



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Vincent Ricciardi
and Louis Panarese

Administrative Appeal

CSC Docket Nos. 2017-3487
and 2017-3895

ISSUED: JUL 28 2017 (WR)

The Superior Court of New Jersey has transferred the issue of Louis Panarese's status as a Police Chief with Hillside Township (Hillside) to the Civil Service Commission (Commission). A copy of the Court's May 26, 2017 order is attached. Vincent Ricciardi, represented by Rubin Sinins, Esq., also contests Panarese's appointment as Police Chief and seeks a determination of his employment status. Since these matters concern the same issues, they have been consolidated herein.

By way of background, Hillside Township (Hillside) appointed Louis Panarese to Police Chief, pending promotional examination procedures, effective February 5, 2013. According to Panarese, Hillside indicated its intention to seek a waiver of the promotional examination, but, for unknown reasons, never submitted that waiver request to this agency. It also failed to notify this agency of Panarese's provisional appointment. Subsequently, on March 16, 2016, Hillside returned Panarese to his permanent position as Police Captain and provisionally appointed Vincent Ricciardi to the title of Police Chief, pending promotional examination procedures. As a result of the appointment, an examination (PM1603U) was announced on August 1, 2016 with a closing date of October 31, 2016.¹ Panarese, Ricciardi and Nicola Lomonte applied for and were admitted to the written examination, which was held on December 6, 2016. Panarese did not appear for the

¹ The examination was open to applicants in possession of an aggregate of one year of continuous permanent service as a Police Captain or Police Lieutenant as of the closing date.

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examination.² An eligible list containing the names of Lomonte and Ricciardi promulgated on January 12, 2017. The list was certified on February 22, 2017 (PL170263). In disposing of the certification, Hillside indicated that Ricciardi received a regular appointment to the title of Police Chief, effective April 12, 2017.

On April 12, 2017, Panarese filed a verified complaint and order to show cause with the New Jersey Superior Court seeking his reinstatement to the title of Police Chief. On the following day, the Honorable Karen M. Cassidy, A.J.S.C. ordered Panarese's reinstatement. A hearing on the matter was held on May 24, 2017 and on May 26, 2017, Judge Cassidy transferred the matter to the Commission for disposition of all matters alleged in the complaint that fall under its jurisdiction. Hillside was enjoined from demoting Panarese from the position of Police Chief or from promoting any other individual to the position of Police Chief until the Commission's decision on this matter. It is noted that Judge Cassidy retained jurisdiction, pending the determination of the Commission.

Before the Commission, Panarese, represented by Christopher Gray, Esq., argues that when the Hillside Council voted to appoint him as Police Chief on February 5, 2013, it intended to make his appointment permanent. He asserts that the Mayor at the time, Joseph Menza, "directed that all required paperwork be completed to make his provisional appointment permanent." To this end, Panarese contends that Hillside planned to seek an examination waiver from this agency, but never formally requested one due to Hillside's negligence, which he blames on a "communication breakdown," and which led him, Menza and the Council President to believe the appointment process was completed. Had the waiver been requested, Panarese argues that this agency would have granted the request as he met the waiver criteria set forth in *N.J.A.C. 4A:4-2.7*. He posits that the Commission has the authority to retroactively grant a waiver and in support, he relies on *Kyer v. City of East Orange*, 315 *N.J. Super.* 524 (App. Div. 1998) and *In re Crane*, Docket No. A-0413-04T3 (App. Div., decided February 17, 2006). As in *In re Crane*, Panarese contends that he was under the belief that he was permanently appointed on February 5, 2013 because he attended a ceremony celebrating his appointment that day and also because "everyone in the township," including Mayor Angela Garretson, referred to him as the Police Chief. Moreover, he observes that the current Business Administrator confirmed in a deposition that he was permanently appointed to the title of Police Chief. Additionally, Panarese argues that "from February 5, 2013 through March 16, 2016, [he] was never made aware there was any technical deficiency to his permanent status."

Panarese further claims that he has led the Hillside Police Department with integrity and dedication, and there is no claim that he did anything wrong. Thus, he asserts that the goals of the Civil Service would be thwarted if he is returned to

² Agency records indicate that Panarese did not request a makeup examination or appeal his failure to take the examination.

his permanent position of Police Captain. In this regard, he argues that he was appointed to the title of Police Chief for his knowledge, skills and abilities and his meritorious performance should be rewarded. He also claims that he “deserves the protection from . . . [a] political and retaliatory removal.” Specifically, he posits that his demotion may be in retaliation for filing a Conscientious Employee Protection Act (CEPA) lawsuit against Mayor Garretson. He states that he also complained about Garretson to the Hillside Council President, the Union County Prosecutor and this agency.³ Finally, Panarese states that he applied for the December 6, 2016 examination (PM1603U) “out of an abundance of caution.” However, he maintains that he considered himself the permanent Police Chief at the time.

In response, Hillside, represented by Farrah Irving, Esq., asserts that Menza did not permanently appoint Panarese to the title of Police Chief in 2013. Moreover, it rejects Panarese’s arguments regarding the waiver request. It states that under its form of government, the Mayor is the appointing authority⁴ and would have been the only person empowered to request a waiver. It contends that there is no evidence that Menza did so or that he ordered anyone to do so on his behalf. In this regard, Hillside argues that “the mere musings of Menza do not create a procedural defect in the Police Chief appointment process.” It also asserts that the belief of elected officials does not govern Panarese’s status. Additionally, Hillside asserts that Panarese had “every opportunity” to inquire about the alleged waiver request, but failed to do so. Finally, Hillside observes that Ricciardi and Lomonte took the examination and by not taking it, Panarese “effectively removed himself from consideration as the Chief.”

Ricciardi contends that his appointment to the title of Police Chief, effective April 12, 2017, complied with the promotional examination process. By contrast, he argues that Panarese was not properly appointed to the title of Police Chief and therefore never became permanent in the position. Accordingly, he requests that the Commission adjudicate the matter of his and Panarese’s conflicting job rights and the remedy, if any, to which each is entitled.

CONCLUSION

A thorough review of the record in the instant matter reveals that Panarese has failed to establish that he should be granted a retroactive waiver of the

³ In a letter dated October 2, 2015, Panarese requested from this agency assistance “with the ongoing problems in respect to the responsibilities of” Mayor Garretson to the Civil Service Commission regarding appointments in the Police Department. He wrote, “I have just learned that officers here, including myself, have not had their promotions properly filed with your agency dating back to at least 2013.”

⁴ In 2013, the Hillside Mayor and municipal council were involved in litigation regarding the proper designation of the Hillside appointing authority. In *Hillside Firemen’s Mut. Benevolent Ass’n, Local No. 35 v. Menza*, Docket No. A-4937-10T2 (App. Div. March 6, 2013), the Appellate Division determined that the Mayor was the appointing authority.

promotional examination process or be retroactively permanently appointed to the title of Police Chief.

In *O'Malley v. Department of Energy*, 109 N.J. 309 (1987), our Supreme Court concluded that a long-term provisional employee was not entitled to retain his provisional position without complying with the examination procedures set forth in N.J.S.A. 11A:1-1 *et seq.* In *O'Malley*, the employee provisionally occupied a position for more than two years before he was returned to his former permanent title. No examination was conducted during this time period. The employee contended that the failure to give a timely examination vested him with the automatic right to retain his provisional position. The Court rejected this claim.

Neither the original act nor the 1986 Act expressly created such a right in favor of provisional employees. In addition, nothing in the legislative history suggests that the Legislature intended to create such a right. It is the welfare of the public, not that of a particular provisional employee, that underlies civil service legislation. We believe it would thwart the legislative intent to allow a provisional employee to retain his or her position merely because the Commission could not offer a timely test.

* * *

In the present case, however, we are persuaded that the legislative goal of appointments based on merit and fitness is the paramount consideration. *With respect to provisional employees, that goal is met by competitive examinations, not by holding a position beyond the time prescribed by the Legislature. Id.* at 316-317 (emphasis added).

In *Kyer v. City of East Orange*, 315 N.J. Super. 524 (App. Div. 1998), the court determined that the City of East Orange's ("City") actions in denying Kyer, a seven-year employee, the opportunity to ever achieve permanent status in her competitive career service position, contrary to the Civil Service Act, were so egregious that they warranted a unique remedy.

It is our view that a delicate balance must be struck between the public and private interests that are subject to prejudice when a governmental entity fails to comply with its statutory obligations. Estoppel is not the answer. First, the Supreme Court has precluded that solution. Second, unqualified persons may thereby be afforded an improper route to permanency. But by the same token, it is no solution to leave remediless the well-qualified, experienced, high-performing, long-term provisional employee who is unaware that her position is not permanent, who in all likelihood would have easily

achieved permanency but for the municipal negligence, and whose summary discharge from employment is as obviously unfair and arbitrary as this jury found plaintiff's to be. *Kyer, supra*, 315 *N.J. Super.* at 532-533.

Accordingly, the court transferred the case to the Department of Personnel⁵ to retroactively determine whether Kyer would have qualified for the competitive career service position she provisionally held for seven years and, if so, "to fashion an appropriate remedy." *Id.* at 534. Ultimately, the Merit System Board determined that, notwithstanding Kyer's years of service or the misdeeds of the appointing authority, she was not entitled to a permanent appointment since she did not meet the open-competitive requirements for the position at the time the provisional appointment was initially made. *See In the Matter of Ruby Robinson Kyer* (MSB, decided May 4, 1999).

In the instant matter, Panarese cannot be considered to be a permanent employee simply because he occupied the position of Police Chief as a long-term provisional employee. *See e.g., N.J.S.A. 11A:4-13(a)* (permanent appointment can only be achieved when an individual takes an examination, is placed on an eligible list and is permanently appointed from that eligible list). Panarese had no property interest in his provisional position which would give him a mandatory right to a permanent appointment. *See e.g., Nunan v. Department of Personnel*, 244 *N.J. Super.* 494, 497 (App. Div. 1990) (a candidate on an eligible list only has an expectancy interest in appointment); *In re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984) ("[t]he only benefit inuring to such a person is that so long as that list remains in force, no appointment can be made except from that list."); *see also, N.J.A.C. 4A:4-4.8(a)3* (appointing authority may choose any of the top three eligibles for permanent appointment).

Although Panarese relies on *Kyer* and *In re Crane* to argue that he is entitled to a retroactive examination waiver, the facts in the instant matter are distinguishable. While Hillside *may have* been negligent in failing to request an examination waiver, there is no indication that Panarese was given misleading information regarding the status of his appointment. Specifically, there is no indication in the record that Panarese was ever informed that the waiver request was granted or that his position as Police Chief had become permanent. Moreover, the Commission notes that requests for such waivers are discretionary and, even when requested, require review and approval by this agency. Further, "everyone in the township" referring to him as Police Chief is unpersuasive evidence of his permanent service since, as the provisional Police Chief, he was entitled to be

⁵ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008.

addressed by that title. Additionally, unlike the employees in *In re Crane* and *Kyer* who were misled about their employment status for 10 and seven years, respectively, Panarese was, at most, only unaware of his status from the date of his appointment to October 2, 2015, the date he admitted such in a letter to this agency. In that regard, both *Kyer* and *Crane* were *specifically erroneously informed* by their respective employers that they were permanent employees. In fact, *Crane* was actually informed by his employer that he was permanently appointed from a certified list. In this matter, there is no specific evidence indicating that Panarese was informed that his appointment to Police Chief was permanent. Also, in contrast to *Kyer*, Panarese was not a new employee who was unaware of the normal appointment process. Rather, Panarese was a long term employee who had been promoted several times and who had been previously involved in the appointment process. Finally, the fact remains that Panarese applied for the PM1603U examination, but, for reasons he does not explain, failed to take it. Accordingly, Panarese has not established that he is entitled to a regular appointment to the title of Police Chief.

With regard to Hillside's disposition of the February 22, 2017 certification from the Police Chief (PM1603U) eligible list, it is noted that in disposing of the certification, Hillside indicated that Ricciardi received a regular appointment, effective April 12, 2017. Since it has been determined that Panarese was not entitled to a regular appointment to the title of Police Chief, Ricciardi's appointment to Police Chief, effective April 12, 2017 should be recorded. However, Ricciardi must complete a current working test period.⁶

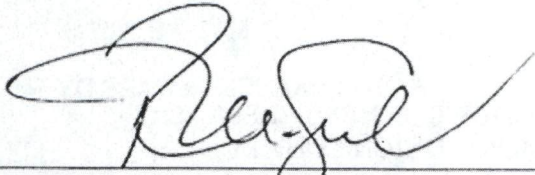
ORDER

Therefore, the Civil Service Commission finds that Louis Panarese is not entitled to a regular appointment as a Police Chief. Furthermore, the Civil Service Commission orders that Vincent Ricciardi's appointment to the title of Police Chief, effective April 12, 2017 be recorded and that he complete a current working test period.

This is the final administrative action in the matter. Any further review should be pursued in a judicial forum.

⁶ In its Order, the Superior Court ordered that the temporary restraints should remain in effect until the Commission's determination of this matter, after which the appointing authority may move to dissolve or modify the temporary restraints.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 26th DAY OF JULY, 2017



Robert M. Czede, Chairperson
Civil Service Commission

Inquiries
and
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Attachment

c: Louis Panarese
Christopher Gray, Esq.
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Rubin Sinins, Esq.
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Honorable Karen M. Cassidy, A.J.S.C.
Dayna Katz, Esq.
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Records Center

FILED

MAY 26 2017

PREPARED BY THE COURT

LOUIS PANARESE

Plaintiff,

v.

TOWNSHIP OF HILLSIDE &
MAYOR ANGELA GARRETSON,
individually and in her official
capacity as Mayor of the Township
of Hillside

Defendants.

KAREN M. CASSIDY
SUPERIOR COURT OF NEW JERSEY, J.S.C.
LAW DIVISION – UNION COUNTY

DOCKET NO.: UNN-L-1375-17

Civil Action

ORDER

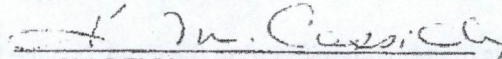
THIS MATTER having come before the Court the Honorable Karen M. Cassidy, A.J.S.C., by Order to Show Cause with Temporary Restraints by Christopher A. Gray, Esq. of Sciarra and Catrambone, counsel for plaintiff Louis Panarese (“Panarese”), seeking relief by way of temporary restraints and preliminary injunctive relief pursuant to R. 4:52, based upon facts contained in the Verified Complaint in Lieu of Prerogative Writs and supporting Certification and Brief and by Motion to Dismiss by Farrah A. Irving, Esq. of Irving & Mendenhall, counsel for defendants Township of Hillside and Mayor Angela Garretson; and the Court having considered the submissions of the parties, including the submission of Christopher A. Gray, Esq. of Sciarra and Catrambone, the submission of Farrah A. Irving, Esq. of Irving & Mendenhall and the submission of Rubin M. Sinins, Esq. on behalf of the potential intervener Vincent P. Ricciardi, Jr.; and a hearing having been held on May 24, 2017, with counsel for plaintiff, defendant, and Vincent P. Ricciardi, Jr. appearing and oral argument being heard and with Vito A. Gagliardi, Jr. appearing on behalf of New Jersey State Association of Chiefs of Police, having filed a separate application

to appear *amicus curiae* but not participating at oral argument; and for the reasons set forth on the record:

IT IS on this 26th day of May, 2017 hereby ORDERED that:

- (1) Defendant's motion to dismiss is denied;
- (2) This matter is transferred to the Civil Service Commission for disposition of all matters alleged in the Complaint that fall within their jurisdiction. The court retains jurisdiction over this matter pending the determination of the Civil Service Commission;
- (3) Pending disposition of this action before the Civil Service Commission, defendants are enjoined and temporarily restrained from:
 - a. Demoting, or in any way removing Plaintiff, Louis Panarese, from his position as Chief of Police in Hillside Township;
 - b. Promoting any other individual to the position of Chief of Police of the Township of Hillside; or
 - c. Taking any action to interfere with Plaintiff's ability to manage the Hillside Police Department under N.J.S.A. 40A:14-118;
- (4) The temporary restraints shall remain in effect until a ruling on those issues referenced in paragraph 3 are made by the Civil Service Commission. Should their decision terminate the continued service of Louis Panarese as Chief of Police, counsel may move to dissolve or modify the temporary restraints, for good cause shown, upon two (2) days notice to the plaintiff's attorney;
- (5) Furthermore, following a determination of the Civil Service Commission the parties may seek adjudication of any issues which remain before this Court by filing the appropriate application; and

A copy of this Order has been provided to all parties by the Court on this date via facsimile and regular mail.


KAREN M. CASSIDY, A.J.S.C.