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STATE OF NEW JERSEY

In the Matter of Personnel Assistant
(C0392S), Ocean County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2438

Request for Appointment Waiver

ISSUED: JUL 31 2015 (JET)

Ocean County requests permission not to make an appointment from the November 5, 2014 certification for Personnel Assistant (C0392S), Ocean County.

The record reveals that the appointing authority provisionally appointed Jennifer Maier, pending open competitive examination procedures, to the subject title, effective January 30, 2014. The examination was announced with a closing date of June 11, 2014. The resulting list of eight eligibles promulgated on October 30, 2014 and expires on October 29, 2017. A certification was issued on November 5, 2014 (OL141458) which contained the names of the eight eligibles. The appointing authority returned the certification and indicated that it would not make a permanent appointment since Maier was no longer serving in the title and there was no longer a need for the title as a result of budgetary restrictions and layoffs. It is noted that Maier's provisional appointment was discontinued effective July 9, 2014.¹ The appointing authority thereafter requested a waiver from the appointment requirement since the provisional was no longer serving in the title and it did not currently have a use for the title in that jurisdiction.

On January 26, 2014, the appointing authority returned the certification to the Division of Agency Services (Agency Services) and requested that it be cancelled. Specifically, the appointing authority indicated that the only provisional serving in the title, Maier, was appointed as an Assistant Personnel Technician, and it was unnecessary to use the title due to budgetary restrictions and layoffs. It

¹It is noted that Maier was appointed as an Assistant Personnel Technician effective July 10, 2014.

is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. See *N.J.A.C. 4A:10-2.2(a)1*. Thereafter, the matter was referred by Agency Services to the Division of Appeals and Regulatory Affairs (DARA), and the appointing authority was advised that it could request a waiver of the appointment requirement. Moreover, it was advised that if an appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, the appointing authority argues that it should not be assessed costs as it will no longer be offering home health care services and it continues to face a deficit of \$1.5 million in 2015.

Official personnel records indicate that Maier resigned effective July 6, 2015. A review of agency records indicates that there are currently no employees serving provisionally pending open competitive examination procedures with the appointing authority in the title of Personnel Assistant.

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 for a list 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 generated as a result of the provisional appointment of Jennifer Maier. However, after a complete certification was issued, the appointing authority returned it and requested its cancellation. It stated that there was no longer a provisional appointee serving in the subject title, as Ms. Maier's provisional appointment was discontinued on July 9, 2014 and was no longer serving in the subject title. The appointing authority also explained that the subject title was not appropriate based on its budget cuts and layoffs. Accordingly, since there is no provisional serving in the title at issue, there is sufficient justification for an appointment waiver.

Although an appointment 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 this agency for the costs of the selection process. While two of the primary activities of this agency include administering the examination process and providing the names of eligible candidates to the jurisdictions under the Civil Service system, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists and candidates have needlessly expended their effort and money to take the examination with hopes of being considered for a permanent appointment. While

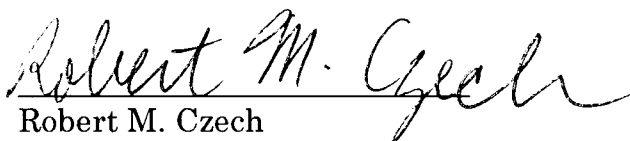
the Commission recognizes that the only provisional employee's appointment was discontinued on July 9, 2014, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Furthermore, the fact that the appointing authority no longer wishes to utilize the subject title is not sufficient justification to waive the costs. Therefore, although the appointing authority has shown sufficient reason for not making an appointment from the subject eligible list, it should be charged for the costs of the selection process. However, since the appointing authority has recently undergone a layoff, it would not be appropriate to assess the appointing authority for the total costs of the selection process in this particular matter. Rather, it is appropriate to assess its partial costs in the amount of \$1,024. *See e.g., In the Matter of Housing Assistance Technician (M1259H), City of Orange Housing Authority (MSB, decided January 16, 2008) (Appointment waiver request granted and partial costs assessed as the Housing Authority had undergone a layoff in May and June 2007, affecting eight employees).*

ORDER

Therefore, it is ordered that a waiver of 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 29th DAY OF JULY, 2015



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