



STATE OF NEW JERSEY

In the Matter of Ann Dodd, Sussex
County

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

CSC Docket No. 2023-2571

Administrative Appeal

ISSUED: November 22, 2023 (HS)

Ann Dodd, represented by Nicholas P. Milewski, Esq., challenges the appointment of Amy Rochette to the title of Chief Clerk.

As background, Sussex County (County) appointed Susan Squire to the title of Chief Clerk provisionally, pending promotional examination procedures, effective February 1, 2022. As a result of Squire's appointment, a promotional examination announcement for Chief Clerk (PC4395D), Sussex County, was issued on July 1, 2022 with a closing date of July 22, 2022. Squire separated from service with the County due to retirement on July 29, 2022, and this separation was entered into the County and Municipal Personnel System (CAMPS) that same date. The appellant took and passed the Chief Clerk examination, which was administered as a written test on January 19, 2023. The resulting eligible list, consisting of the names of three non-veteran eligibles with the appellant ranked third, promulgated on February 16, 2023 and expires on February 15, 2026.

As further background, Amy Rochette took and passed the open competitive examination for Advocate, Victim-Witness Program (C0430B), Sussex County, and her name appeared on the resulting eligible list. Rochette's name was certified to the County, and she received a permanent appointment to the title of Advocate, Victim-Witness Program (class code 23),¹ effective June 9, 2021. Subsequently, Rochette undertook a voluntary demotion. Specifically, on August 1, 2022, Rochette received

¹ Per the job specification, Advocate, Victim-Witness Program requires a Bachelor's degree.

a provisional appointment, pending qualifying examination procedures and satisfactory completion of the working test period, to the title of Chief Clerk (class code 20),² given that Chief Clerk is not considered a lower related title to Advocate, Victim-Witness Program. See *N.J.A.C.* 4A:4-7.8(c) and *N.J.A.C.* 4A:8-2.1(b). On October 31, 2022, Rochette passed the qualifying examination and her appointment to Chief Clerk was converted to a regular appointment. Rochette's appointment became permanent upon passing her working test period.

On appeal to the Civil Service Commission (Commission), the appellant argues that Rochette's appointment to Chief Clerk³ must be reversed as it was inconsistent with merit and fitness principles. Specifically, she maintains that since this agency deemed it appropriate to conduct a competitive examination (PC4395D), the County's discretion to appoint was limited to the candidates on the promotional eligible list, and, notwithstanding her qualifying examination, Rochette was not, "upon information and belief," qualified for the Chief Clerk title as of the date of her provisional appointment. She argues that *Chambers v. Civil Serv. Comm'n of N.J.*, 129 *N.J.L.* 191 (1942), a decision of the Court of Errors and Appeals of New Jersey (Court), is on point and compels her requested relief. The appellant proffers that the eligibles on the PC4395D eligible list accrued a right to have an appointment made from that list and that Rochette's appointment violated the Civil Service "Rule of Three." The appellant also contends that the voluntary demotion regulation does not address whether a voluntary demotion can be made when a competitive list is in effect.

CONCLUSION

A voluntary demotion is, in pertinent part, the voluntary movement of a permanent employee from her permanent title to a lower title in local service. *N.J.A.C.* 4A:4-7.8(a)1. Permanent status and seniority shall be retained when the demotion is to a lower related title, based on the criteria on determining related titles per *N.J.A.C.* 4A:8-2.1(b). *N.J.A.C.* 4A:4-7.8(b). If the criteria set forth in *N.J.A.C.* 4A:4-7.8(b) are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to her permanent title, unless disqualified for further employment. *N.J.A.C.* 4A:4-7.8(c).

"Promotion" means, in local service, an advancement in title. *N.J.A.C.* 4A:1-1.3. To determine such advancement, each title is assigned a class code. "Class code," in turn, means, in pertinent part, a designation assigned to job titles in local service

² Per the job specification, Chief Clerk has no educational requirement and requires five years of supervisory experience in clerical work.

³ At various points, the appellant refers to the appointment as a "promotion."

with ranking based upon an evaluation of job content. *Id.* To be considered a promotion, a title must have a higher class code than the former title.

In this matter, the appellant contests Rochette's appointment to the title of Chief Clerk as being an improper "promotion." However, contrary to such characterization, movement from Advocate Victim-Witness Program, Rochette's prior permanent title, to Chief Clerk is in fact a *demotion*. In this regard, the former title requires a Bachelor's degree and is designated class code 23, while the latter has no educational requirement and is designated class code 20. Thus, because Advocate Victim-Witness Program has a higher class code and educational requirement than that of Chief Clerk, the movement is *not* a promotion but is rather a demotion that could be accomplished using the voluntary demotion regulation, which provides for appointment pending examination and passing a working test period where, as here, the titles are not related. See *N.J.A.C.* 4A:4-7.8(b) and *N.J.A.C.* 4A:8-2.1(b). The regulation does not require that the examination administered be competitive. Also, it does not prohibit the effectuation of a voluntary demotion even though this agency may be in the process of conducting an examination for the title or even though an eligible list for the title exists. Further, the appellant's assertion that Rochette was not, "upon information and belief," qualified for the Chief Clerk title as of the date of her provisional appointment is speculative. A review of pertinent agency records in fact confirms that the Division of Agency Services appropriately determined that Rochette met the requirements for the Chief Clerk title as of the date of her provisional appointment and that she passed her qualifying examination.

The appellant argues that *Chambers, supra*, compels relief. The pertinent facts in that case are as follows. An open competitive examination for Assistant Clerk was held. Gilbert Chambers ranked first on the resulting eligible list as a disabled veteran of World War I, while Frank Pietrucha was ranked 41. The eligible list was announced on May 21, 1941. The following day, the Judge of the Second District Court of the City of Newark (Judge) advised this agency of his intention to promote Pietrucha from his position as Clerk of the Small Claims Division and Assistant to the Clerk to the Assistant Clerk position. This agency approved the promotion without further examination on the ground that Pietrucha was the only male employee in the Second District Court eligible for promotion. The Court reversed. Initially, the Court noted that under Civil Service law, "[a]ppointments to and promotions in the civil service of the state shall be made only according to merit and fitness, to be ascertained, as far as practicable, by examinations, competitive, if practicable." *Chambers*, 129 *N.J.L.* at 192. The law also provided that a vacancy in the higher classes of positions shall be filled, as far as it is consistent with the best interests of the State, by promotion following competitive tests open to those who have served a minimum time established by regulation in the lower class or classes of positions as may be designated. The Court stated that this agency's determination to hold an open competitive examination constituted a finding that, in the particular circumstances, the promotion of the occupant of the single position in the next lower

rank would not serve the public interest. The Court observed that Pietrucha's promotion was not deemed to be in the public interest until the day after the results of the competitive examination became known. The Judge conceived it to be his province "to resort to the list . . . or to that [statute] which recognizes the advantage of promotion of an experienced person from one bracket to another." *Chambers*, 129 *N.J.L.* at 193. Thus, the Court stated, the Judge made experience in the work the conclusive test and usurped a function lodged in this agency. The Court held:

The legislative concept was that once it is determined by [this agency] that the filling of a vacancy by a promotion would not be consistent with the best interests of the public, and a competitive test is held and the result ascertained and proclaimed, the register of eligibles may not then be disregarded in favor of a promotion from the next lower grade. This would seem to be indispensable to the integrity of the system.

Id.

Chambers is distinguishable and does not control the instant matter. Rochette, unlike Pietrucha, was *demoted*, not promoted, at a time when the eligible list had yet to promulgate.⁴ The Commission also rejects any notion that Rochette's appointment was not in accord with merit and fitness principles or that it raised integrity concerns. In this regard, it should not be ignored that Rochette had already participated in a competitive examination process prior to being permanently appointed to the title of Advocate Victim-Witness Program, a higher level title as compared to Chief Clerk. Rochette then passed both her qualifying examination and working test period for the latter title. The Commission would also observe that the voluntary demotion regulation, *N.J.A.C.* 4A:4-7.8, serves the public policy of the State to provide public officials with appropriate appointment, supervisory, and personnel authority to execute properly their constitutional and statutory responsibilities and furthers the implementation of a comprehensive personnel management system. See *N.J.S.A.* 11A:1-2b and *N.J.S.A.* 11A:2-6d.

In addition, the appellant contends that the eligibles on the PC4395D eligible list have accrued a right to have an appointment made from that list. It is acknowledged that in the normal course, once the examination process has been initiated due to the appointment of a provisional or an appointing authority's request for a list to fill a vacancy, the affected appointing authority shall be required to make appointments from the list if there is a complete certification. See *N.J.S.A.* 11A:4-5. However, when an appointing authority has notified this agency, either by the date

⁴ The Commission notes that the eligible list had yet to promulgate only because it is a fact that distinguishes this matter from the circumstances of *Chambers*. The Commission is not suggesting that the result of this matter would be different had the eligible list in fact already promulgated. As noted earlier, the voluntary demotion regulation does not prohibit the effectuation of a voluntary demotion even though an eligible list for the title exists.

of the examination or within 30 days after the initial date of the examination announcement, whichever date is earlier, that it has vacated the position and terminated the provisional appointee, this agency may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action. *See N.J.A.C. 4A:10-2.2(a)1*. Here, it was Squire’s provisional appointment to Chief Clerk, pending promotional examination procedures, that triggered the promotional examination announcement for Chief Clerk (PC4395D) issued on July 1, 2022. Squire then separated from service with the County due to retirement on July 29, 2022, and this separation was entered into CAMPS that same date. By entering this transaction into CAMPS on July 29, 2022, the County, in effect, notified this agency within 30 days after the initial July 1, 2022 date of the examination announcement that the position was vacated with the provisional appointee’s separation from service with the County. Agency records indicate that there is no one serving provisionally in the title of Chief Clerk with the County. Therefore, given the foregoing circumstances, it is appropriate that the County be permitted, without the assessment of selection costs, not to make appointments from the PC4395D eligible list.⁵ The eligibles on the list, for their part, do not possess a vested property interest in the position. *See Nunan v. Dep’t of Pers.*, 244 *N.J. Super.* 494, 497 (App. Div. 1990) (“[A] person who successfully passes an examination and is placed on an eligible list does not thereby gain a vested right to appointment”) (quoting *In re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984)).

Further, the appellant suggests that Rochette’s appointment to Chief Clerk violated the “Rule of Three.” Such reliance on the “Rule of Three” is misplaced. The “Rule of Three” applies when a certification issues from an eligible list. *See N.J.A.C. 4A:4-4.8(a)3* (upon receipt of certification, appointing authority shall appoint one of the top three interested eligibles from promotional list). However, as already discussed above, Rochette’s appointment to Chief Clerk was effected using voluntary demotion procedures where the “Rule of Three” has no application, and the Commission is permitting the County not to make appointments from the PC4395D eligible list. Even assuming that a certification were to issue at some point during the life of the list, the “Rule of Three” would only apply to the eligibles *on that certification*. In other words, the County would have discretion to select any of the top three interested eligibles on the certification. Application of the “Rule of Three” at that time would have no bearing on Rochette’s appointment to Chief Clerk.

ORDER


Therefore, it is ordered that this appeal be denied.

⁵ This is unlike a situation where the time period set forth in *N.J.A.C. 4A:10-2.2(a)1* has passed. In that scenario, *N.J.A.C. 4A:10-2.2(a)2* would govern and the County would have had to petition the Commission for permission not to make appointments. The Commission could grant such petition but could also assess selection costs.

It is further ordered that Sussex County be permitted not to make appointments from the Chief Clerk (PC4395D) eligible list and that no selection costs be assessed.

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



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