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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Supervisor Building
Services (M0418T), Millville School
District

Appointment Waiver

CSC Docket No. 2016-4275

ISSUED: MAY 19 2017 (WR)

Millville School District requests permission not to make an appointment from the December 8, 2015 certification for Supervisor Building Services (M0418T), Millville School District.

The record reveals that the appointing authority announced a vacancy for the subject position after the incumbent employee indicated his intent to retire. The examination was announced with a closing date of July 1, 2015. The examination resulted in an eligible list of seven individuals, which promulgated on December 3, 2015 and expires on December 2, 2018. A certification was issued on December 8, 2015 containing all seven eligibles. It is noted that the incumbent retired on February 19, 2016.

The appointing authority thereafter requested an appointment waiver and asserted that the incumbent had retired from the subject position and it eliminated the subject position due to budget cuts. The appointing authority notes that, as an "Abbott district," it receives "over 80% of its funding from the State" and has not received an increase in funding in the last six years.¹ Accordingly, it states that it needed to eliminate 20 positions to balance the budget and the subject position was one of them.²

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be

¹ An "Abbott district" is a New Jersey school district, which receives State assistance to ensure that its students receive an adequate public education as required by the State constitution.

² Agency records do not indicate that the appointing authority initiated layoffs from 2015 to the present.

assessed for the costs of the selection process in the amount of \$2,048. No further arguments were received.

A review of official personnel records reveals that there are currently no other employees serving provisionally pending open competitive examination procedures in the subject title in the Millville School District.

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 announced after the incumbent indicated his intention to retire. However, after a complete certification was issued, the appointing authority requested an appointment waiver because it eliminated the subject position due to budget cuts. Therefore, since there are no employees serving provisionally in the subject title, the appointing authority has provided sufficient justification for an appointment waiver.

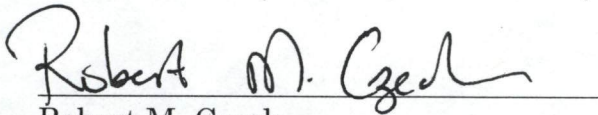
Although the appointing authority's petition for a waiver is granted, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment it can be ordered to reimburse the Civil Service Commission (Commission) for the costs of the 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 the Commission, 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 and efforts to take these examinations in hopes of being considered for a permanent appointment. Although the appointing authority has shown a valid reason for not making an appointment from the subject eligible list, it has failed to present a sufficient basis for not being charged for the costs of the selection process which produced it. However, as the Commission is cognizant of the Millville School District's receipt of State aid, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the total costs of the selection process. Rather, it is appropriate to assess partial costs in the amount of \$1,024. See *In the Matter of Community Service Worker, Bilingual in Spanish and English (M0464E)*, City of Hoboken (MSB, decided November 15, 2006) (Half of the selection costs assessed on the basis that Hoboken was a distressed city); *In the Matter of Director of Economic and Industrial Development (M6882A)*, City of Paterson (MSB, decided January 29, 2002) (Half of the selection costs assessed on the basis that Paterson was a distressed city).

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 17th DAY OF MAY, 2017



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