



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Diana Fenter, *et al.*

CSC Docket No. 2016-1490, *et al.*

Administrative Appeals

ISSUED: **NOV 3 0 2016** (DASV)

Diana Fenter, Margaret Lewis, and Deborah Vinson, Clerk 3s with the Monmouth County Department of Human Services, appeal their non-appointments to Clerk 4.

By way of background, the appellants, nonveterans, are serving in the title of Clerk 3 with Monmouth County's Department of Human Services. Their names appear on the Clerk 4 (PC0339S), Monmouth County, eligible list, which promulgated on August 14, 2014 and expires on August 13, 2017. Elisabeth Cohen and Fenter were tied in the first rank, while Lewis and Vinson ranked third and fifth, respectively. Certifications of the subject eligible lists were issued on August 19, 2014 and February 24, 2015, and the notices of certification, which were dated August 26, 2014 and March 3, 2015, respectively, were sent to the eligibles. Cohen was appointed from the August 19, 2014 certification effective October 25, 2014. Nilsa Correa, who ranked fourth on the subject eligible list, was appointed from the February 24, 2015 certification effective March 28, 2015. A review of these certifications does not indicate that the appellants filed appeals of their non-appointments at any time prior to their current appeals.

On appeal to the Civil Service Commission (Commission),<sup>1</sup> the appellants request pay increases and a change of title to Clerk 4. They state that if Cohen "is worthy of her just due pay/title," they should also be worthy of the same. They note that they have had two pay raises from their "union contract closing." Furthermore, they allege that Cohen's promotion was "fraudulent" and submit documents explaining that assertion. Specifically, the appellants claim that the position was not posted, they

<sup>1</sup> The appellants' appeals were received on October 14, 2015.

were not aware of any posting, and they were denied "due process of an interview." They maintain that "[i]t was stolen" and "protocol was not followed." In that regard, the appellants contend that Monmouth County's selection method was not followed with respect to Cohen's appointment, *i.e.*, a memorandum from the Office of Human Resources was not issued regarding a vacancy in the Clerk 4 position. However, the appellants assert that "this selection method was sent out for Nilsa Correa (Spanish woman)." By contrast, the "promotional job was made up for Lisa Cohen only." Moreover, the appellants present copies of complaints filed with the Equal Employment Opportunity Commission, alleging discrimination regarding Cohen's promotion. The appellants state that "we ladies of color have a right to an appeal." It is noted that the appellants are African American, Cohen is Caucasian, and Correa is Hispanic.

### CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. In the instant matter, Cohen and Correa were appointed effective October 25, 2014 and March 28, 2015, respectively. A review of the subject certifications does not indicate that the appellants timely filed appeals of their non-appointments. Rather, the appellants filed their appeals on October 14, 2015. Moreover, nothing in the record supports the relaxation of the time requirement. Therefore, any challenge regarding the appellants' non-appointments from these certifications is untimely.

Nonetheless, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3 allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. The "Rule of Three" allows an appointing authority to use discretion in making appointments. 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 the present case, although the petitioners claim discrimination regarding Cohen's appointment, they have not submitted any substantive evidence to support such a claim. It is emphasized that Cohen was tied in the first rank. Additionally, Correa was reachable on the February 24, 2015 certification. Thus, the appointing authority was within its discretion to have appointed Cohen and Correa.

In addition, it is within the appointing authority's discretion to choose its selection method, *i.e.*, to interview candidates or not. *See e.g., In the Matter of Daniel Dunn* (CSC, decided August 15, 2012); *In the Matter of Angel Jimenez* (CSC, decided April 29, 2009); *In the Matter of Abbas J. Bashiti* (CSC, decided September 24, 2008); *In the Matter of Paul H. Conover* (MSB, decided February 25, 2004); *In*

*the Matter of Janet Potocki* (MSB, decided January 28, 2004). The failure of an appointing authority to post an internal memorandum regarding a vacancy does not violate Civil Service law or rule since, as indicated here, the appellants filed for the Clerk 4 (PC0339S) examination, which evidences that they received the examination notice, and were also sent certification notices providing an opportunity to be appointed. It is noted that an eligible candidate does not possess a vested property interest in a position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

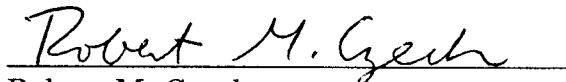
Additionally, to the extent that the appellants are currently requesting pay increases and a change of title to Clerk 4, it is noted that there is no legal obligation to fill a vacant position or provide employees with promotions if they are performing duties commensurate with their current title. Furthermore, the Commission does not have jurisdiction to review any items contained in a collective negotiations agreement. A local employee's compensation is under the control of the appointing authority unless the base salary is below the minimum or above the maximum established salary for an employee's title. See *N.J.S.A. 11A:3-7d* and *N.J.A.C. 4A:3-4.1(a)*. Therefore, a review of the matter does not indicate that Civil Service law or rules were violated.

### 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.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 23<sup>RD</sup> 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

c: Diana Fenter (2016-1490)  
Margaret Lewis (2016-1491)  
Deborah Vinson (2016-1493)  
Frank Tragno  
Kelly Glenn  
Records Center