



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Maintenance Worker 3 Grounds (C0432S) and (C0052T), Salem County

Request for Enforcement and Appointment Waiver

CSC Docket No. 2016-1639

ISSUED: NOV 16 2016 (SLK)

The Division of Agency Services (Agency Services) requests that the Civil Service Commission (Commission) order Salem County to return the May 19, 2015 certification of the eligible lists for Maintenance Worker 3 Grounds (C0432S) and (C0052T), Salem County for proper disposition. Salem County requests permission not to make an appointment from the May 19, 2015 certification for Maintenance Worker 3 Grounds.

By way of background, the May 19, 2015 (OL150645) certification containing four names was issued to Salem County. Salem County initially disposed of the certification on July 29, 2015, but Agency Services returned the certification on August 21, 2015 notifying Salem County that its reason for removing the eligibles' names from the list was not acceptable. Specifically, Agency Services indicated that the reason the appointing authority stated, that the applicants did not possess a Commercial Driving License (CDL), was not acceptable since there was no indication in its records that the announcement for either symbol required applicants to possess a Commercial Driving License (CDL). However, Salem County failed to properly dispose of the certification. Thereafter, the matter was referred to the Division of Appeals and Regulatory Affairs (DARA). The referral was acknowledged by DARA, and the appointing authority was notified that the matter had been referred for enforcement and it was advised that any failure on its part to return the certification could subject it to the assessment of costs, charges and fines pursuant to N.J.A.C. 4A:10-2.1(a)2 and N.J.A.C. 4A:10-2.2(b). In response, the appointing authority stated that it required the employee holding the

title provisionally to possess a CDL. Additionally, it noted that the announcements only indicated that applicants *may* be required to possess a CDL. Further, it maintained that some of the equipment to be used by the person in the position requires a CDL.

Thereafter, staff from DARA wrote the appointing authority stating that it is Agency Services' understanding that the appointing authority's provisional appointee did not have a CDL license at the time these announcements were issued. Therefore, DARA requested that the appointing authority provide an explanation and supporting documentation to indicate why a CDL was not required at the time these announcements were issued and why it is now requiring it. Further, the appointing authority was advised that if it did not provide a response by April 29, 2016, this matter would be forwarded to the Commission for a review and decision without these explanations.

In a letter dated May 25, 2016, the appointing authority requested an appointment waiver due to budgetary constraints and stated that it has instituted a hiring freeze and wishes to vacate this title.

A review of agency records indicates that the provisional was removed from the subject title on April 29, 2016 and there are no other employees recorded as serving provisionally pending open competitive examination procedures in the subject title with Salem County.

CONCLUSION

N.J.A.C. 4A:10-2.1, states, in pertinent part, that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission may assess costs, charges and fines not to exceed \$10,000.

N.J.A.C. 4A:10-2.2(a) states that when the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

N.J.A.C. 4A:10-2.2(a)2 states that an appointing authority may, for valid reasons such as fiscal restraints, petition the Commission not to make a permanent appointment. The petition may grant such a petition, but may order the appointing authority to reimburse the Commission for the costs of the selection process.

N.J.A.C. 4A:10-2.2(b) states in addition to the actions which the Commission may take in (a) above, the Commission may take any action set forth in *N.J.A.C.*

4A:10-2.1. Prior to any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

In this matter, the announcement for (C0052T)¹ states:

Appointees may be required to possess a valid Commercial Driver's License (CDL) and applicable endorsements for this class and type of vehicle being operated.

The appointing authority argued that since the announcements state that a CDL may be required, the applicants did have notice that they may need a CDL and it had a legitimate business reason to remove the applicants for failing to possess a CDL. However, personnel records indicate that Agency Services specifically asked the appointing authority, prior to issuing the subject announcements, if a CDL was required and both times it responded that it was not. Further, personnel records indicate that the provisional appointee did not possess a CDL at the time these announcements were issued. Moreover, the appointing authority was given the opportunity to present documentation that the provisional appointee possessed a CDL at the time of the announcements as well as an opportunity to explain why it did not initially require a CDL and why it is now requiring it; however, it failed to do so. Therefore, non-possession of a CDL is not a valid basis to remove an eligible from these lists.

The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).* DARA sent Salem County a November 5, 2015 letter advising that it could be subject to fines for failure to properly dispose of the certification. However, Salem County did not respond. Thereafter, DARA sent Salem County an April 8, 2016 letter requesting that it provide a response by April 29, 2016 explaining why it initially did not require a CDL license and why it is now requiring it. Further, it was advised that if it did not respond, the Request for Enforcement would be forwarded to the Commission without its explanation. As Salem County has not provided the requested explanation and Agency Services and DARA spent considerable resources on the enforcement of this matter, it shall be assessed a fine of \$1,000 for noncompliance under *N.J.A.C. 4A:10-2.1*.

¹ The announcement for (C0432S) does not have this sentence in its announcement, but the overall sentiment regarding whether or not a CDL license is a requirement for a position with the appointing authority in the subject title is the same.

Thereafter, in a May 25, 2016 letter, Salem County requested an appointment waiver due to budgetary constraints. 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.

The examination for the subject title was generated as the result of a provisional appointment to the subject title. However, after a complete certification was issued, the appointing authority indicated that it wished to vacate this title due to its fiscal constraints and personnel records indicate that the provisional has been removed from the subject title. Consequently, 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 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 for 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 regard, the removal of the provisional is insufficient to support a waiver of the costs of the selection process. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

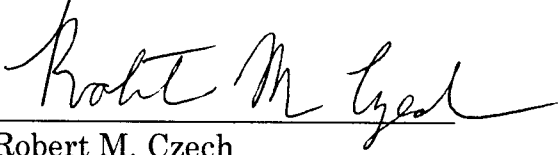
ORDER

Therefore, the Commission orders that a fine for noncompliance be assessed against Salem County in the amount of \$1,000, pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-2.1, to be remitted within 30 days of the issuance of this decision.

Further, it is ordered that 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 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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