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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of David Lerner and  
Ferdinand Picariello, Jersey City

CSC Docket Nos. 2015-1769 and  
2015-1771

Administrative Appeals

ISSUED: **AUG 21 2015** (DASV)

David Lerner and Ferdinand Picariello, represented by Steven I. Adler, Esq., appeal the termination of their employment. Since these matters involve similar issues, they have been consolidated.

By way of background, the Civil Service Commission (Commission) granted the request of the City of Jersey City (Jersey City) to permanently appoint employees of the Jersey City Parking Authority (Parking Authority) effective July 1, 2014.<sup>1</sup> The Parking Authority, a non-Civil Service agency, was to be dissolved and Jersey City obtained approval to absorb 86 Parking Authority employees. Upon review, the Commission determined that the movement of these employees would not be the type of arrangement contemplated by the Uniform Shared Services and Consolidation Act. As such, the absorption of Parking Authority employees into Jersey City constituted new appointments to be made. Accordingly, Jersey City's request was considered to be a request for permanent appointments in the competitive division, which ordinarily could not be made without an individual applying for and passing an examination, being appointed from an eligible list, and satisfactorily completing a working test period. However, the Commission found that it would be inequitable and possibly detrimental for the employees who have worked in the Parking Authority for one or more years to compete in an open-competitive examination situation, and conceivably be displaced, in order to secure

<sup>1</sup> The Jersey City Council did not approve the appointments until after September 2014 and the dissolution of the Parking Authority did not actually occur until January 1, 2015. Thus, the effective date of the appointments to Jersey City was January 1, 2015.

a position which they had already clearly demonstrated their merit and fitness to perform. Therefore, under those unique circumstances, considering that the Parking Authority employees had come within the career service by virtue of their agency's dissolution and the utilization of their positions within Jersey City, a jurisdiction that has adopted Title 11A, good cause was presented to grant Jersey City's request. *Cf.*, N.J.S.A. 11A:9-9. However, the Commission noted that those individuals who did not possess one year of service as of the transfer date were correctly considered provisionally appointed on that date and must proceed through the examination process in order to achieve permanent status. *See In the Matter of the Jersey City Parking Authority* (CSC, decided July 30, 2014).

In the instant matter, Lerner and Picariello indicate that they were long-term employees of the Parking Authority, having worked for that agency for 20 years and 18 years, respectively. They state that, during the transfer of the employees to Jersey City, Lerner was to be appointed as a Management Assistant and Picariello as an Insurance Manager. The appellants argue that since they worked for more than one year with the Parking Authority prior to the transfer, they should have been placed in the aforementioned career service titles in Jersey City with permanent status. Moreover, the appellants contend that the Commission's decision made clear that they ceased to be employees of the Parking Authority and were absorbed by Jersey City and could not be removed except in accordance with Civil Service law. However, they explain that Jersey City sent them letters, dated November 19, 2014, "falsely representing to them they had not become City employees" and "their employment with the [Parking Authority] would terminate on January 1, 2015." Specifically, in the letter, Jersey City's Business Administrator said in part that "the City will unfortunately not be able to offer you a position with the Jersey City Department of Public Safety/Division of Enforcement after the [Parking Authority] officially dissolves on January 1, 2015." Further, the appellants assert that Jersey City failed to submit a layoff plan to this agency, serve them with layoff notices 45 days prior to their separation, or inform them of any job vacancies and their displacement rights. Moreover, the November 19, 2014 letter to the appellants failed to set forth a legitimate basis for their layoff. Therefore, the appellants request relief from the Commission.

In response, Jersey City states that during the transition between August 1, 2014 and December 31, 2014, it conducted a review of job functions and determined that the functions of the appellants' positions were duplicative and already filled by permanent Jersey City employees. It explains that Picariello was to be appointed as an Insurance Manager, but Jersey City "has an entire risk management department which essentially performs the same functions." Moreover, Lerner was an Assistant Chief Executive Officer with the Parking Authority and Jersey City initially proposed that he be given an Assistant Division Director title. However, there was already an Assistant Director in the Department of Public Safety. Additionally, Jersey City indicates that a list of 65 former Parking Authority

employees was submitted to this agency on February 3, 2015 to place the employees' appointments in the County and Municipal Personnel System. The appellants were not included on that list. Jersey City maintains that, although the appellants were advised of proposed job titles, they were never offered a position and did not become Jersey City employees. Furthermore, it contends that it was not required to serve any layoff notice as the effective date of the appointments was on January 1, 2015 and no Parking Authority employees became Jersey City employees prior to that date. Jersey City emphasizes that the November 19, 2014 letter was "simply a courtesy to thank" the appellants for their service to the Parking Authority and to advise them that Jersey City would not be able to offer them a position. Lastly, it stresses that the Parking Authority and Jersey City are not the same party and each are separate and distinct from one another.

### CONCLUSION

*N.J.A.C.* 4A:2-2.1 provides that the right to appeal major discipline, which includes the termination of an employee, applies only to permanent employees in the career service or a person serving a working test period. *See also N.J.S.A.* 11A:2-6. Additionally, *N.J.A.C.* 4A:8-2.6(a) provides that good faith appeals and determination of rights appeals in layoff actions may be filed by permanent employees and employees in their working test period. *See also N.J.S.A.* 11A:8-4 and *N.J.S.A.* 11A:2-11h. Moreover, *N.J.A.C.* 4A:8-1.6(a) provides that no permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. *See also, N.J.S.A.* 11A:8-1(a).

A review of the instant matter reveals that the appellants were not appointed by Jersey City and did not acquire permanent status. Accordingly, any right set forth above is not applicable to them. In that regard, there is no dispute that the appellants were employed by the Parking Authority, a non-Civil Service agency which was dissolved on January 1, 2015. Although there was a determination as to the appellant's proposed titles in Jersey City, the record indicates that no offer of employment was given to them. The appellants argue that the Commission's decision clearly indicated that they ceased to be employees of the Parking Authority and were absorbed by Jersey City and could not be removed except in accordance with Civil Service law. However, the Commission explicitly determined that the absorption of Parking Authority employees into Jersey City constituted new appointments. Moreover, Jersey City's request to absorb employees was considered a request for permanent appointments of those new appointees, which the Commission granted on equitable grounds to those employees who had worked for the Parking Authority for more than one year. Therefore, at no time were the appellants considered Jersey City employees. They were not offered employment.

and as such, they did not acquire permanent status upon the dissolution of the Parking Authority. The November 19, 2014 letter clearly advised them of that fact. It is settled that there is no provision in Civil Service law or rules that requires an appointing authority to fill a vacancy. The determination as to whether a vacancy exists and/or will be filled is left to the discretion of the appointing authority. *See In the Matter of Todd Sparks* (MSB, decided April 6, 2005); *In the Matter of Institution Fire Chief* (MSB, decided January 12, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). In the present case, there was not a vacancy, as Jersey City submits that the appellants' functions were already performed by other employees. Moreover, although 86 former Parking Authority employees were initially considered in the transfer, neither the Commission's prior decision nor any other Civil Service law or rule obligated Jersey City to appoint all 86 employees, including the appellants.

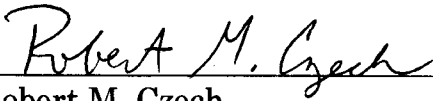
Therefore, absent a valid appointment, the Commission is without jurisdiction to address the appellants' terminations. *See N.J.A.C. 4A:2-2.1 and N.J.S.A. 11A:2-6; see e.g., In the Matter of Gary Thacker* (MSB, decided March 10, 2004). *See also, In the Matter of Marcus Adams* (MSB, decided March 9, 1999) (No jurisdiction to review local appointing authority hiring practices in non-Civil Service title of volunteer fire fighter). Accordingly, their appeals are dismissed.

### ORDER

Therefore, it is ordered that the appeals of David Lerner and Ferdinand Picariello be dismissed for the Civil Service Commission's lack of jurisdiction.

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 19<sup>TH</sup> DAY OF AUGUST, 2015

  
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