



STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

 In the Matter of Deputy Municipal
 Emergency Management Coordinator
 (M0272W), City of Newark

Appointment Waiver

CSC Docket No. 2022-237

 ISSUED: SEPTEMBER 24, 2021
 (BW)

The City of Newark requests permission not to make an appointment from the March 4, 2019 certification for Deputy Municipal Emergency Management Coordinator (M0272W), City of Newark.

The record reveals that the City of Newark provisionally appointed Frank Bellina, pending open competitive examination procedures, to the subject title, effective March 2, 2015. An examination was announced with a closing date of March 22, 2018 that resulted in a list of four eligibles with an expiration date of February 27, 2022. A certification containing the names of the four eligibles was issued on March 4, 2019.

The appointing authority responded that there is new management in the Division of Personnel, and it did not initially return the certification for proper disposition.¹ Additionally, it indicates that it has appointed Bellina to the appropriate unclassified title of Municipal Emergency Management Coordinator due to his license and certifications and its need to continue joint operations with local, County, State and federal partners. It further indicates the subject title will not be filled due to budgetary constraints and requests a waiver of the appointment requirement.

¹ The certification for Deputy Municipal Emergency Management Coordinator was subsequently returned on September 10, 2021. In that regard, the City of Newark noted that: no appointments would be made from the certification due to budgetary constraints; that Bellina was appointed to the higher-level unclassified title; and that it was requesting the subject appointment waiver.

Tanya Fraser, the number one ranked eligible on the list, requests review of the outstanding certification. Fraser indicates in her letter that this is the second consecutive occurrence in which the list for the Deputy Municipal Emergency Management Coordinator has gone unused. She emphasizes that her education and experience are equal to and above the requirements for the position.

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 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 for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Frank Bellina, who is no longer serving in the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that the position will not be filled due to budgetary constraints and it appointed Bellina to the higher unclassified title of Municipal Emergency Management Coordinator due to his license and certifications and its need to continue joint operations with local, County, State and federal partners. Given that the appointing authority has appointed Bellina to a higher title and it has indicated the current position will not be filled due to budgetary constraints, it is appropriate to grant the request for an appointment waiver.

Although an appointment waiver is granted in this matter, 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 for 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, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this case, the appointing authority's separation of the provisional employee and its determination that a permanent appointment would not be made from the subject list are sufficient for an appointment waiver but do not provide a basis to waive the assessment of costs.

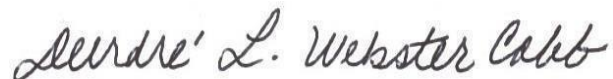
ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing

authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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 22 DAY OF SEPTEMBER, 2021



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