



STATE OF NEW JERSEY

In the Matter of Police Sergeant, City  
of Trenton

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2016-1447, 2016-  
1445, 2016-1443, 2016-1444, 2016-  
1448, 2016-1446, 2016-1451 and  
2016-1450

Administrative Appeal

ISSUED: OCT 22 2015 (JH)

The City of Trenton requests that six individuals be assigned permanent dates of appointment to Police Sergeant effective March 9, 2015, and two individuals be assigned permanent dates of appointment to Police Sergeant effective March 20, 2015.

By way of background, in January 2010, the United States Department of Justice (USDOJ) filed a complaint against the State of New Jersey and the Civil Service Commission (Commission), alleging that the selection process utilized by the State to test and appoint candidates to the Police Sergeant title between 2000 and 2008 had a disparate impact on African-American and Hispanic candidates in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, as amended. During the pendency of this litigation, the parties agreed to the terms of a settlement which was formulated into a Consent Decree.<sup>1</sup> The terms of the Consent Decree provided, in pertinent part, that the State, in consultation with USDOJ, develop a new Police Sergeant examination and scoring process. In addition, in thirteen specific jurisdictions, including Trenton, priority is to be given to minority candidates who sit for and achieve a passing score on the new examination for promotions.<sup>2</sup> In this regard, paragraph 60 of the Consent Decree

<sup>1</sup> On November 22, 2011, the United States District Court for the District of New Jersey (Court) provisionally approved and entered the Second Amended Consent Decree (Consent Decree). The Court approved and entered the Consent Decree as final on June 12, 2012.

<sup>2</sup> The thirteen jurisdictions identified in the Consent Decree, in Attachment K, are: Atlantic City, Bridgeton, Camden, East Orange, Elizabeth, Hoboken, Jersey City, New Brunswick, Newark,

provides that priority promotion candidates shall be certified over all other eligible candidates. Furthermore, paragraph 61 provides that all priority promotions be made in accordance with the provisions of *N.J.A.C.* 4A:4-4.1 through *N.J.A.C.* 4A:6-6.6. Additionally, pursuant to paragraph 67 of the Consent Decree, for any of the thirteen jurisdictions with existing special reemployment lists,<sup>3</sup> such as Trenton, candidates eligible for priority promotions are to be certified on at least a one to one ratio with candidates on an existing special reemployment list.

Subsequently, USDOJ filed a Motion for Modification to modify paragraph 67 of the Consent Decree. The Commission opposed the USDOJ's motion to alter the agreed-upon sequence in which eligible candidates would be certified from Trenton's priority promotion list and the special reemployment list. Specifically, USDOJ claimed that certifying Trenton's lists on a one to one basis would provide some priority promotion candidates with greater than the intended make-whole relief. As a result, the release of the priority promotion list for Police Sergeant (PM5159X), Trenton, was delayed and Trenton was unable to effectuate permanent appointments pending disposition of the USDOJ's motion. Thus, Trenton provisionally appointed six individuals, A, B, C, D, E and F, to Police Sergeant effective March 9, 2015, and two individuals, G and H, effective March 20, 2015.<sup>4</sup>

On September 30, 2015, the Court denied the USDOJ'S Motion for Modification. As a result, on October 6, 2015, Trenton submitted the instant request that the above noted provisional appointments be recorded as permanent. The Division of Agency Services has reviewed this request and finds that the sequence of the appointments is consistent with the one to one ratio indicated in the Consent Decree.

## CONCLUSION

Given the Court's Order denying the USDOJ'S Motion for Modification, the Consent Decree as originally approved by the Court remains intact. *N.J.A.C.* 4A:4-

---

Passaic, Paterson, Teaneck and Trenton. Each of these jurisdictions are allocated a certain number of priority promotion positions. In this regard, it is noted that three priority promotion positions are allocated to Trenton. As further indicated in the Consent Decree, once a jurisdiction has made all of the allocated priority promotions, or the list of priority promotion candidates for that jurisdiction has been exhausted, use of the priority promotion list may be discontinued.

<sup>3</sup> A special reemployment list is comprised of permanent employees who were laid off, laterally displaced or demoted in lieu of layoff. See *N.J.A.C.* 4A:4-3.1. Generally, special reemployment lists take priority over promotional lists. See *N.J.A.C.* 4A:4-3.7 and *N.J.A.C.* 4A:8-2.3(b).

<sup>4</sup> Paragraph 65 of the Consent Decree provides, in pertinent part, that the designation as a priority promotion pursuant to the Consent Decree will remain confidential and will not be disclosed by the State or a local jurisdiction. Accordingly, these eight individuals shall be designated herein by the letters A through H. A, B and C appear on the PM5159X priority promotion list. D, E, F, G and H appear on the special reemployment list for Police Sergeant, Trenton.

4.1(a) provides that when a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by this agency to enable this agency to issue or authorize the necessary certification or advise that there is no appropriate eligible list. Additionally, *N.J.A.C. 4A:4-4.2(a)* provides that upon determining that there is a need for a certification as provided for in *N.J.A.C. 4A:4-4.1*, this agency shall issue or authorize the issuance of a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list. *N.J.A.C. 4A:4-4.8(a)* provides that upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made: 1. Appoint the eligible whose name has been certified from the special reemployment list; 2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or 3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list. *N.J.A.C. 4A:4-1.10(c)* provides that, when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause.

In the present matter, due to the Motion for Modification filed by USDOJ, the release of the priority promotion list for Police Sergeant (PM5159X), Trenton, was delayed. As a result, Trenton was unable to request certifications from the PM5159X and special reemployment lists in order to effectuate permanent appointments to the Police Sergeant title. Based on the unique circumstances of this matter, the Commission finds that good cause has been presented to grant retroactive dates of regular appointment. Accordingly, in order to effectuate the permanent appointments of A, B and C to the Police Sergeant title, a certification should be promptly issued to the appointing authority from the priority promotion list for Police Sergeant (PM5159X), Trenton. Upon meeting the requirements for priority promotion appointment pursuant to the Consent Decree,<sup>5</sup> the appointments of A, B and C should be recorded in accordance with the Consent Decree.<sup>6</sup> In order to effectuate the permanent appointments of D, E and F, a certification should be promptly issued to the appointing authority from the special reemployment list for Police Sergeant, Trenton. Furthermore, the records of D, E and F should reflect

---

<sup>5</sup> Priority promotions are subject to those conditions outlined in the Consent Decree. In this regard, pursuant to paragraph 65, eligible candidates will receive a written offer of priority promotion pursuant to the Consent Decree setting forth the terms of the appointment including the appointment date, starting salary, salary after the completion of the probationary or working test period, and upon completion of the working test period, retroactive seniority as of the candidate's presumptive appointment date. Priority promotion candidates must accept or reject the offer of priority promotion in writing.

<sup>6</sup> As indicated in paragraphs 65 and 76 of the Consent Decree, upon successful completion of a working test period, a priority promotion candidate is entitled to receive retroactive seniority as of the candidate's presumptive appointment date.

permanent appointment dates of March 9, 2015, and the records of G and H should reflect permanent appointment dates of March 20, 2015.

ORDER

Therefore, it is ordered that this request be granted and a certification be promptly issued to the appointing authority from the priority promotion list for Police Sergeant (PM5159X), Trenton. Upon meeting the requirements for appointment pursuant to the Consent Decree, the appointments of A, B and C shall be recorded in accordance with the Consent Decree. Furthermore, a certification should promptly be issued to the appointing authority from the special reemployment list for Police Sergeant, Trenton, and the records of D, E and F should reflect permanent appointment dates of March 9, 2015, and the records of G and H should reflect permanent appointment dates of March 20, 2015.

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 21ST DAY OF OCTOBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

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

c: Kenneth Connolly  
Joseph Gambino  
Kevin Jespersen, Assistant Attorney General