



implemented in that jurisdiction. In response, the appointing authority explained that as a result of its severe fiscal constraints, it implemented layoffs in order to reduce operating costs. As a result of the financial situation it is experiencing, the appointing authority contends that it cannot make an appointment from the subject certification. The appointing authority now requests a waiver of the February 21, 2013 certification and a waiver of any fines that may be assessed as a result of this request.

It is noted that Claudia Perez is currently serving provisionally pending promotional examination procedures (PAP) in the subject title. However, it is not necessary to remove her from the provisional position in the face of an open competitive list in the instant matter. Additionally, Cheatham was returned to her former permanent title and no employees are serving provisionally, pending open competitive examination procedures in the subject title.

### CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated due to Atlantic City's need to fill the vacancy in the subject title. However, after a complete certification was issued, the appointing authority requested cancellation of the certification due to the candidates not meeting the criteria for appointment. The appointing authority also states that, as a result of its severe financial constraints, it is unable to make an appointment from the certification. Consequently, there is sufficient justification to grant an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While two of the primary activities of this agency include administering the examination process and providing the names of eligible candidates to the jurisdictions under the Civil Service system, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists and candidates have needlessly expended their effort and money to take the examination with hopes of being considered for a permanent appointment. Moreover, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Furthermore, reimbursement of selection costs pursuant to *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 does not place an undue burden on the appointing authority

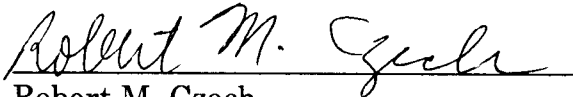
or prohibit it from looking towards other cost saving measures. Therefore, the appointing authority should be charged for the costs of the selection process. However, since the appointing authority has recently undergone a layoff, it would not be appropriate to assess the appointing authority for the total costs of the selection process in this particular matter. Rather, it is appropriate to assess partial costs in the amount of \$1,024. *See e.g., In the Matter of Housing Assistance Technician (M1259H), City of Orange Housing Authority* (MSB, decided January 16, 2008) (Appointment waiver request granted and partial costs assessed as the Housing Authority had undergone a layoff in May and June 2007, affecting eight employees).

### ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$1,024 to be paid within 30 days of the issuance of this order.

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 7<sup>th</sup> DAY OF OCTOBER, 2015



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