



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Food Service  
Manager (C0539W), Bergen County

CSC Docket No. 2020-586

Appointment Waiver

ISSUED: SEPTEMBER 26, 2019 (BW)

Bergen County requests permission not to make an appointment from the September 17, 2018 certification for Food Service Manager (C0539W), Bergen County.

The record reveals that the appointing authority appointed Michael Canzone provisionally to the subject title, which generated an open-competitive examination announcement with a closing date of May 7, 2018. The resulting eligible list of six names promulgated on October 25, 2018 and expires on October 24, 2021. The appointing authority took no action to prevent the need for the examination at the time of the announcement or prior to the administration of the examination. On October 29, 2018, the names of six eligibles were certified to the appointing authority from the eligible list. Subsequently, the appointing authority returned the certification and requested an appointment waiver and a waiver of the selection costs. In this regard, the appointing authority indicated that it removed the provisional employees as he was in the wrong title.<sup>1</sup> It also stated that it planned on using the list before it expires on October 24, 2021.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be

<sup>1</sup> Canzone was appointed provisionally to the title of Assistant Food Service Manager, pending open competitive examination, on January 29, 2018.

assessed for the costs of the selection process in the amount of \$2,048.00. In response, the appointing authority reiterates its previous arguments.

A review of agency records indicates that there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

### 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 by the Civil Service Commission for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated based on the appointing authority's appointment of provisional employees. However, after a complete certification was issued, the appointing authority requested an appointment waiver. In this regard, the appointing authority indicated that it removed the provisional as he was in the wrong title. It also indicated that it plans on using the list before it expires on October 24, 2021. Under these circumstances, the appointing authority has presented adequate justification for granting 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 appointing authority indicates that it may utilize the subject list prior to its expiration date of October 24, 2021. 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. Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of October 24, 2021, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

**ORDER**

Therefore, it is ordered that the request for the waiver of appointment 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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 25<sup>TH</sup> DAY OF SEPTEMBER, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Michele Popkin  
Kelly Glenn  
Diane Lukasewycz