



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Chemist 1 (M0493S),
City of Newark

CSC Docket No. 2016-3819

Appointment Waiver

ISSUED: **NOV 10 2016** (WR)

The City of Newark (Newark) requests permission not to make an appointment from the February 23, 2015 certification for Chemist 1 (M0493S).

The record reveals that the appointing authority provisionally appointed Robert Murray, pending open competitive examination procedures, to the subject title, effective May 3, 2014.¹ The examination was announced with a closing date of June 27, 2014. It is noted that Murray was found ineligible for the examination because he did not meet the minimum requirements for education. The resulting eligible list of 16 names promulgated on February 19, 2015 and expires on February 18, 2018. It 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. A certification was issued on February 23, 2015 containing the names of eight eligibles. The appointing authority returned the certification on June 29, 2016 and indicated that it would not make a permanent appointment since Murray was no longer serving in the subject title. The appointing authority thereafter requested a waiver of the appointment requirement and costs because it was "under budgetary constraints."

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. No further arguments were received.

¹ Murray's appointment to the subject title was the result of a title consolidation, effective May 3, 2014. He was originally appointed, pending open competitive examination procedures to the title of Water Chemist, Instrumental Trace Analysis, effective January 1, 2014.

A review of agency records reveals that there are currently no employees serving provisionally, pending open competitive examination procedures, in the subject title with Newark. Agency records further indicate that Murray was provisionally appointed, pending open competitive examination procedures, to the position of Senior Water Treatment Plant Operator, effective April 11, 2014.

A review of the job specification for Senior Water Treatment Plant Operator reveals that an individual in that title operates, adjusts, and regulates water treatment plant pumps; takes periodic readings of relevant gauges; and may conduct routine standardized tests on water samples valves, and other equipment. A review of the job specification for Chemist 1 reveals that an individual in that title performs various tests, examinations and analysis work in the laboratory and in the field.

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 generated as the result of the provisional appointment of Murray to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver because Murray was no longer serving in the subject title. A review of the relevant job specifications indicates that an individual in the title of Senior Water Treatment Plant Operator performs sufficiently different duties than an individual in the title of Chemist 1. Moreover, there are no employees serving provisionally in the subject title with the appointing authority. Accordingly, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, 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 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 this agency, 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, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this matter, the appointing authority requests that the cost of the selection process be waived due to its fiscal constraints. However, although the Commission is sympathetic to its situation, the appointing authority's economic

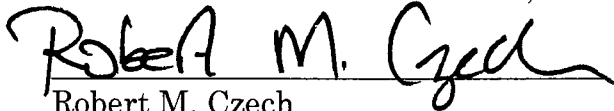
problems, while serious, are no less than those encountered by many, if not most other New Jersey county and municipal governments. Furthermore, reimbursement of selection costs pursuant to *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* does not place an undue burden on the appointing authority or prohibit it from looking towards other cost saving measures. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

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 \$2,048 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 10th DAY OF NOVEMBER, 2016



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