



STATE OF NEW JERSEY

In the Matter of Michael Davis,
Police Sergeant (PM4658C), Union
Beach

CSC Docket No. 2024-480

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

List Bypass

ISSUED: November 22, 2023 (SLK)

Michael Davis, represented by Stephen B. Hunter, Esq., appeals the bypass of his name on the Police Sergeant (PM4658C), Union Beach eligible list.

By way of background, the appellant appeared on the PM4658C eligible list, which promulgated on November 24, 2022, and expires on November 23, 2025. The appellant's name was certified on May 19, 2023 (PL230903) for a position in the subject title. A total of four names were certified. The appellant, who was the first positioned candidate, and the second positioned candidate, were bypassed, the third positioned candidate was appointed, and the fourth positioned candidate was removed.

On appeal, the appellant presents that although he was the first ranked candidate by 10 points based on his score on the Civil Service examination, he was bypassed. He asserts that the third positioned candidate was appointed due to political considerations. The appellant claims that the Chief of Police (Chief) recommended that he be promoted, and his promotion was strongly supported by other administrative/supervisory personnel within the Police Department. He indicates that he is a highly decorated Officer, who does not have any disciplinary history, and he is former union president.

In response, the appointing authority, represented by Bernard M. Reilly, Esq., asserts that the appellant has made an unsupported allegation that he was bypassed due to "political consideration." It also indicates that the appellant incorrectly states

that the Chief recommended that he be promoted, when no such recommendation was made. The appointing authority provides that its promotional process involved resumes, written submissions by the candidates in response to specific inquiries, and interviews by the Public Safety Committee (Committee). Further, this led to the Committee rating the candidates and then recommending the third positioned candidate for appointment which eventually led to this candidate's appointment. It states that there was a consensus that the third positioned candidate was the best candidate based on his superior experience in County Narcotics and Dive Team Task Force, his service as a detective, his continuing education, and his superior responses and ratings in his written submission and interview. The appointing authority emphasizes that it is not stating that the two bypassed candidates were not qualified, but only that it felt that the appointed candidate best met its needs. It presents case law to support its assertion that its decision complies with the Rule of Three and past Civil Service Commission (Commission) decisions.

In reply, the appellant certifies that the appointing authority's process did not follow its past practice. He presents prior promotions where candidates were typically promoted based on their Civil Service rank, with and without interviews. Further, the appellant asserts that in 2023, the Mayor stated that in the future, candidates would be chosen based on their Civil Service rank, with no interviews conducted, to avoid any future controversies based on subjective assessments. He emphasizes his higher Civil Service examination score which was approximately nine points higher than the second ranked candidate and 10 points higher than the appointed candidate.

The appellant asserts that the candidates were advised in advance that their interviews would be 20 minutes. Then, at the interview, he indicates that he was told that he would have five minutes to tell the Committee anything he wanted to say, and then it would ask him questions. While he assumed that he would be asked the same questions as the other candidates, he explains that after speaking with the other candidates, he learned that he was asked different questions and was the only candidate who was subjected to the arbitrary five-minute time constraints. The appellant provides that the beginning and end of each interview was time stamped and the appointed candidate was given one hour and 20 minutes to complete his interview. He states that he was only asked follow-up questions to two of the 13 questions that he submitted to the inquiries in advance of the interview.

The appellant believes that he received the highest Civil Service test score for anyone applying for Sergeant since he was first employed by the Police Department. The appellant highlights his preparation and the knowledge required to receive such a high score. He also indicates that he has more seniority than the other candidates, but this was not considered in his promotion score by the Committee. He notes his 11 years of law enforcement experience, which includes three years as a Correctional Police Officer and eight years with the Police Department. The appellant believes that the Committee's "weighting methodology" was arbitrary where the candidates'

interviews lengths greatly varied, and their written inquiries accounted for 85 percent of the promotional score. He argues that the appointing authority's failure to advise the candidates in advance on how the promotional scores would be calculated should void the promotional process that was used in this matter. He contends that he has superior experience compared to the appointed candidate, and he presents his achievements and honors with the police department.

The appellant further asserts that he was bypassed for improper reasons. He states that one of the Committee members had a conflict of interest since her husband was arrested by his father in the 1990s, who retired as a Union Beach Police Officer in 2013. Additionally, he states that the appointed candidate's father is a former Undersheriff with the Monmouth County Sheriff's Department who has social relationships with Union Beach politicians. The appellant indicates that he was a union president for five years who actively engaged in tough contract negotiations. He provides that he has two active Workers' Compensation cases against Union Beach and his father still has an active Workers' Compensation case against Union Beach. The appellant presents that was placed as a Shift Commander when he returned from a year-long injury in June 2023, and he spent thousands of hours as the Officer in Charge on his assigned shifts. He claims that despite the appointing authority's assertion that the Chief did not recommend him for the Sergeant position, he has been advised on many occasions that the Chief did recommend him for the promotion and on July 22, 2023, the Chief told his wife and him that he recommended him for the promotion.

Concerning the promotional scoring, the appellant reiterates that the candidates were not apprised of the scoring methodology in advance of the process. He states that 85 percent of the scoring was based on the written inquiries to the questions submitted in advance of the interview, with the remaining 15 percent split between the interviews and the Civil Service test scores. The appellant states the written inquiries involved questions that could be ascertained from a review of his employment record or were generic questions. He also emphasizes that the candidates' seniority was not factored in the promotional scores.

The appellant argues that the appointing authority's process ignored "merit and fitness principles" as required by law. He believes that the Civil Service written test represents the cornerstone of "constitutional merit and fitness standards," while the Committee's process treated the Civil Service test as an afterthought. The appellant states that regarding the promotional scores, he received a "10" for his Civil Service test score while the appointed candidate received an "8;" yet there was no explanation on how the written inquiries or interviews were scored. Therefore, he asserts that the promotional scores were arbitrary. He contends that since he had the highest Civil Service test score and the highest seniority, he was the only candidate who deserved promotion to Sergeant.

In response, the appointing authority argues that the appellant's position that the candidate who has the highest Civil Service test score should be automatically promoted is unfounded. It presents that under the Rule of Three, the appointing authority had broad discretion to choose any of the top three candidates as long as the selection was based on a legitimate business reason. The appointing authority notes that there is no prescribed process under the law on how an appointing authority makes its selection and there is no requirement that an appointing authority disclose its methodology in advance to the candidates. It provides that its process in this matter, which involved reviewing resumes, soliciting responses to written questions in advance of interviews, and interviews, which were unscripted and intended to be a follow-up to the written responses, was a legitimate process. The appointing authority states that the interviews could not logically be the same for each candidate because each candidate had different resumes, history, responses to the written questions, and different initiatives presented. It notes that there was no requirement that it even conduct interviews.

Referring to the appellant's claim that "there were discriminatory motives," the appointing authority asserts that these claims are vague and nonsensical. It indicates that the appellant claimed that his father arrested the spouse of a Committee member in the 1990s. However, the appointing authority states that he provides no documentation to support this claim, and even if true, there is nothing to support that this played any role in its decision. It presents that the appellant claimed the appointed candidate received favoritism because the appointed candidate's father was a former Undersheriff in the Monmouth County Sheriff Department who has social connections with Union Beach politicians and the appointed candidate's father donated a used vehicle to the Police Department. However, the appointing authority states that the donated vehicle in question was from Monmouth County to the police department, and the donation did not involve the appointed candidate's father. Further, there is nothing to support that the appointed candidate's father being a former Undersheriff had any role in the present appointment. Therefore, it argues that these claims of discriminatory motive are frivolous.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-6, 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 list, provided that disabled veterans and then veterans shall be appointed in their order of ranking.

As set forth above, the Rule of Three allows an appointing authority to use discretion in making appointments. See *N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:4-4.8(a)3i. As long as that discretion is utilized properly, an appointing authority's decision will not be overturned. Compare, *In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984) (Hearing granted for individual who alleged that bypass was due to anti-union

animus); *Kiss v. Department of Community Affairs*, 171 N.J. Super. 193 (App. Div. 1979) (Individual who alleged that bypass was due to sex discrimination afforded a hearing).

In this matter, the record indicates that the appointing authority's appointment complied with the Rule of Three as it presented legitimate business reasons for its selection. Specifically, the appointing authority provides that the appointed candidate had superior experience for its needs based on that candidate's County Narcotics and Dive Team Task Force experience, experience as a detective, and his continuing education. Further, the appointing authority indicated that the appointed candidate's responses to its written inquiries and interview were scored higher than the other candidates. Moreover, even assuming, *arguendo*, that the appellant had greater experience or was otherwise more qualified, as long as the selection was based on a legitimate business reason, the appellant's bypass does not violate Civil Service law and rules.

Concerning the appellant's belief that he should be appointed because he scored higher on the Civil Service written examination and he has greater seniority, under the Rule of Three, there is no requirement that an appointing authority consider a candidate's Civil Service score on the written test and/or their seniority. In fact, such a mandate would render the Rule of Three meaningless. Instead, under the Rule of Three, an appointing authority has discretion as to its selection method. In this case, the appointing authority's methodology of having the candidates submit resumes, written responses to inquiries, and interview was a valid selection method. Further, there is no requirement that an appointing authority advise the candidates of its selection methodology in advance. Additionally, if an appointing authority chooses to interview candidates, there is no requirement under Civil Service law or rules that each candidate receive the same interview questions, the interviews be the same length and/or the interview questions be scripted in advance. Moreover, the appointing authority explains that the interviews varied based on each candidate's background, written inquiry submissions, and interview responses.

Regarding the appellant's claim that the Chief recommended him for promotion, the appointing authority denies that the Chief ever made such a recommendation, and the appellant has not provided any evidence to support this claim, such as a written statement from the Chief. Regardless, even if the Chief had recommended that the appellant be appointed as Sergeant, a Chief's recommendation is not determinative as the Chief is not the appointing authority. *See In the Matter of Craig G. Howlett and Lori A. Soares* (CSC, decided December 19, 2018). Referring to the appellant's assertion that the appointing authority did not follow past practice in its selection process, there is no requirement under Civil Service law and rules that an appointing authority follow past practice in its selection process. *See In the Matter of Chad Hutchinson* (CSC, decided July 20, 2022).


Finally, the appellant has not established a *prima facie* case that he was bypassed for political or discriminatory motives due to his father's allegedly arresting a spouse of a Committee member in the 1990s, his and his father's Workers' Compensation claims against the appointing authority, his former union presidency, and the appointed candidate's father being a former Undersheriff for the Monmouth County Sheriff Department and allegedly having social relationships with Union Beach politicians. Other than mere allegations, he did not present any substantive evidence regarding the bypass that would lead the Commission to conclude that the bypass was improper or an abuse of the appointing authority's discretion. *See In the Matter of Chirag Patel* (CSC, decided June 7, 2017).

ORDER

Therefore, it is ordered that this appeal 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 22ND DAY OF NOVEMBER, 2023



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Michael Davis
Stephen B. Hunter, Esq.
Robert M. Howard Jr.
Bernard M. Reilly, Esq.
Division of Human Resources Information Services
Records Center