



STATE OF NEW JERSEY

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

In the Matter of Program Monitor
(M0727U), Newark

Appointment Waiver

CSC Docket No. 2019-762

ISSUED: JUNE 5, 2020 (HS)

Newark requests permission not to make an appointment from the February 13, 2017 certification for Program Monitor (M0727U) (Title Code 04700).

By way of background, Newark provisionally appointed Tanyashka Babilonia, pending open-competitive examination procedures, to the title of Program Monitor, effective June 20, 2016. This provisional appointment generated an examination announcement (M0727U) for the subject title with a closing date of October 3, 2016, which resulted in a list of seven eligibles that promulgated on February 9, 2017 and expired on February 8, 2020. It is noted that Babilonia was deemed ineligible. A certification (OL170170) was issued on February 13, 2017 and consisted of the names of the seven eligibles. Newark did not return the certification by the required disposition date. The Division of Agency Services (Agency Services) issued a Notice of Violation and Salary Disapproval Order, both of which notified Newark that it was required to properly dispose of the certification. Newark provisionally appointed Babilonia, pending open-competitive examination procedures, to the title of Supervising Inventory Control Clerk, effective December 18, 2017,¹ but failed to return the certification. It is noted that Newark took no action to obviate the need for this examination at the time of the announcement or prior to its administration. *See N.J.A.C. 4A:10-2.2(a)*. Subsequently, Agency Services referred the matter to the Civil Service Commission (Commission) for enforcement.

¹ Babilonia later received a permanent appointment to the title, effective December 23, 2019.

Newark was advised that it could request an appointment waiver and that if such request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, Newark requested an appointment waiver, stating that it was under budgetary constraints and that Babilonia was no longer serving in the subject title. However, personnel records reveal that Newark provisionally appointed Kareem Motley, pending open-competitive examination procedures, to the subject title, effective November 6, 2017,² and that he continues to serve in that capacity. It is noted that Motley did not apply for the examination.

CONCLUSION

In the absence of information to the contrary, the Commission must conclude that Newark is attempting to circumvent Civil Service law and rules by employing a provisional in the subject title who did not apply for the examination. Under these circumstances, there is no basis for granting an appointment waiver. Therefore, Newark must remove Motley from his provisional appointment as a Program Monitor and properly dispose of the certification for Program Monitor (M0727U), *i.e.*, make a permanent appointment.

In examining the legislative history of *N.J.S.A. 11A:4-5*, in *Local 198 of I.A.F.F. v. Atlantic City*, Docket No. A-855-88T1F (App. Div. 1989), the court stated that a certification is required to be issued automatically where there is a provisional appointee or a vacancy. Moreover, the court concluded that *N.J.S.A. 11A:4-5* unambiguously stated that once the examination process has been initiated due to the appointment of a provisional employee, the appointing authority must make an appointment from the eligible list if there is a complete certification. Additionally, the court found that *N.J.S.A. 11A:4-5* was a clear legislative response to pervasive violations of Title 11, and that non-compliance with this statute is not a mere technical violation. Rather, it undermined the purpose and intent of the constitutionally-based Civil Service selection system. The court found that in circumstances such as these, it was appropriate to order the appointing authority to make an appointment. Thus, there is no doubt that Newark must make an appointment from this list if there is a complete certification, that is, one containing the names of at least three interested and eligible candidates. Moreover, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

² The County and Municipal Personnel System indicates that this transaction was disapproved since a complete eligible list was in existence.

ORDER

Therefore, it is ordered that the appointment waiver be denied.

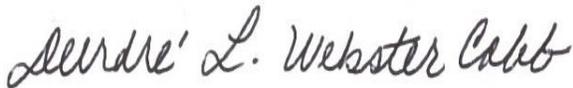
Additionally, the Commission orders that Newark properly dispose of the certification within 30 days of receipt of this decision, indicating the interested eligible candidates and making the appropriate appointment from the eligible list. If, at any time, Newark does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

Further, if no proper disposition is made, the Certification Unit shall canvass the eligible list for interested eligible candidates and constructively permanently appoint the first interested eligible candidate, with retroactive seniority to February 13, 2017, for record and salary step purposes.

Finally, the Commission orders that the costs incurred by this agency in the compliance process be assessed against Newark in the amount of \$1,000, pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-3.2(a)5, to be remitted within 30 days of receipt of this decision.

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 DAY 3RD OF JUNE, 2020



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