

In the Matter of Police Captain (PM3519K), Atlantic City
CSC Docket No. 2009-320
(Civil Service Commission, decided August 27, 2008)

Daniel Ritzel, James Shellem, Charles Love, Joseph Hanlin, and Gregory Vandenberg, Police Lieutenants with Atlantic City, appeal the attached determination of the Division of Selection Services, which denied their request to reduce the one-year service requirement in the title of Police Lieutenant to the completion of the working test period for the promotional examination for Police Captain (PM3519K), Atlantic City.

By way of background, the Police Captain (PM3519K), Atlantic City, examination was announced with a closing date of August 31, 2008 and was open to employees in the competitive division who possessed an aggregate of one year of continuous permanent service in the title of Police Lieutenant. The written portion of the examination is scheduled for October 4, 2008. The appellants were appointed as Police Lieutenants, effective November 2, 2007, and filed for the examination. However, they were found ineligible as they lacked the required one year of permanent service in the title of Police Lieutenant. It is noted that Michael Russack, Ronald Krause, Kirk Sutton, Edward Brady, and Robert Degaetano also filed for the examination, but were denied admittance as they lacked the one-year service requirement. Russack, Krause, and Sutton were appointed as Police Lieutenants effective November 2, 2007, November 21, 2007, and December 21, 2007, respectively. Brady and Degaetano were appointed as Police Lieutenants effective February 29, 2008. It is further noted that Lee Ragozzine, Gregory Anderson, and Ralph Meyers were appointed as Police Lieutenants effective November 2, 2007, November 21, 2007, December 21, 2007, respectively, but they did not file for the examination.

The appellants petitioned the Division of Selection Services for a reduction of the one-year service requirement to the completion of the working test period. The appellants argued that there are only two Police Lieutenants who qualify for the examination, and thus, the examination would produce an insufficient number of eligibles. Further, they indicated that there were currently three vacant Police Captain positions which Atlantic City could fill. Moreover, the appellants maintained that 10 Police Captains would be eligible for retirement in the next few years, producing several vacancies. The Division of Selection Services denied their request. It acknowledged that although waiving the one-year service requirement would expand the number of eligibles, it found no provisional employees serving in a Police Captain position. It is noted that only two Police Lieutenants, William Mazur and James Pasquale, have been admitted to the subject examination. Moreover, the Division of Selection Services indicated that the appointing authority was contacted and it took no position on the request for waiver. Additionally, it stated that the appointing authority may request a new announcement if the

resulting eligible list (PM3519K) is insufficient to satisfy its appointment needs. It is noted that the current Police Captain (PM3568G), Atlantic City, eligible list has been exhausted. Thus, the Division of Selection Services indicated that absent a request from the appointing authority, it would not waive the one-year service requirement for the subject examination.

On appeal, the appellants present essentially the same arguments. They assert that the acting Mayor wished to remain neutral due to his acting status. They reiterate that there are three vacant positions for only two eligible Police Lieutenants. Additionally, the appellants maintain that the number of anticipated vacancies will exceed the number of eligibles. They indicate that there are 14 officers, including 10 Captains, three Deputy Police Chiefs, and the Police Chief, who are eligible to retire. Thus, the appellants contend that they clearly meet two criteria set forth in *N.J.A.C. 4A:4-2.6(g)*, which allows for reduction of the one-year service requirement. The appellants also maintain that a competitive examination is in the best interest of the public and the most equitable course of action, as the examination would most accurately measure the candidates' merit and fitness. It is noted that the record does not reflect that the appointing authority requested a waiver of examination. Additionally, the appellants state that they should be judged the same way as their Police Chief, John J. Mooney, III, who was allowed to take the Police Chief (PM3594H), Atlantic City, examination. They cite *In the Matter of Ernest Jubilee and Henry M. White, Jr.* (MSB, decided November 1, 2006), where Deputy Police Chiefs challenged the eligibility of Mooney for the examination of Police Chief (PM3594H), Atlantic City, which had a closing date of November 30, 2006. In that decision, the Merit System Board (Board),¹ noted that if Mooney did not meet the one-year service requirement, an incomplete promotional list would result. The Board also stated, "In that case, it would be appropriate to reduce the service requirement to the completion of the working test period." However, Mooney had been deemed to have been continuously permanently serving in the title as of January 1, 2005. See *In the Matter of John J. Mooney, III* (MSB, decided March 8, 2006). Thus, the Board did not waive the one-year service requirement in that case.

It is noted that the appointing authority was provided with the opportunity to respond to the appellants' appeal. In response, it did not dispute the appellants' arguments or the information that they presented. Rather, the appointing authority advised that "the City of Atlantic will adhere to the final determination of the [Civil Service Commission]."

¹ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008.

It is further noted that the police union, PBA Local 24, objects to the waiver of the one-year service requirement as it conflicts with its contract. It submits that Article XX of its contract, which is consistent with the service requirement of *N.J.A.C.* 4A:4-2.6(a)1, clearly states that Police Lieutenants must serve at least one year in their rank prior to taking an examination for the next higher rank. Therefore, although the union states that it will abide by the decision in this matter, it does not support a reduction of the service requirement to the completion of the working test period.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. *N.J.A.C.* 4A:4-2.6(g) provides:

The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons as determined by the Commissioner.

In the instant matter, the appellants submit that the requirements of *N.J.A.C.* 4A:4-2.6(g)1 and 2 have been met since there are only two eligibles admitted for the subject examination and three vacant positions. Additionally, they maintain that more vacancies will occur since several officers are eligible to retire. The appointing authority has not disputed this fact. Moreover, the current Police Captain (PM3568G), Atlantic City, eligible list has been exhausted. Thus, the PM3519K eligible list will be incomplete and will not provide a sufficient number of eligibles. Furthermore, the appellants and Russack will have almost 10 months of experience in the title of Police Lieutenant by the closing date of the examination. The record also shows that Krause, Sutton, Brady, and Degaetano will have at least six months of applicable experience by the closing date. Finally, the appointing authority is not objecting to the appellants' request, as it states that it will abide by the decision rendered in the instant matter. Therefore, while the union's position in the matter is acknowledged, under the circumstances presented, it is appropriate to reduce the one-year service requirement for the Police Captain (PM3519K), Atlantic City, examination to the completion of the working test period for Police Lieutenant. *See e.g., In the Matter of John Lenge, Deputy Police Chief (PM3587G), Middletown Township*, Docket No. A-1060-06T5 (App. Div. October 19, 2007) (The Superior

Court of New Jersey, Appellate Division, found it permissible to reduce the service requirement for the Deputy Police Chief examination to Police Lieutenants who had completed their working test period, where only four Police Lieutenants with one year of service planned to file for examination, and there would likely be more than one vacancy within the first year of the list. The Appellate Division also determined that if an appointing authority requested a reduction, it should provide a reasonably complete statement of reasons why it is seeking this relief and the Department of Personnel should contemporaneously memorialize its reasons for granting or denying such requests). Moreover, since the appellants, Russack, Krause, Sutton, Brady, and Degaetano have filed for the subject examination and it appears that they have passed their three-month working test period,² they will be admitted to the subject examination. Further, since Ragozzine, Anderson, and Meyers were appointed on November 2, 2007, November 21, 2007, and December 21, 2007, respectively, they will be given the opportunity to file for the examination by September 10, 2008.

ORDER

Therefore, it is ordered that this appeal be granted. It is further ordered that Daniel Ritzel, James Shellem, Charles Love, Joseph Hanlin, Gregory Vandenberg, Michael Russack, Ronald Krause, Kirk Sutton, Edward Brady, and Robert Degaetano be admitted to the Police Captain (PM3519K), Atlantic City, examination. Additionally, Lee Ragozzine, Gregory Anderson, and Ralph Meyers may file for the subject examination by September 10, 2008, and the Division of Selection Services shall promptly notify them of their eligibility.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² Pursuant to *N.J.A.C. 4A:4-5.2(b)1*, Police Lieutenants are required to serve a three-month working test period in order to achieve permanent status. The personnel records of the appellants and the individuals referred to in this decision indicate that they have achieved permanent appointments as of the date of their regular appointments to Police Lieutenant.