



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Clerk 3 (M0752P), City of Paterson

CSC Docket No. 2016-3770

Administrative Appeal

ISSUED: NOV 29 2016 (SLK)

In In the Matter of Clerk 3 (M0752P), City of Paterson (CSC, decided February 26, 2014), the Civil Service Commission (Commission) granted the request of the City of Paterson (Paterson) for an appointment waiver for the April 15, 2013 certification and ordered that no selection costs were to be assessed at that time since there was a possibility that the list could be utilized prior to its expiration. A copy of that decision is attached hereto and incorporated herein. However, the appointing authority did not utilize the subject eligible list and the matter of the assessment of costs is now before the Commission.

Agency records reveal that no further certifications were issued from the subject list. Therefore, the appointing authority was notified that since the eligible list was not utilized by its expiration date, the matter of the costs for the selection process in the amount of \$2,048 would be forwarded to the Commission for a determination. In response, the appointing authority requests that the costs of the selection process be waived as it has been facing severe financial hardship and receives substantial Transitional State Aide each year in order to close gaps in its budget. It presents that due to these financial hardships, it is under strict hiring regulations by the Department of Community Affairs (DCA) and that all hiring requires a waiver from DCA. It indicates that its need for a Clerk 3 during the past three years has not risen to the level where it has requested a waiver for approval to hire. On the contrary, it highlights that it has been reducing hiring.

CONCLUSION

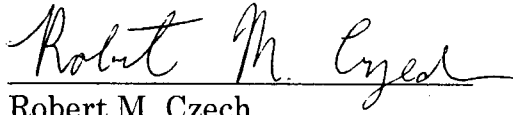
N.J.S.A. 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. The amount of \$2,048 has been determined to be the cost of the selection process for open-competitive examinations for local government positions. In the instant situation, although the appointing authority had shown a valid reason for not making an appointment from the subject eligible list, it failed to provide a sufficient basis for not being charged for the costs of the selection process which produced the subject eligible list. The Commission can appreciate that the appointing authority has faced many financial hardships since the certification was issued. However, the subject list was never utilized and the appointing authority's actions in provisionally appointing Sharone Butler to the subject title resulted in the announcement of the examination and the resulting eligibility list. Although the Commission agrees that it would not be appropriate to assess the appointing authority for the total costs of the selection process due to its status as being a distressed city that receives substantial transitional aid, it is appropriate to assess partial costs in the amount of \$1,024. See *the Matter of Community Service Worker, Bilingual in Spanish and English (M0464E), City of Hoboken* (MSB, decided November 15, 2006) (Hoboken assessed half of the selection costs on the basis that it was a distressed city); *In the Matter of Director of Economic and Industrial Development (M6882A), City of Camden* (MSB, decided January 29, 2002) (Camden assessed half of the selection costs on the basis that it was a distressed city).

ORDER

Therefore, it is ordered that the appointing authority be assessed the costs of the selection process in the amount of \$1,024 to be paid within 30 days of the issuance of this decision.

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 23rd DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Nellie Pou
Kelly Glenn
Beth Wood
Records Center

appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$2,048 and that the appointing authority could submit within 20 days from the receipt of this notice reasons why costs of the selection process should not be assessed. The appointing authority, despite being provided the opportunity, did not respond.

A review of agency records indicates that there are no other employees recorded as serving provisionally pending open competitive examination procedures in the subject title in Paterson.

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 as the result of the provisional appointment of Sharone Butler to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that Butler was returned to her prior permanent title of Keyboarding Clerk 1. Consequently, since there is no provisional serving in the title at issue, there is sufficient justification for 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 for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the civil service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. However, the appointing authority indicates that there is a possibility that the list could be utilized prior to its expiration date of August 4, 2013. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of April 10, 2016, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

ORDER

Therefore, it is ordered that the request for the waiver of appointment requirement be granted and no selection costs presently 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 26th DAY OF FEBRUARY, 2014**

Robert E. Brenner

**Robert E. Brenner
Presiding Member
Civil Service Commission**

**Inquiries
and
Correspondence**

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

**c: Charles Thomas
Kenneth Connolly
Joseph Gambino**