



**STATE OF NEW JERSEY**

In the Matter of Police Captain,  
North Brunswick

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2020-598 and  
2020-1136

Administrative Appeal

**ISSUED:** January 30, 2020 (JH)

Superior Officer's Association 160, represented by Leonard C. Schiro, Esq., and Gregory Gyumolcs appeal the approval of North Brunswick's request to be exempted from the 2019 Police Captain promotional testing cycle.

By way of background, the Police Captain (PM1312T), North Brunswick list, which contains the names of two eligibles, promulgated on April 21, 2016 and is set to expire on April 21, 2020.<sup>1</sup> To date, one certification has been issued, on April 21, 2016, from this list (Certification No. PL160530). In disposing of PL160530, North Brunswick appointed the first ranked eligible effective May 19, 2016.

It is noted that the Police Promotional Schedule (2019) Examination Information Alert (EIA) issued by the Division of Test Development and Analytics in January 2019 and available on the Commission website, indicated that appointing authority requests to be included in the 2019 Police Captain promotional testing cycle were due by May 1, 2019 and announcements for Police Captain were to be issued on July 1, 2019 with a September 30, 2019 closing date.<sup>2</sup> In its request, filed on June 19, 2019, to be exempted from the 2019 Police Captain testing cycle,

<sup>1</sup> It is noted that the initial expiration date of the PM1312T list, April 20, 2019, was extended one year. *See N.J.A.C. 4A:4-3.3(b)1.*

<sup>2</sup> It is noted that the 2019 Police Captain promotional exam consisted of two parts: a multiple-choice portion, which was administered on October 10, 2019, and an oral portion, which was administered on December 5, 2019.

North Brunswick indicated that it historically has had only two Police Captains and those positions were currently filled. North Brunswick further indicated that it did not anticipate any increase in the number of Police Captain positions due to budget restraints and there were no expected retirements in the near future. By letter dated July 18, 2019, the Division of Agency Services granted the Township's request and noted that once the PM1312T list expires on April 20, 2020, "the Township will be without an eligible list for Police Captain until potentially 2021. Please note that a new announcement for Police Captain will automatically be initiated in the next examination cycle."<sup>3</sup>

On appeal, Superior Officer's Association 160 (SOA) presents that the Township "failed to inform the SOA that it had applied for the waiver and that the waiver was granted." The SOA maintains that "last year's waiver was granted for an examination that would have produced a list at the beginning of this year, when the old list was set to expire. Consequently, since the test was not administered, the current list was extended for one year with an expiration date of April, 2020 . . . This year's waiver will leave the Department without an active Captain's list. The Township's decision for requesting exclusion from the examination was based in part on the Department's representation that there are no vacant positions for Captain. However, both Captains currently serving are eligible for retirement in 2020."

Gyumolcs argues that he was not made aware that the Police Director "was requesting to for[e]go the testing for this position nor was it brought to my attention or other Lieutenants by our SOA representative . . . There are several Lieutenants that are eligible to take the test and had no idea that the Director was planning to opt out." Gyumolcs adds that the two current Police Captains are eligible to retire in February and August 2020, respectively.

North Brunswick, represented by Judy A. Verrone, Esq., notes that the Township has "in the past, requested to opt out of an examination announcement and was permitted to do so." The Township maintains that the approval of its request "is eminently appropriate where, as here, the reason for the Township's request is based on the fact that (i) there are no vacant Captain positions to fill and no expectation that a vacancy is on the horizon, and (ii) should a vacancy occur, it is clearly within the Township's managerial prerogative as to whether or not a vacancy will be filled . . . Under these circumstances, requiring the Township to participate in the Captains promotional examination would, most respectfully, make no practical sense and amount to a futile exercise that serves no one's interests."

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<sup>3</sup> To date, the Police Promotional Schedule (2020) Examination Information Alert (EIA) has not been published to the Commission's website.

## CONCLUSION

Although the appellants argue that the current Police Captains are eligible to retire in April and August, the Commission cannot base its decisions on future contingencies. Rather, the Commission can only examine the existing situation. Currently, the Township employs two Police Captains and indicates that there are no vacancies to be filled. In addition, the Township has indicated that it does not anticipate increasing the number of Police Captain positions beyond the two it currently maintains. Moreover, there is no evidence in the record that a union contract between the SOA and the Township requires the Township to maintain a current Police Captain eligibility list.

Furthermore, even assuming that both current Police Captains were to retire from their positions, there is no statutory or regulatory provision that requires an appointing authority to fill a vacancy. *See In the Matter of Gertrude Remsen, Department of Human Services, A-1126-96T3* (App. Div., January 17, 1997). In this regard, should the Township determine a need to make a Police Captain appointment prior to the issuance of a new list, the Township may make a provisional appointment to the Police Captain title if the conditions of *N.J.A.C. 4A:4-1.5* are met.<sup>4</sup>

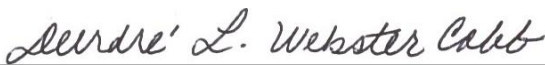
Thus, the appellants have not provided a basis to disturb the determination of the Division of Agency Services.

## ORDER

Therefore, it is ordered that these appeals 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 JANUARY, 2020



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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<sup>4</sup> See also *N.J.A.C. 4A:4-4.2(c)2*.

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and  
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