



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Administrative Analyst
(M0864R), West New York

CSC Docket No. 2015-2731

Request for Appointment Waiver

ISSUED: **NOV 16 2016** (EG)

West New York requests permission not to make an appointment from the November 5, 2014, certification for Administrative Analyst (M0864R).

The record reveals that West New York provisionally appointed Brian O'Reilly to the subject title effective November 20, 2012. As a result, an examination was announced with a closing date of October 8, 2013. The subject eligible list promulgated on August 7, 2014, with 25 eligibles and expires on August 6, 2017. Thereafter, West New York requested a waiver of the appointment requirement. It indicated that a prior Business Administrator created the subject position in 2012, and that the new Business Administrator would not be appointing any individuals to this title due to budget constraints. It is noted that O'Reilly is no longer serving as an Administrative Analyst.

West New York'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. West New York did not provide a response to this advisement.

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, the examination for the title of Administrative Analyst was

generated as a result of a provisional appointment to the subject title. After a complete certification was issued, West New York indicated that the Business Administrator had changed and that it would not be making any appointments due to budget constraints. Further, official records indicate that there are currently no employees serving provisionally in the subject title. Accordingly, based on the foregoing, there is 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.

However, the Civil Service Commission notes that the list in question will not expire until August 6, 2017. Further, the record reveals that there is currently an outstanding certification of the subject eligible list from another department/appointing authority.¹ Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided March 22, 2006)* (Not appropriate to assess the Department of Corrections for the costs of the selection process since it had indicated its intention to utilize the eligible list prior to its expiration date). Nevertheless, in the event the list is not utilized by its expiration date of August 6, 2017, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided April 11, 2007)* (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).

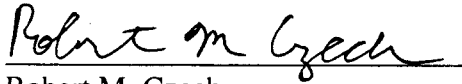
ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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

¹ West New York utilizes a Walsh Act form of government.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF NOVEMBER, 2016



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