields' members. In this regard, candidates from Newark and other jurisdictions who have not identified themselves as being associated with the Newark Bronze Shields or other organization also filed appeals arguing that they did not receive two to three weeks written notice.

Additionally, there is no basis on which to grant the appellants a make-up. The lack of two to three weeks written notice is not a sufficient basis on which to grant a make-up under stringent standards of *N.J.A.C. 4A:4 2.9(c)2*, particularly given the immediate steps taken by this agency to ensure all of the candidates were advised of the test date and locations. Moreover, a make-up is not possible since all but one of the appellants took the examination and have been exposed to the test materials.

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.