

B-76



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Dean Barone, *et al.*,  
Police Lieutenant (PM1494R),  
Paterson

CSC Docket Nos. 2014-2686, 2014-  
2684, 2014-2687, 2014-2685

Examination Appeals

ISSUED: **APR 02 2015** (SLK)

Dean Barone, Anthony Hyatt, Stephen Iacuzzo, and Michael McDonald appeal the determinations of the Division of Selection Services<sup>1</sup> (Selection Services) that they lacked the required amount of permanent status in a title to which the examination is open as of the closing date for the promotional examination for Police Lieutenant (PM1494R), Paterson.

The examination at issue was announced with specific requirements that had to be met as of the August 31, 2013 closing date (see attached). There were 43 individuals who applied for the subject examination. The examination was administered on September 26, 2013 that resulted in a list of 32 eligibles. Certification PL141301 was issued containing the names of four eligibles and two were appointed. The list expires on February 5, 2017.

A review of personnel records indicates that Mr. Barone was a Police Officer from April 2011 to the August 31, 2013 closing date, a Police Sergeant from May 2010 to April 2011, and a Police Officer from June 2000 to May 2010. Mr. Hyatt was a Police Officer from April 2011 to the August 31, 2013 closing date, a Police Sergeant from May 2010 to April 2011, a Police Officer from August 1998 to May 2010, and a Housing Police Officer from March 1994 to August 1998. Mr. Iacuzzo was a Police Officer from April 2011 to the August 31, 2013 closing date, a Police Sergeant from March 2007 to April 2011, and a Police Officer from January 1999 to March 2007. Mr. McDonald was a Police Officer from April 2011 to the August 31,

<sup>1</sup> The eligibility review function is now within the Division of Agency Services.

2013 closing date, a Police Sergeant from March 2007 to April 2011, and a Police Officer from January 1999 to March 2007. The appellants applied for the subject examination but were deemed ineligible as each was serving in the title of Police Officer as of the August 31, 2013 closing date.

It is noted that on September 20, 2013 the Department of Community Affairs (DCA) signed waivers approving the appellants' promotions to Police Sergeant. Further, all of the appellants were appointed to Police Sergeant from a special reemployment list on November 15, 2013.

On appeal, Mr. Barone states that on April 18, 2011 he was demoted to Police Officer as a result of a layoff. Thereafter, on April 1, 2013, the appointing authority issued a general order placing him and other demoted Sergeants into the position of "acting Sergeant" as there were vacant supervisor positions. Mr. Barone notes that the appointing authority was aware that the State does not recognize acting positions; however, all of the acting Sergeants were placed back in supervisory positions and paid a Sergeant's salary, but only at the base step as they were not entitled to full pay. He presents that he was still in acting status as of the subject examination closing date and he and the other acting Sergeants were denied the opportunity to take the test. Mr. Barone maintains that the appropriate documents were prepared to initiate his permanent promotion to Police Sergeant in May 2013, but the Mayor's Office initially refused to sign, and therefore the documents were signed only four days prior to the subject examination administration date. Mr. Barone highlights that he was officially promoted to Sergeant on November 15, 2013, which is only a few weeks after the test, and argues that due to reasons beyond his control, he lost his opportunity to compete in the subject examination.

Mr. Hyatt represents that he was demoted to Police Officer on April 18, 2011 as a result of a layoff but maintains that even after he was demoted he was still performing duties of a Police Sergeant. Additionally, he states that he was appointed to acting Sergeant on March 31, 2013 and the appointing authority began the process to permanently appoint him to Police Sergeant. Mr. Hyatt contends that he has continuously served as Police Sergeant since May 2010 and this should be considered when determining his eligibility for the subject examination. He also highlights that another Police Sergeant who was to be demoted while serving in Afghanistan when the demotion list was created, was not demoted upon his return from active duty and therefore was able to take the subject examination. Mr. Hyatt argues that since both he and this other Police Sergeant were promoted to Police Sergeant on May 9, 2010, he should also be determined eligible for the subject examination.

Mr. Iacuzzo states that he was promoted to Sergeant in March 2007 and then demoted to the position of Police Officer in April 2011 as a result of a layoff. However, he asserts that he was appointed acting Sergeant on March 31, 2013. Mr.

Iacuzzo contends that there were vacant, available positions, but the appointing authority filled them on an acting basis. He maintains that while serving as an acting Sergeant he was paid as a Police Sergeant and assigned all the attendant responsibilities. Mr. Iacuzzo presents that in May 2013 the appointing authority started the process of permanently reappointing him as a Police Sergeant and reiterates that as of the subject examination closing date, he had over four years of experience.

Mr. McDonald states that he was demoted to Police Officer on April 18, 2011 due to a layoff and appointed as an acting Sergeant on April 1, 2013. Mr. McDonald highlights that he was ranked 10<sup>th</sup> on the last Police Lieutenant eligible list and due to the three year length of time between testing cycles, he should be allowed to take the subject examination since he has over five years of experience as a Police Sergeant. He highlights that other Police Sergeants that were originally promoted to Police Sergeant on the same day as him in March 2007 were able to take the exam since they were re-promoted before him as they had more seniority even though he ranked ahead of them on the prior promotional list for Police Lieutenant. Mr. McDonald argues that if the appointing authority had permanently appointed him as a Police Sergeant instead of as an acting Sergeant he would not be denied his opportunity to take the subject examination.

By letter dated September 5, 2014, the appellants and the appointing authority were provided the opportunity to provide additional information and argument for the Civil Service Commission (Commission) to review in this matter. In response, Jerry Speziale, Director, Paterson Police Department, submitted a letter in support of the previously demoted Police Sergeants<sup>2</sup> who returned to rank in an acting capacity effective March 30, 2013 as indicated by a personnel order that he attaches. Speziale states that their return to status was necessitated by supervisory staffing shortages and bureaucratic delays in obtaining authorization for proper appointments and that during their seven months as acting Sergeants, they were acting in full capacity as Police Sergeants. Speziale states that he has no objection to these Sergeants being credited for the acting time for the purposes of being granted eligibility for the subject examination.

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a)1 provides, in pertinent part, 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.

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<sup>2</sup> It is noted that the Director's letter is in support of Michael Cheff, Anthony Hyatt, Stephen Iacuzzo, and Michael McDonald. Mr. Barone is not mentioned in this letter and the attached personnel order. Additionally, Mr. Cheff did not appeal the determination that he was ineligible for the subject examination.

*N.J.A.C.* 4A:4-2.6(f) provides that employees who are separated or displaced as a result of a layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

*N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In the instant matter, the requirement for the subject examination was to be currently serving in the title of Police Sergeant as of the August 31, 2013 closing date. According to agency records and the appellants' own admissions, none of them were permanently serving in the Police Sergeant title on the August 31, 2013 closing. As such, Selection Services correctly determined that the appellants were not eligible for the subject examination. Although the appellants argue that they should be granted eligibility since they were serving as "acting" Sergeants, which included the pay, benefits, and responsibility of a Police Sergeant since April 2013 and as of the subject examination closing date, there is no such designation as an "acting" appointment under Civil Service rules. *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1 *et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. See *In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Rather, as a Distressed City, the City of Paterson and the Department of Community Affairs (DCA) entered into a Memorandum of Understanding regarding the conditions of receipt of Distressed Cities' Aid. As such, the appointing authority needed to receive DCA approval prior to funding the filling of vacant positions.

In these matters, the appointing authority did not receive DCA approval to fill the Police Sergeant positions until September 20, 2013. Therefore, even if there were vacant Police Sergeant positions, they were not funded. In order to constitute a genuine vacancy, the appointing authority must have the current ability, including fiscal ability, to fill the position. None of these conditions were met during the period of the appellants' "Acting" appointments. See *In the Matter of Robert Frett, et al.* (CSC, decided November 22, 2011). Further, even with DCA approval, as all of the appellants were not permanently appointed as Police Sergeant until November 15, 2013, which is after the subject examination administration date of September 26, 2013, the appellants were not eligible for the subject examination.

With regard to the appellants' argument that it was unfair that the appointing authority placed the appellants in "acting" Sergeant positions, which is not recognized under Civil Service law, if the appellants felt that their positions were misclassified at that time, the proper course of action for them to take would have been to pursue a classification appeal of their positions in accordance with *N.J.A.C.* 4A:3-3.9(c).

In relation to the appellants' other arguments that other employees who were initially appointed to Police Sergeant at the same time they were who were either appointed from the special reemployment list to Police Sergeant sooner than they were or who were not demoted at all were allowed to take the test, that they were ranked higher on previous Police Lieutenant examinations than others who were allowed to take the test, and that their career paths for promotion were being delayed by not being allowed to take the test, it would be unfair to other candidates who met the requirements under *N.J.A.C. 4A:4-2.6* to allow the appellants to take the subject examination when the appellants did not meet the requirements. Further, as the list is complete, there is no basis to relax the rules.

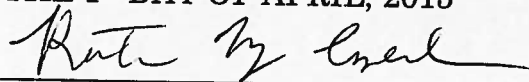
Accordingly, the appellants have not met their burdens of proof and Selection Services properly determined that the appellants lacked the required amount of permanent status in a title to which the examination is open.

**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 1<sup>st</sup> DAY OF APRIL, 2015



Robert M. Czech  
Chairperson  
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

**Attachment**

**c: Dean Barone  
Anthony Hyatt  
Stephen Iacuzzo  
Michael McDonald  
Nellie Pou  
Kelly Glenn  
Joseph Gambino**

NEW JERSEY CIVIL SERVICE COMMISSION  
COUNTY AND MUNICIPAL GOVERNMENT SERVICES  
PROMOTIONAL ANNOUNCEMENT



[Click here to file Online](#) Print

**\$50.00 PROCESSING FEE REQUIRED**  
Make Check/Money Order Payable to NJCSC

SYMBOL: PM1494R

TITLE: POLICE LIEUTENANT

ISSUE DATE: June 01, 2013

TITLE CODE: 02727/ THFRR3

JURISDICTION: PATERSON

DEPARTMENT: POLICE

WEIGHT CODE: 01

SALARY: \*\* See Below

APPLICATION DEADLINE: June 21, 2013

(Application must be postmarked by this date)

JURISDICTION CODE: N16080082

CLOSING DATE: August 31, 2013

(Eligibility must be established by this date)

RETURN COMPLETED APPLICATIONS TO:

**ONLY ON LINE APPLICATIONS  
WILL BE ACCEPTED  
FOR THIS ANNOUNCEMENT**

Open to employees in the competitive division who are currently serving in a title to which the announcement is open and have an aggregate of one year of continuous permanent service as of the closing date in the following title(s):

Police Sergeant 02739

**SPECIAL EXAMINATION INFORMATION**

Examination: The examination items will be related to the duties of a Police Lieutenant. Final scores will be calculated as follows:

Parts / Weights  
Written Test (Multiple Choice) / 70%  
Seniority Rating / 30%

Note: The Police Lieutenant examination is tentatively scheduled to be administered in September 2013. To obtain a copy of the 2013 Police Lieutenant Orientation Guide, please refer to our website at <http://www.state.nj.us/csc>. Applicants admitted to the examination will be mailed notice(s) of the date, time and place of the examination at least two weeks prior to the test date.

The Orientation Guide will assist you in preparing for the Police Lieutenant Examination; a listing of supervisory textbooks is included with the Orientation Guide. Eligible applicants without access to the Internet can request a copy of the Police Lieutenant Orientation Guide by sending a postcard with your name, mailing address and symbol number along with the words "Orientation Guide". Please mail the postcard to N.J.C.S.C., Law Enforcement Unit, P.O. Box 310 Trenton, NJ 08625-0310.

\*\*Please contact your Personnel Office for current salary information.

Make-up Examinations: Requests for make-up examinations based on medical grounds for public safety promotional exams must include a New Jersey Civil Service Commission Authorization for Public Safety Make-Up Examination Form.

**IMPORTANT INFORMATION**

1. N.J.A.C. 4A:4-2.6 states that all requirements listed must be met as of the closing date, including jurisdiction, department, and permanent status.
2. YOU MUST COMPLETE YOUR APPLICATION IN DETAIL. Failure to complete your application properly may cause you to be declared ineligible.
3. This examination is open to full-time and part-time permanent employees. If an employment list results from this announcement, it may be certified to fill both full-time and part-time positions. If 35- and 40-hour positions are used within the department, the resulting list may be used to fill either work week position.
4. N.J.A.C. 4A:4-1.5 states that any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his/her title SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.
5. IN ACCORDANCE WITH NJAC 4A:4-2.9 MAKE-UP REQUESTS MUST BE SUBMITTED IN WRITING WITHIN FIVE (5) DAYS OF RECEIPT OF THE EXAM NOTICE. However, in situations involving illness, death or natural disasters, make-up requests must be made in writing within five (5) days after the test date. Requests for make-up examinations based on medical grounds must include written documentation from your physician and must include a New Jersey Civil Service Commission Medical Authorization for Public Safety Make-Up Examination Form. Mail all material to NJCSC, Selection Services, Attn: Make-up, PO Box 310, Trenton, NJ 08625-0310 or fax it to (609) 984-1064.
6. SAVE ON POSTAGE! GO PAPERLESS! RECEIVE IMMEDIATE CONFIRMATION THAT YOUR APPLICATION HAS BEEN RECEIVED! You can now file an application for this examination on-line. Visit the Civil Service Commission website at <http://info.csc.state.nj.us/epoa>. Select the promotional announcement and click on the link, "Click Here to file On-Line" at the top of the announcement. You can now complete and submit your application and payment on-line to the Civil Service Commission and you will receive an immediate receipt confirmation!

DPF-256A \* Revised 03/09