



**STATE OF NEW JERSEY**

In the Matter of Jaime Navarro, Jr.,  
Police Captain (PM1353U), Paterson

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

CSC Docket No. 2021-219

Administrative Appeal

**ISSUED: MARCH 26, 2021 (SLK)**

Jaime Navarro, Jr., represented by Ben Weathers, Esq., appeals Paterson’s failure to certify the Police Captain (PM1353U), Paterson eligible list prior to its June 3, 2020 expiration.<sup>1</sup>

By way of background, the appellant, a nonveteran, appeared on the PM1353U eligible list, which promulgated on April 6, 2017 and expired on June 3, 2020. The appellant was the seventh ranked eligible on the list. The appellant’s name was first certified on PL191102 for a position in the subject title.<sup>2</sup> The first and second positioned candidates were appointed, and the third positioned and the appellant, the fourth positioned candidate, were reachable, but not appointed. Thereafter, the appellant’s name was certified on PL200224 and the disposition was recorded on February 25, 2020. The first candidate was appointed and the appellant, the second positioned candidate, and the third positioned candidate, were reachable, but not appointed.

<sup>1</sup> The appellant’s appeal also indicated that he was appealing the bypass of his name on the PM1353U list. However, the record reveals that although he was reachable on certifications from the list, higher ranked candidates were appointed, and his name was not bypassed. The non-appointment in favor of higher ranked candidates is not challengeable. *See In the Matter of Michael Barbato-Buckley* (CSC, decided August 16, 2017).

<sup>2</sup> There were two prior certifications from the PM1353U list where the appellant’s name was not certified based on his rank.

On appeal, the appellant presents that prior to May 1, 2020, the first six eligibles on the PM1353U list were appointed,<sup>3</sup> with the appellant and two others remaining on the list. The appellant presents that on May 1, 2020, Captain G.B. retired, and his position became vacant. The appellant indicates that on May 14, 2020, Paterson “filled” the Captain vacancy by naming the second highest remaining eligible on the PM1353U list, E.R., as “acting” Captain. He contends that this placement broke with past practice and custom to request a certification and fill any vacancies with the next candidate from the eligible list in either a permanent or provisional capacity. The appellant asserts that at the time E.R. was named “acting” Captain, Paterson did not request a waiver from this agency to make an appointment from the eligible list pursuant to *N.J.S.A.* 11A:4-5.<sup>4</sup> He notes that at the time E.R. was named “acting” Captain, Paterson was not implementing a reduction in force nor was it facing fiscal constraint. In fact, the appellant indicates that Paterson paid E.R. more than it would have if he had been named in the position because under the collective bargaining agreement, since E.R. has three more years of experience than him, it had to pay him six percent more.

Thereafter, on June 11, 2020, the Police Captain (PM0881A), Paterson list promulgated. He presents that this agency’s local certification unit sent him an email on July 1, 2020 indicating that he was still the first eligible to be considered for a Captain’s vacancy. However, on August 7, 2020, the certification unit sent the appellant an email informing him that the PM1353U eligible list expired on June 3, 2020.<sup>5</sup> Subsequently, on August 10, 2020, Paterson permanently appointed S.M., the first positioned candidate on certification PL200681 from the PM0881A eligible list, as Captain.<sup>6</sup>

The appellant states that under Civil Service law and rules, candidates are to be appointed based on merit and there is to be equal opportunity. He presents that *N.J.A.C.* 4A:4-4.1(a) provides that “[w]hen a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment.” The appellant asserts that Paterson broke from custom and practice to let an active list expire so that he would

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<sup>3</sup> This agency’s records indicate that the first ranked eligible on the list was removed and the second through sixth ranked eligibles were appointed.

<sup>4</sup> *N.J.S.A.* 11A:4-5 provides that once the examination process has been initiated due to the appointment of a provisional or an appointing authority’s request for a list to fill a vacancy, the affected appointing authority shall be required to make appointments from the list if there is a complete certification, unless otherwise permitted by the Commission for valid reason such as fiscal constraints. If the Commission permits an appointing authority to leave a position vacant in the face of a complete list, the Commission may order the appointing authority to reimburse the Commission for the costs of the selection process.

<sup>5</sup> The local certification unit indicated that the expiration date as indicated in this agency’s records changed; however, it noted that it does not handle the promulgation or expiration of symbols for this agency.

<sup>6</sup> Agency records indicate that the appellant was the 10<sup>th</sup> ranked candidate on the PM0881A eligible list.

not be considered for the Captain position, which he claims violates *N.J.A.C.* 4A:4-4.1(a). He cites *In re Code Enforcement Officer*, 349 *N.J. Super.* 426, 438-439 (App. Div. 2002) to argue that when the circumstances suggest that an appointing authority is circumventing the appointment requirements which fails to recognize the spirit and legislative intent of the Civil Service Act, this is reason alone to reverse its action. The appellant requests that S.M.'s appointment be rescinded and that the PM1353U eligible list be revived so that he may be considered for the Captain vacancy. While the appellant acknowledges that he does not have a vested right to appointment based on his placement on the PM1353U eligible list, he argues that as long as that eligible list remains in force, no appointment can be made from the subsequent list. *See In Re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984).

In response, Paterson, represented by Adam S. Herman, Esq., presents that it is characterized as a "distressed" municipality and receives financial aid from the State for the Police Department's budget. Under a Memorandum of Understanding (MOU), to receive this aid, Paterson is under supervision and control of the Department of Community Affairs (DCA). It presents that under the MOU, Paterson must receive written approval from the DCA before any rank and file or superior officer can be hired, appointed or promoted.

Paterson explains that it follows the same general course of action each time vacancies become available. Initially, it decides if it needs to fill the vacancy. If there is a need, documentation to support the need is sent to Paterson's Business Administrator for presentation to the DCA. It explains that Paterson requests to fill a block of vacancies rather than on a piecemeal basis. The documentation submitted to DCA is drafted by Captain M.C. M.C. prepares a DCA status update report every month or every other month, which is a comprehensive document which takes a significant amount of time to prepare and involves the collection of information and data from other Paterson departments. After DCA reviews the status update report and considers Paterson's request to fill vacancies or make promotions, it discusses the financial impact of the proposed actions. Paterson indicates that it takes four to eight weeks for DCA to either approve or deny a Police Department personnel request, and upon approval, DCA will sign a waiver. Once Paterson receives the waiver, it requests a certification from this agency, and once a certification is issued, a promotional date is coordinated with Paterson's administration. Therefore, it indicates that its practice is to only seek approval from DCA after a vacancy has been created. Paterson indicates that once an individual is appointed, the disposition of the certification is usually returned to this agency within a week.

Paterson presents that Captain G.B. retired on May 1, 2020. It explains that this retirement created a vacancy in the Patrol Division, where G.B. had been assigned. At the time of G.B.'s retirement, there were approximately 15 vacancies within the Police Department. Paterson states that in June 2020, it sought permission from the DCA to fill 11 vacancies through promotion, including one Captain, five Lieutenants, and five Sergeants. Accordingly, M.C. prepared an April-

May 2020 status update report which sought approval for the 11 promotions which was submitted to DCA on June 29, 2020. DCA responded requesting additional information, and M.C. prepared a supplemental report, which was submitted to DCA on July 8, 2020. On that same date, DCA indicated that it was satisfied with the supplemental report and Paterson prepared a "Request for Certification Form" for the Captain vacancy, which included DCA's Request for Employment Approval. The Request for Employment Approval was signed by Paterson's Mayor, Business Administrator and Chief Financial Officer on July 16, 2020. On July 21, 2020, DCA approved eight of the 11 requested promotions. The eight promotions, including S.M.'s appointment as Captain, became effective on August 10, 2020.

Paterson asserts that E.R. was never promoted to "acting" Captain. It explains that at the time of G.B.'s retirement, E.R., who was assigned to the Patrol Division, was asked to perform some Captain duties due to the vacancy. It notes that the appellant was assigned to the Juvenile Division, and not the Patrol Division at the time, and as a Detective Lieutenant, received a stipend and night differential in that position. Paterson explains that between May 1, 2020 and August 9, 2020, E.R. performed both his full-time Lieutenant duties and Captain duties. Further, per the collective bargaining agreement, he was entitled to out-of-title pay for performing duties of a higher rank for more than 14 consecutive days. It reiterates that E.R. was never elevated to "acting" Captain as the MOU prohibits any promotion without approval and it understands that there are no "acting" positions under Civil Service law and rules. Additionally, Paterson comments that E.R. did not take an oath-of-office nor was he officially or unofficially designated "Captain" by a formal announcement, an insignia on his uniform, or other common means identifying him as someone who is recognized as having a higher rank. It states that once S.M. was promoted to Captain off the PM0881A list, which was the only active Captain's list, E.R. ceased his temporary performance of Captain duties. Therefore, Paterson argues that since it followed DCA's process as required, there is no merit to the appellant's suggestion that it intentionally delayed its request for certification to this agency to allow the PM1353U list to expire.

Paterson reiterates that the DCA does not approve anticipatory vacancies, and therefore, it does not seek approval from the DCA until after a vacancy is officially created. It asserts that the process to fill the Captain vacancy did not take an unusually long time as there was a May 1, 2020 Captain's retirement and on July 8, 2020, DCA indicated that it was satisfied with the information to support its request to fill the vacancy. Thereafter, it immediately sought that the Captain's vacancy be filled by the only available active list. It asserts that the appellant has not presented any evidence that suggests that it circumvented Civil Service law and rules. Further, Paterson followed its normal procedures and it was required to seek approval from the DCA under the MOU.

In reply, the appellant presents that the PM1353 list promulgated on or around April 6, 2017 and he was the seventh ranked eligible. He indicates that by

May 1, 2020, the first six ranked eligibles had been promoted to Captain and the appellant was the highest ranked eligible remaining on the list, along with two other eligibles. The appellant states that in May and June 2018, he became a vocal critic of Paterson and the police unions' contract negotiations. He indicates that the contracts were set to expire on July 31, 2019, and the parties were contemplating a two-year extension. However, the appellant vocally expressed support to re-negotiate a new contract prior to the expiration as he believed that better benefits for less senior officers needed to be negotiated because a significant number were leaving to obtain employment in other jurisdictions, which impacted public safety. The appellant expressed concern at a meeting and via email that the Union Presidents, who both had 25 years of experience, would not adequately represent less senior officers. Thereafter, the Union Presidents suggested that he nominate himself to be on the negotiating committee, which he did. However, he was not selected, but M.C. was. Thereafter, at a January 31, 2019 union meeting, the appellant indicates that he expressed concern that M.C., given his seniority, would not fairly represent others. He also expressed concern that he would be retaliated against due to his opposition to extend the contracts, which the then-Police Chief and Public Safety Director supported. The appellant also notes that M.C. is the direct supervisor of one of the Union Presidents.

On February 11, 2020, a Captain who was ranked ahead of him was promoted from the PM135U list. Shortly thereafter, the appellant indicates that he learned that Captain G.B. was retiring effective May 1, 2020. He states that on February 24, 2020, the PL200224 certification from the PM135U list was returned to this agency. The appellant asserts that Paterson's past practice is that when it becomes aware of a pending retirement and there is an outstanding certification, it would not return the certification until it promoted someone once the retirement or resignation became effective. He cites that S.R. was certified for Captain on November 23, 2016 and promoted on February 2, 2017, on day after Captain J.R. retired. The appellant notes that the disposition of PL200224 was not due back to this agency until May 11, 2020, and therefore, he could have been appointed on that certification due to the May 1, 2020 vacancy.

The appellant states that Paterson had recent promotions in November 2020 and the certifications related to those promotions were not returned to this agency as of January 18, 2021. The appellant also cites the promotions of R.V. on December 16, 2018, A.P. to Captain on August 13, 2019, 13 days after the position became vacant, and D.R. to Captain on February 19, 2020, 15 days after the position was vacated. Therefore, while M.C. certifies that it takes the DCA four to eight weeks to approve Police Department personnel actions, he presents that W.G., S.R., D.R., A.P., and I.B. were promoted within days or weeks of the positions being vacated. Further, the appellant asserts that contrary to M.C.'s certifying that the DCA does not approve anticipatory promotions, he indicates that R.V. was promoted to Deputy Police Chief in December 2019, and L.P. was promoted to Deputy Police Chief in May 2018 on anticipatory basis. The appellant also asserts that in 2019, many officers assumed

the duties of higher ranked officers until they were promoted. He claims that the selection of these officers to assume duties were based on their ranks on eligible lists. The appellant indicates that he spoke with M.C. on May 29, 2020 about being promoted to Captain from the PM1353U eligible list, which was still active at that time. He claims that M.C. informed that he was working with the Office of Business Administration, Mayor and Police Unions to ensure that he would not get promoted and “die on the list.”

The appellant argues that he was engaged in protected activity by speaking on matters that affected all Paterson residents as he was concerned that less senior officers were not being adequately represented in contract negotiations, which resulted in an exodus of those officers to other jurisdictions, which impacts public safety. He asserts that he was subject to an adverse employment action when instead of asking for a certification from the PM135U list to fill Captain G.B.’s vacancy, Paterson broke from past practice to let the list expire. The appellant argues that Paterson’s actions were a clear attempt to violate the intent and purpose of Civil Service law and rules. The appellant claims that he can show disparate treatment based on how promotions were handled in the past based on the above cited examples. Further, he asserts that M.C.’s own words indicating that he would “die on the list” support his claim.<sup>7</sup>

In further response, Paterson asserts that the appellant has not raised anything in his reply that refutes its position. It presents the M.C.’s attendance on the negotiations team is irrelevant to the appeal as any complaints that the appellant had about union negotiations of the contract are disagreements with the union which have no bearing on his claims against it. Paterson indicates that M.C. was a member of the contract negotiations team on behalf of the unions. It states that M.C.’s involvement was limited to several meetings where potential terms were discussed for presentation during contract negotiations with Paterson. As M.C. certifies, the union presidents and attorneys ran those meetings and team members presented ideas to them for potential presentation during the collective bargaining process. M.C. indicates that the appellant’s name was never discussed during those meetings and those meetings have nothing to do with this appeal or the appellant’s claim that he was wrongly denied a promotion.

Paterson reiterates that promotions cannot be made without DCA approval. M.C. explains that the process to seek approval from DCA to fill vacancies can take

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<sup>7</sup> The appellant also certifies that he criticized Paterson for promoting M.C. to Lieutenant by initially bypassing him on one list in favor of W.G., by claiming that W.G. was the only supervisor qualified to serve as Range Master who would assume the duties of a sworn qualified Command-level member and then, on the same day bypassing two others on another list to promote him. He claims that W.G. did not perform the duties as a Lieutenant that were consistent with its stated rationale for his promotion. The appellant indicates that he verbally expressed that the promotions were unfair to others in the Department.

weeks to months. It asserts that the appellant's attempt to connect certification dates to promotion dates is misleading since it is the process with DCA prior to getting the certification that can be lengthy, and often positions remain vacant until DCA's approval. Paterson states that it cannot get a certification issued until DCA signs off. However, once DCA approves and a certification is issued, the promotions can happen quickly. Further, because the approval process is lengthy, Paterson generally seeks to promote multiple positions at one time, unless there are extenuating circumstances. It notes that there are currently 11 Sergeant positions that DCA has yet to approve.

Paterson presents, as an example of the process, that as part of its October 3, 2017 DCA report, it requested to fill two Lieutenant and five Sergeant positions. However, it took DCA seven weeks for it to approve any promotions and it only approved one Lieutenant and three Sergeants, which Paterson subsequently appointed. Further, Paterson states other examples where there was a lengthy time between retirements and the approval from DCA to fill those promotional vacancies. Referring to L.P. who was promoted to Deputy Police Chief on May 23, 2018, her Captain's position was not filled until April 30, 2019 following DCA approval. Also, when R.V. was promoted on December 16, 2019, his Captain position was not filled until February 19, 2020 following DCA approval.

Concerning Captain G.B.'s retirement which the appellant claims he should have been promoted to fill, Paterson indicates that it followed all required procedures as it took until July until it received permission from DCA to fill the vacancy. However, by that point, the PM1353U eligible list expired on June 3, 2020 and a new list, PM0881A was active. It emphasizes that due to the process, it attempts to promote multiple vacancies at one time. Further, due to work involved in preparing DCA reports, the reports are only submitted every month or two. Paterson indicates that in June 2020, M.C. started preparing the DCA reports for April and May 2020, where it sought the approval to fill 11 of 15 vacancies. The report was then submitted to DCA on June 29, 2020 and DCA approved eight of 11 promotions on July 21, 2020, which became effective on August 10, 2020. Paterson indicates that it requested a certification from this agency to fill the Captain vacancy as soon as it got approval from DCA. It reiterates that G.B.'s Captain vacancy was filled using the only active list and the time it took to fill his position after his retirement was not unusual.

Paterson states that the appellant appears to be complaining that certifications were returned rather than held by it so that he could be promoted. However, it contends that the appellant's argument either demonstrates that he does not understand the promotion process or is deliberately attempted to distract from undisputed facts. It presents that it is standard practice to return promotional certifications quickly, typically on the same or next day after a promotional appointment, and M.C. presents multiple examples where this was done. Further, Paterson notes that even if the appellant was at or near the top of an eligible list, he does not have an entitlement to that promotion under the "Rule of Three." Moreover,

it highlights that the appellant did not raise allegations of retaliation in his original appeal and that is because Paterson never retaliated against him. Paterson states that the appellant has made wild and unsupported allegations against M.C. claiming that he told the appellant that he was working to ensure that he would not get promoted and “die on the list.” However, M.C. denies making this statement and the appellant only offers a self-serving statement in the form of an email that he allegedly emailed to himself, which indicates that the allegation strains credulity. Paterson asserts that if M.C. had made the alleged statement, the appellant would have filed a complaint with his union, submitted an Official Report, lodged a form complaint, or made the allegation in his initial appeal submission in this matter. However, the appellant did not do any of these things. Therefore, Paterson believes that the retaliation claim is an attempt to create a false narrative to seek a hearing at the Office of Administrative Law.

Additionally, Paterson states that the appellant presents a case under the New Jersey Law Against Discrimination to support his retaliation claim; however, it argues that he has not made a *prima facie* case under the cited case, namely (1) that he engaged in protected activity known to his employer, (2) that he has thereafter subject to an adverse employment decision by his employer, and (3) that there was a causal link between the two. Paterson asserts that the appellant has not alleged protected activity known to it as he only spoke about a “concern that less senior officers were not being adequately represented in contract negotiations,” which it contends is only a complaint/allegation that he has with his union and not with it. Further, as explained, it argues that the appellant was not subjected to an adverse employment decision as it followed its standard practice when filling Captain G.B.’s position and the appellant had no right to appointment under the “Rule of Three.” Moreover, it contends that no fact finding will change that Paterson followed its standard process in seeking approval from DCA and that the PM0881A list was the only active list at the time it made the appointment.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Civil Service Commission (Commission) finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

*N.J.A.C.* 4A:4-3.3(b)1 provides that open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Chairperson or designee determines that, under the circumstances, a shorter time period is appropriate. Further, an eligible list may, for good cause, be extended by the Chairperson or designee prior to its expiration, except that no list shall have a duration of more than four years.



*N.J.A.C.* 4A:4-3.3(e) provides that when a promotional list for a law enforcement or firefighter title is extended until a new promotional list is available for certifications and appointments, the extended list shall expire when the new promotional list issued, provided however, that certifications of and appointments from the new list shall not be made until the promulgation date of the new list.

*N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7 and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive list provided no veteran heads the list.

*N.J.A.C.* 4A:2-1.4(c) provides that the burden of shall be on the appellant.

Initially, the appellant requests a hearing in this matter. Appeals are treated as reviews of the written record. *See N.J.S.A.* 11A:2-6b. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C.* 4A:2-1.1(d). For the reasons set forth below, no material issues of disputed fact have been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

Concerning the appellant's comments about the PM1353U expiration date from this agency, the record indicates that the PM1353U list promulgated on April 6, 2017. Therefore, under *N.J.A.C.* 4A:4-3.3(b)1, the PM1353U list would normally have expired on April 5, 2020, which is before the vacancy in question was to be filled. However, the record indicates that the PM1353U list was extended until June 3, 2020, the date that a new list, PM0881A, promulgated, which complies with *N.J.A.C.* 4A:4-3.3(e). Referring to the appellant's comments that Paterson broke with past practice by naming E.R. "acting" Captain when G.B. retired, instead of him the highest ranked eligible on the active PM1353U, 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). Further, Paterson explains that E.R. was not appointed "acting" Captain. Instead, as E.R. was in the same division as G.B., and the appellant was in another division, E.R. assumed some of G.B.'s duties until there was a permanent appointment. As such, there is nothing in the record that indicates that Paterson violated Civil Service rules and law by assigning E.R. some of G.B.'s duties. This is especially true given Paterson's explanation of its promotional process and the approvals required by DCA. Moreover, Paterson did not need to request a waiver to not make an appointment from the PM1353U list prior to its expiration under *N.J.S.A.* 11A:4-5 as the appellant alleges, as this agency's records indicate that the appointing authority made five appointments from this list on four different certifications prior to the list expiring.

An appointment waiver only needs to be requested when an appointing authority does not make any appointments from a list prior to its expiration.

Regarding the appellant's claim that Paterson circumvented the spirit and practice of the Civil Service Act by not holding certification PL200224 until its disposition due date of May 11, 2020, so that it could appoint him to the Captain vacancy in question that became effective on May 1, 2020, there is no requirement under Civil Service rule that an appointing authority hold the return of a certification because there is an anticipatory vacancy prior to its disposition due date. Further, even if Paterson attempted to fill the subject vacancy prior to the expiration of the PM1353U list, even though the appellant was the highest ranked remaining eligible on the list, he had no vested right to appointment under the "Rule of Three." Moreover, there is no dispute in the record that Paterson is a "distressed" city, which is required to obtain approval from DCA prior to making an appointment to fill a vacancy. Further, there is nothing in the record that indicates that Paterson took an unusually long time for it to gain DCA approval and to make the appointment in question. At most, the appellant claims that Paterson has not taken extra-ordinary steps to approve his appointment for the subject vacancy prior to the list expiring by holding a certification and requesting that DCA approve the subject appointment on an anticipatory basis, which he alleges that it has sometimes done in the past. As indicated above, the Commission finds that it was not required to take any such extra-ordinary measures. Finally, as the appellant has not provided one scintilla of confirming evidence, such as a document or statement from a third party that confirms that Paterson took any action against him based on the appellant's union activity, there are no material facts that are in dispute and there is no basis for a hearing.

### **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 24<sup>TH</sup> DAY OF MARCH, 2021

*Deirdre' L. Webster Cobb*

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