



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Natalie Ogonowski, Township of Hillside

CSC Docket No. 2016-1257

Request for Reconsideration

ISSUED: NOV 30 2016 (CSM)

Natalie Ogonowski, a Police Officer with Hillside, represented by Daniel J. Zirrieth, Esq., requests reconsideration of the attached decision rendered on July 29, 2015, concerning her non-appointment from the Police Sergeant (PM2677L), Hillside eligible list.

By way of background, the appellant appeared in the second position on the July 23, 2013 (PL130859) certification of the subject eligible list. In disposing of the certification, the appointing authority appointed the number one eligible. The appellant appealed this matter to the Civil Service Commission (Commission) arguing that she had been employed as a Police Sergeant in an "acting" capacity since October 7, 2012, so she requested that this agency perform a classification review of her position. A classification determination dated May 4, 2014 found that the appellant was performing duties commensurate with those of a Police Sergeant and indicated that she was to be considered serving provisionally in the title effective April 5, 2014. However, she claimed that the appointing authority exercised its right to remove the higher level duties but replaced her with another Police Officer serving in an "acting" capacity. Further, she noted that the appointing authority had been issued two salary disapproval letters for the use of an "acting" position and for not disposing of the July 23, 2013 certification, argued that the Commission should order permanent appointments to fill vacancies where "acting" appointments were being utilized, and that she be appointed as she was next on the eligible list. In denying her appeal, the Commission noted that none of the individuals specified by the appellant were serving provisionally in any title, that the individuals she named were in "acting" positions, and that the appointing authority did not deny the use of "acting" positions. Nevertheless, the Commission

observed that the appointing authority's use of "acting" appointments was improper as there is no such designation in Civil Service law or rule and cautioned it from using such designations in the future. Additionally, the Commission found that there was no basis to order that the appellant be appointed to Police Sergeant.

On reconsideration, the appellant states the appointing authority continues to use "acting" positions that require a permanent appointment to fill the vacancy for Police Sergeant. In support of her contentions, she provides a certification indicating that on June 6, 2014, Terence Clerk was appointed as an "acting" Police Sergeant in Secondary Employment, that LaShonda Burgess was appointed "acting" Police Lieutenant in Patrol on September 1, 2014, that Timothy O'Neil was appointed to "acting" Police Sergeant in Patrol on September 2, 2014, and that Richard Floyd was appointed to "acting" Police Captain in Administration on December 9, 2014. Additionally, the appellant's certification claims that Peter Corvelli was appointed to "acting" Police Sergeant in Patrol from August 28, 2014 to October 7, 2014 and from December 21, 2014 to the present, that Angelo Lomonte as appointed to "acting" Police Lieutenant in Patrol on December 21, 2014 and that Jamie Howell was appointed to "acting" Police Sergeant in Patrol on April 5, 2015. The appellant argues that all of these individuals are still serving in "acting" positions, even though a current Police Captain and Police Lieutenant eligible list can be used.

Further, the appellant states that she was improperly removed from her "acting" Police Sergeant position in Secondary Employment and was replaced with another "acting" Police Sergeant, Clerk. The appellant maintains that the above is "new information" that was not available during the initial proceeding. Therefore, since the filling of vacancies must be done via an existing promotional list, she argues that the Commission should compel the appointing authority to fill these existing vacancies. Thus, since the appellant was required to fill an existing vacancy in an "acting" Police Sergeant capacity and the appointing authority failed to appoint enough eligibles from the July 23, 2013 certification to resolve its continued improper use of "acting" appointments, she argues that should have been permanently appointed since her classification review results were issued prior to the issuance of a salary disapproval letter. Therefore, the appellant contends she should be permanently appointed as Police Sergeant. In the alternative, if the appointing authority disputes any of the facts asserted, the appellant requests a hearing. The appellant provides various documents in support of her appeal, such as letters of assignment to various individuals to various positions, organizational charts, and a news article.

In response, the appointing authority, represented by Robert F. Varady, Esq., states that the list provided by the appellant indicates three "acting" appointments prior to her September 5, 2014 initial appeal to the Commission and argues that there is no reason why this information could not have been presented by that date.

Thus, the documentation, which was clearly obtainable by the appellant prior to the submission of her initial appeal of July 8, 2014 in this matter, even if considered new information, does not conclusively establish that Clerk was appointed as an "acting" Police Sergeant.

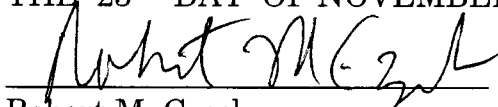
Additional evidence that the appointing authority has not improperly utilized "acting" appointments is found in response to her allegations concerning the other alleged "acting" appointments. For example, in this case, the appointments of Burgess as a Police Lieutenant on September 1, 2014, Lomonte as a Police Lieutenant on December 21, 2014, and Floyd as a Police Captain on December 9, 2014 were erroneously initially recorded as permanent appointments upon waiver of examination (RA4). *See N.J.A.C. 4A:4-2.7.* O'Neil was provisionally appointed as a Police Sergeant on January 1, 2015. However, it was subsequently determined that permanent appointments upon waiver could not be used in these situations since complete eligible lists were in existence for Police Lieutenant (PM5020P) and Police Captain (PM7581P) and certifications (PL150750) and (PL150749) had been issued for these positions. Accordingly, upon disposing of those certifications, the time served from the initial RA4 appointments was recorded as provisional and since Burgess and Floyd were in the first positions on their respective certifications, they were permanently appointed effective September 1, 2015. Similarly, in order to resolve Lomonte's incorrect RA4 appointment, certification PL151202 was issued against his position and the time from his initial appointment was corrected to provisional. Although this certification has not yet been disposed, it is noted that Lomonte's name is in the first position. Thus, while "acting" appointments are improper, given the situations, these provisional appointments were valid appointments under Civil Service law and rules. *See N.J.A.C. 4A:4-1.5.* Further, while the appellant asserts that Corvelli and Howell were appointed as "acting" Police Sergeants, she has not provided any evidence in support of these allegations.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech

Chairperson

Civil Service Commission

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and
Correspondence

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Attachment

c: Daniel Zirrith, Esq.
Robert Varady, Esq.
Natalie Ogonowski
Records Center



B-43

STATE OF NEW JERSEY

In the Matter of Natalie Ogonowski,
Police Sergeant (PM2677L),
Hillside

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-91

Administrative Appeal

ISSUED: ~~AUG 0 2~~ 2015 (EG)

Natalie Ogonowski, Police Officer, Hillside, represented by Daniel J. Zirrieth, Esq., appeals her non-appointment from the Police Sergeant (PM2677L), Hillside eligible list.

The appellant passed the subject examination and appeared in the second position on the July 23, 2013 certification of the resultant eligible list. The appointing authority appointed the number one eligible. The Police Sergeant (PM2677L), Hillside, eligible list expired on June 2, 2014.

In the instant appeal, the appellant argues that that she had been employed as a Police Sergeant in an acting capacity since October 7, 2012, pursuant to a personnel order issued by the Chief of Police. In support of this contention, the appellant submits a letter dated October 5, 2012 indicating her assignment to an "Acting" position and an organization chart showing that she was an Acting Police Sergeant. The appellant claims that she was assigned to this position to fill a vacancy. Additionally, the appellant asserts that due to the appointing authority's failure to permanently appoint her to Police Sergeant, she filed a classification appeal. A determination was issued on May 4, 2014, finding that the appellant's duties were commensurate with those of a Police Sergeant. The determination also indicated that the appellant was considered to be serving provisionally in the title of Police Sergeant effective April 5, 2014. Further, the appellant states that this agency issued the appointing authority a salary disapproval letter for the use of an "Acting" Police Sergeant and two letters for not timely disposing the July 23, 2013 certification. Moreover, the appellant argues that while, subsequently, her Police

Sergeant duties were removed, the appointing authority improperly replaced her with another officer put in an acting capacity. In this regard, the appellant submits a certified statement in which she asserts that Terence Clerk, Timothy O'Neill, and Peter Corvelli were appointed to Acting Police Sergeant positions and that Lashonda Burgess was appointed to an acting Police Lieutenant position. The appellant argues that the appointing authority is improperly utilizing acting positions to fill vacancies when there was an active eligible list. She adds that due to the retirement of several officers, vacancies have existed in the title of Police Sergeant for several years. Furthermore, the appellant argues that the appointing authority should be ordered to make permanent appointments to fill the vacancies. In this regard she contends that she should be appointed as she was the next on the eligible list.

In response, the appointing authority, represented by Robert F. Varady, Esq., argues that the appellant was removed from her provisional position as a Police Sergeant and returned to her Police Officer position in the spring of 2014. It also states the July 23, 2013 certification was returned and a permanent appointment was made.

CONCLUSION

In the instant matter, the appellant argues that the appointing authority has vacancies in the Police Sergeant position and that it should make permanent appointments from the eligible list. In this regard, the Civil Service Commission (Commission) has consistently found that nothing in Civil Service law or rules requires that an appointing authority fill all of its budgeted positions. *See In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005); *See also, In the Matter of Todd Sparks* (MSB, decided April 6, 2005).

Further, the appellant has argued that she served in an "Acting" capacity. She also states that while she is no longer serving in a provisional position or "Acting" Police Sergeant position, others were named to "Acting" positions even after a Salary Disapproval letter was issued. Official records do not indicate that any of the individuals mentioned by the appellant are currently provisionals in any title. Records also indicate that O'Neill is serving as a Police Sergeant on an interim appointment. Moreover, the appellant has not provided any substantive evidence that shows that the individuals she named were in "Acting" positions. However, the appellant has provided documentary evidence that she had served in an "Acting" capacity. Furthermore, the appointing authority has not denied the use of "Acting" positions. In this regard, the Commission notes that the appointing authority's use of an "Acting" title was improper as there is no such designation as an "Acting" appointment under Civil Service rules. *N.J.S.A. 11A:4-13* and *N.J.A.C. 4A:4-1, et seq.*, provide for regular, conditional, provisional, interim, temporary, and emergency appointments. *See In the Matter of Russell Davis* (MSB, decided August

10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Therefore, the Commission cautions the appointing authority from utilizing the "Acting" designation in the future.

The appellant also argues that due to the vacant positions and the use of "Acting" designations, she should receive a permanent appointment to Police Sergeant. In this regard, the Commission notes that none of the individuals on the subject list possessed a vested right to an appointment. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Therefore, regardless of the appointing authority's improper use of "Acting" positions, neither the appellant nor any other candidate on the eligible list was entitled to an appointment. The appellant was on certifications and was considered for appointment. All the certifications from the PM2677L eligible list were returned¹, and in each case, an eligible with a higher rank was permanently appointed to Police Sergeant.

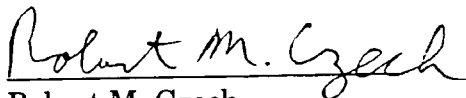
Accordingly, based on the foregoing, the Commission denies the appellant's appeal.

ORDER

Therefore, it is ordered that this appeal be denied

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 29TH DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

¹ The July 23, 2013 certification was returned June 3, 2014.

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