



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Management
Specialist (M0823R), City of Trenton

CSC Docket No. 2016-1531

Appointment Waiver

ISSUED: **NOV 15 2016** (LDH)

The City of Trenton requests permission not to make an appointment from the February 6, 2014 certification for Management Specialist (M0823R).

The record reveals that the appointing authority provisionally appointed Audrey Lane, pending open-competitive examination procedures to the title of Management Specialist, effective August 12, 2013. As a result of the provisional appointment, an examination was announced with a closing date of September 25, 2013. The resulting eligible list of five names promulgated on January 30, 2014 and expires on January 29, 2017. The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. On February 6, 2014, the names of five eligibles were certified from the subject eligible list.¹ The appointing authority returned the certification noting that the position could not be filled because of fiscal 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. In response, the appointing authority requests a waiver of costs. Specifically, it asserts that it receives transitional aid from the New Jersey Department of Community Affairs (DCA) transitional aid program and thus is unable to pay for the costs of the

¹ Lane applied to the subject examination but was deemed ineligible.

selection process. Moreover, the appointing authority states that the provisional has since resigned.

Agency records reveal that Lane resigned, effective September 11, 2015. Personnel records further reveal that there are no employees in the subject title serving provisionally, pending an open competitive examination, with the appointing authority.

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, as a result of the provisional appointment of Lane, a complete certification was issued to the appointing authority. Subsequently, it indicated that it would not be making any appointments due to fiscal constraints and noted that Lane had resigned, effective September 11, 2015. Moreover, agency records indicate that there are currently no employees serving provisionally in the subject title with the appointing authority. Accordingly, based on the foregoing, the appointing authority has presented sufficient justification for an appointment waiver.

Although the 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 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, effort and money to take these examinations in hopes of being considered for a permanent appointment. In the instant situation, the appointing authority states it should not be assessed selection costs due to fiscal constraints. In this regard, it notes that it is receiving transitional aid² from the DCA. Although the Commission is cognizant of the appointing authority's receipt of transitional aid, the examination process was initiated due to the provisional appointment of Lane. However, since the appointing authority is receiving transitional aid, under the particular circumstances of this matter, it would not be an appropriate to assess the appointing authority for the total costs of the selection process. Rather it is

² The jurisdictions that receive transitional aid were previously known as "distressed cities."

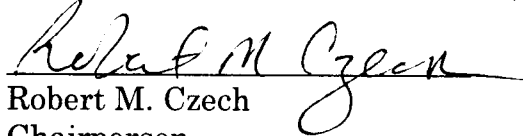
appropriate to assess partial costs in the amount of \$1,024. *See the Matter of Community Service Worker, Bilingual in Spanish and English (M0464E), City of Hoboken* (MSB, decided November 15, 2006) (Hoboken assessed half of the selection costs on the basis that it was a distressed city); *In the Matter of Director of Economic and Industrial Development (M6882A), City of Camden* (MSB, decided January 29, 2002) (Camden assessed half of the selection costs on the basis that it was a distressed city).

ORDER

Therefore, it is ordered that the appointment waiver be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed partial costs of the selection process in the amount of \$1,024 to be paid within 30 days of the issuance of this decision.

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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