



STATE OF NEW JERSEY

In the Matter of Alexandre Gabler,
 Librarian 3 (PM4239C), Woodbridge
 Library

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

CSC Docket No. 2022-364

Examination Appeal

ISSUED: FEBRUARY 7, 2022 (HS)

Alexandre Gabler appeals his final average and rank on the eligible list for Librarian 3 (PM4239C), Woodbridge Library.

The subject promotional examination was announced with a closing date of July 21, 2021 and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Librarian 2 as of the closing date. The examination was processed as a ranked unassembled examination (UE). The UE standard on which the scoring process for this examination was based gave full credit for up to ten years of librarian experience. All eligible candidates received a UE score of 70.000, and two points were added for up to ten years of qualifying experience. Also, for this examination, the UE score was worth 70 percent of the final average, while seniority was worth 30 percent. Seniority was based on the time from the regular appointment date to the eligible title (Librarian 2 in this case) to the closing date of the announcement minus the time spent on layoffs, leaves of absence without pay not identified in *N.J.A.C. 4A:4-2.15(d)*, and suspensions. The maximum possible seniority score was 85.000, representing 15 years. The following eligible list, which promulgated on August 26, 2021 and expires on August 25, 2024, initially resulted from the examination:

Rank	Name	Veteran Status	Final Average
1	S.F.	Non-veteran	88.50
2	P.B.	Non-veteran	88.36
3	N.M.	Non-veteran	85.47
4	A.R.	Non-veteran	83.62

5	N.R.	Non-veteran	77.47
6	B.P.	Non-veteran	77.39
7	I.W.	Non-veteran	76.42
8	Appellant	Veteran	75.72

A certification (PL210986) for the title of Librarian 3 issued to the appointing authority on August 31, 2021. Because an earlier-promulgated eligible list for Librarian 3 (PM1079A), Woodbridge Library remained active at the time,¹ the names of the remaining eligibles on the PM1079A list were consolidated with the names of the eligibles from the PM4239C list on the certification. See *N.J.A.C.* 4A:4-3.5(a)1. Certification PL210986 was disposed of as follows on December 8, 2021:

Name	Veteran Status	Symbol	Cert Position	Rank	Disposition
S.F.	Non-veteran	PM1079A	1	1	I7 ²
P.B.	Non-veteran	PM1079A	2	2	I7
N.M.	Non-veteran	PM1079A	3	4	I7
A.R.	Non-veteran	PM1079A	4	5	I7
B.P.	Non-veteran	PM1079A	5	6	I7
S.F.	Non-veteran	PM4239C	6	1	9I ³
P.B.	Non-veteran	PM4239C	7	2	9I
N.M.	Non-veteran	PM4239C	8	3	9I
A.R.	Non-veteran	PM4239C	9	4	9I
N.R.	Non-veteran	PM4239C	10	5	Appointed – effective 11/29/21
B.P.	Non-veteran	PM4239C	11	6	9I
I.W.	Non-veteran	PM4239C	12	7	I7
Appellant	Veteran	PM4239C	13	8	I2 ⁴

On appeal to the Civil Service Commission (Commission), the appellant recounts that the appointing authority determined in September 2020 that there was a Librarian 3 vacancy that needed to be filled, at which time the PM1079A list existed with five eligibles remaining. The appellant claims that the appointing authority failed to request a certification and instead internally posted the following “Vacancy Posting:”

¹ The PM1079A list promulgated on January 2, 2020 with an expiration date of January 1, 2023.

² Retain – interested for future certifications only.

³ Hold – see previous disposition of same eligible on this certification.

⁴ Retain – interested – others appointed (reachable for appointment).

VACANCY POSTING

CLASSIFICATION: LIBRARIAN 3
 Manager of Programming
 And Community Engagement

HOURS: FULL TIME

LOCATION: MAIN LIBRARY

SALARY: \$84,401 Annual

POSTING DATES: September 24th, 25th, 28th, 29,
 And 30th, 2020

MEMOS OF INTEREST SHOULD BE SENT TO:

Monica Eppinger
 Library Director

In the appellant's view, this Vacancy Posting was flawed. Specifically, the "Librarian 3 Manager of Programming and Community Engagement" is not a valid job specification, and altering the Librarian 3 title is detrimental to qualified employees who are led to believe that they are not qualified; the required duties were inconsistent with the job specification; posting the Vacancy Posting organization-wide led employees who were not eligible to incorrectly believe that they were; posting the Vacancy Posting using the term "Manager" in association with the Librarian 3 title was misleading as the title is not a managerial title;⁵ and only five posting days were provided. The appellant proffers that the Vacancy Posting violates *N.J.S.A.* 11A:3-1b, *N.J.S.A.* 11A:3-1e, *N.J.A.C.* 4A:3-3.1(a), and *N.J.A.C.* 4A:3-3.1(b)1-2. The appellant states that none of the five eligibles remaining on the PM1079A list as of September 24, 2020 applied for the Vacancy Posting. The appellant also maintains that he did not apply for the Vacancy Posting because *N.J.S.A.* 11A:4-13b provides, in part, that "[p]rovisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification," and *N.J.A.C.* 4A:4-1.5(a) provides, in part, that a provisional appointment may be made only when "[t]here is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment." However, N.R., who was not on the PM1079A list, applied and received a provisional appointment to Librarian 3,

⁵ The appellant states that individuals serving in the title of Librarian 3 are taking on the duties of the Librarian 4 title, and individuals serving in the title of Librarian 4 should be Chief Librarians. The appellant offers no evidence for these allegations. Nevertheless, it should be noted that employees affected by such alleged misclassification issues may file position review requests pursuant to *N.J.A.C.* 4A:3-3.9.

pending promotional examination procedures, effective October 19, 2020, per the minutes of the Board of Trustees' October 22, 2020 regular meeting.⁶ The appellant argues that this was an improper provisional appointment by the appointing authority as there was a complete list of eligibles (PM1079A) at the time on which N.R. did not appear.⁷

The appellant notes that N.R.'s provisional appointment to Librarian 3 ultimately resulted in the issuance of the promotional announcement for Librarian 3 (PM4239C), Woodbridge Library and the promulgation of the ensuing eligible list. N.R., B.P., I.W., and the appellant were respectively the fifth through eighth ranked eligibles on the list. The appellant contends that he should rank higher than N.R. and I.W. and that there were errors in the scoring of B.P.'s examination as well. The appellant notes that he completed additional job-related education, namely the Dale Carnegie Institute's Skills for Success. Specifically with respect to N.R., the appellant contends that her provisional experience as a Librarian 3 from October 19, 2020 to the July 21, 2021 closing date was improperly factored into the scoring of her examination.⁸ The appellant alleges that in using a ranked UE rather than a written test, the appointing authority had a foregone conclusion in mind and wanted to bias him to the lowest ranking, thereby adversely impacting his "disabled veterans" preference rights⁹ and ensuring that it could reach its provisional employee for appointment. In support, the appellant submits copies of the Vacancy Posting, an excerpt from the October 22, 2020 regular meeting minutes of the Board of Trustees, and other exhibits.

In response, the appointing authority maintains that the process for posting a vacancy is guided by language in the collective negotiations agreement (CNA) with Local No. 2923, American Federation of State, County and Municipal Employees, which covers the Librarian 3 title. Specifically, the appointing authority points to Article 7A, which provides, in part:

Notice of all library vacancies shall be posted in print on all department bulletin boards, with a copy provided to the Union President. Newly created positions, vacancies, or promotional jobs are to be posted in the

⁶ Specifically, those minutes indicated the following: "Promote [N.R.], Librarian 2, Main Library to Librarian 3, Main Library, Full time, 35 hours per week, \$84,401 annual salary, provisional, pending CSC procedures, replacing [A.K.], effective 10/19/2020."

⁷ The County and Municipal Personnel System indicates that the effective date of this provisional appointment was changed from October 19, 2020 to January 6, 2021. The reason for the change is discussed later in this decision.

⁸ A review of N.R.'s application indicates that she listed the position of "Librarian 3" from October 2020 to July 2021 and the position of Librarian 2 from May 2019 to October 2020. N.R. received full credit for this time.

⁹ It is noted that no distinction is made between disabled veterans and veterans in promotional examinations, and both are referred to as veterans in that context. *See N.J.A.C. 4A:5-2.2(a).*

following manner: classification, location, rate of pay, hours of work, person to contact.

The appointing authority highlights that the job specification for Librarian 3 includes the following Note: “The examples of work for this title are for illustrative purposes only. A particular position using this title may not perform all duties listed in this job specification. Conversely, all duties performed on the job may not be listed.” The appointing authority states that a job description that provides detail of duties not specifically listed are added to the cover sheet for the purpose of providing a list of known, additional duties required for the vacancy posting. According to the appointing authority, the posting dates for the Vacancy Posting followed standard operating procedure. The appointing authority notes that on October 8, 2020, it in fact did file a Request for Certification from the PM1079A Librarian 3 list as an alert to the open position. Additionally, the appointing authority states that it contacted this agency for assistance with the process of appointment when all eligible applicants on the certified list declined the position. In this regard, the appointing authority notes that the PM1079A list was certified on October 27, 2020 (PL200939) (the certification issued in response to the appointing authority’s October 8, 2020 request), May 11, 2021 (PL210437), and June 29, 2021 (PL210646). On each of these certifications, all five eligibles remaining on the PM1079A list indicated that they were interested for future certifications only.¹⁰ The appointing authority states that in this case, a provisional appointment from the respondents to the Vacancy Posting was made for the purpose of ensuring that operations continued. The appointing authority notes that the appellant has indicated that he was aware of the Vacancy Posting and determined that he would not apply based on his understanding of Civil Service law and rules. It asserts that the appellant did not contact anyone in the Administration Office to ask questions about the details of the position or the process. The appointing authority maintains that there has been a Librarian 3, Community Engagement and Program Manager in place for four years. Further, the appointing authority argues that the selection of a ranked UE was a request for a process and a recommendation for the purpose of producing an outcome with no preordained result other than to rank the eligible candidates in order of education and experience. In support, the appointing authority provides an excerpt from the CNA; the “Job Announcement” that was attached to the Vacancy Posting, which “Job Announcement” references the position as “Community Engagement and Program Coordinator” and lists the duties included; and other exhibits.

In reply, the appellant initially notes that certain exhibits in the appointing authority’s response contain the unredacted personal information, including full social security numbers, of seven of his co-workers. He argues that by sending him this information, the appointing authority violated *N.J.S.A. 47:1A-1*, which provides:

¹⁰ The dispositions for certifications PL200939, PL210437, and PL210646 were recorded by this agency on January 5, 2021, June 4, 2021, and August 6, 2021, respectively.

[A] public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.¹¹

Returning to the merits, the appellant insists that the appointing authority should have notified this agency of its vacancy in September 2020, not later on October 8, 2020, and that it was required to do so per *N.J.A.C.* 4A:4-4.1(a). He notes that the October 27, 2020 certification had a notice date of November 4, 2020 and contends that by that time, it was already "too late" for the five remaining eligibles on the PM1079A list as N.R. had been provisionally appointed to the title of Librarian 3 weeks earlier on October 19, 2020. The appellant claims that the appointing authority had him reporting to N.R. as his superior and that this was a major violation of Civil Service law and rules given that he has greater seniority than N.R.¹² Regarding the appointing authority's reliance on the CNA, the appellant contends that using an "invalid" agreement as a guide does not change the fact that current laws and regulations, including *N.J.A.C.* 4A:4-2.1(b), must be followed. The appellant adds that the appointing authority has not submitted the CNA to the Public Employment Relations Commission (PERC) as required by the Employer-Employee Relations Act (EERA).

Concerning the "Job Announcement" attached to the Vacancy Posting, the appellant notes that it refers to the position as "Community Engagement and Program Coordinator." He argues that this description, like the description "Manager of Programming and Community Engagement" used in the Vacancy Posting, is not a valid Civil Service job title. The appellant contends that under *N.J.A.C.* 4A:3-3.1(c), descriptive titles can "only" be used for purposes of corresponding with the public, not in the posting of a position. Turning to the issue of the scoring of the PM4239C examination, the appellant argues that any experience awarded and considered in the calculation of N.R.'s score should not include experience gained as a result of out-of-title work in her incorrect provisional appointment to Librarian 3. Citing *N.J.A.C.* 4A:4-2.7(a), the appellant insists that veterans preference rights are a factor here. The appellant further states that he fears reprisal by the appointing authority.

¹¹ The employees' full social security numbers are indeed confidential. The appointing authority is cautioned that such information should not be improperly released in the future.

¹² In the interest of clarity to the reader, the Commission notes that per the job specification, a Librarian 3 "may supervise library staff, services, programs and operations; or, in some jurisdictions, may supervise the staff and operations of a branch within a library system." It is also noted that on his application for the PM4239C examination, the appellant indicated that he was supervised by W.R., Librarian 3, from May 2019 to July 2021.

The appellant maintains that there has been purposeful and willful violation of Civil Service law and rules, and he seeks the following additional remedies: “restitution” paid by the appointing authority to seven employees, including the appellant, serving in the title of Librarian 2 with greater seniority than N.R.; disapproval of salary pursuant to *N.J.S.A.* 11A:10-1 for N.R. and the appointing authority; and designation of a different appointing authority or the appointment of a monitor to oversee the actions of the current appointing authority.

In reply, the appointing authority states that when no one on the PM4239C eligible list responded that they were interested in the position at issue, an applicant for the position was appointed provisionally after the Administration Office consulted this agency for instructions to address the problem. According to the appointing authority, the following factored into the decision at the time: the position filled was deemed necessary to the operation of the library; it has not been the standing operating procedure to promote staff members to a higher level of responsibility or different range of tasks against their wishes or violate in any way their own assessment of their careers; the Board of Trustees empowers the appointing authority to act on its behalf on a day-to-day basis, and the appointing authority acted with guidance from this agency; it is not unusual for the Board of Trustees to approve personnel matters after they have been put in place to keep the library operating; and the appellant declined the opportunity to serve in the post.

It is noted that this agency has reviewed the scoring of the PM4239C examination. The review revealed that although P.B., N.M., and B.P. all had correct UE scores based on the amount of qualifying experience reflected on their applications, they had seniority scores that were too low. These errors have been corrected, and the result is that the final averages for P.B., N.M., and B.P. have increased to 88.66, 85.77, and 77.69 respectively. P.B. and B.P. each have advanced one rank, while N.M.’s rank remains the same. The final averages for the remaining candidates remain unaffected. Of note in this matter:

- N.R.’s application reflected five years of qualifying experience for a UE score of 80.00. The total time N.R. spent in the title of Librarian 2 to the closing date was one year, six months, and 11 days for a seniority score of 71.54. Thus, N.R.’s final average of 77.47 was correct.
- The appellant’s application reflected three years and nine months of qualifying experience for a UE score of 77.50. The total time the appellant spent in the title of Librarian 2 to the closing date was one year, six months, and 11 days for a seniority score of 71.54. Thus, the appellant’s final average of 75.72 was correct.

The revised final averages and ranks are as follows:

Rank	Name	Veteran Status	Final Average
1	P.B.	Non-veteran	88.66
2	S.F.	Non-veteran	88.50
3	N.M.	Non-veteran	85.77
4	A.R.	Non-veteran	83.62
5	B.P.	Non-veteran	77.69
6	N.R.	Non-veteran	77.47
7	I.W.	Non-veteran	76.42
8	Appellant	Veteran	75.72

It is further noted that while the revisions to the scoring of the examination occurred after certification PL210986 had issued, the revisions in effect had no impact on that certification because S.F., P.B., N.M., and B.P. all appeared on that certification above all eligibles from the PM4239C list by virtue of their placement on the earlier-promulgated PM1079A list.

CONCLUSION

At the outset, the Commission notes that it will not address the appellant's claim that the Vacancy Posting was flawed. In this regard, vacancy postings are initiated by the appointing authority, and they are not monitored by this agency. Such postings are used by the appointing authority to generate a list of interested individuals to fill vacant positions. If a provisional appointment pending promotional examination results from the posting, the appointing authority must adhere to Civil Service rules and procedures regarding provisional appointments and promotional examination announcements. Therefore, the requirements set forth in the vacancy posting may not necessarily be those included on the resultant promotional announcement. *See In the Matter of Sarah J. Seigel* (MSB, decided January 11, 2000).

The appellant has not persuasively argued in favor of Commission review of the Vacancy Posting. None of the various provisions of Civil Service law and rules that the appellant claims the Vacancy Posting violates speak to the specific issue of vacancy postings. For example, the appellant cites *N.J.A.C. 4A:4-2.1(b)*. This rule provides:

In order to notify all employees of promotional opportunities, promotional examination announcements shall be posted on, and applications shall be made available through, the Civil Service Commission web site and may also be made available through the web sites of affected appointing authorities. If an affected appointing authority does not maintain or utilize a web site, promotional examination announcements shall be conspicuously posted by the affected appointing authority at all geographic locations within the unit

scope (in State service) or department (in local service) to which the examination is open. Appointing authorities shall also ensure the notification by electronic or other means of all eligibles of the promotional examination announcement. Appointing authorities shall maintain a record of promotional examination announcement postings and the notification of eligibles of the announcement.

Clearly, this rule concerns *promotional examination announcements*, not vacancy postings. *N.J.S.A.* 11A:4-13b provides, in part, that “[p]rovisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification,” and *N.J.A.C.* 4A:4-1.5(a) provides, in part, that a provisional appointment may be made only when “[t]here is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment.” These provisions concern the *making* of provisional *appointments* and, again, do not concern vacancy postings. Thus, contrary to the appellant’s interpretation, *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1.5(a) did not bar him from responding to the Vacancy Posting.

The appellant also cites *N.J.A.C.* 4A:3-3.1(c). This rule provides:

Assigned job titles shall be used in all records and communications relating to personnel and payroll, including budgets. Appointing authorities may designate appropriate descriptive titles to be used for other purposes, such as correspondence with the public.

The appellant misreads this rule in arguing that descriptive titles can “only” be used for purposes of corresponding with the public. The rule clearly presents correspondence with the public as *one example* of another purpose for which descriptive titles may be used, not the sole purpose. As such, *N.J.A.C.* 4A:3-3.1(c) does not supply justification for the Commission to review the Vacancy Posting.

The Commission will also not address the appellant’s claim that the appointing authority could not look to the CNA for guidance concerning the Vacancy Posting because the CNA is “invalid.” In this regard, the Commission generally does not have jurisdiction to enforce or interpret items that are contained in a collective bargaining agreement negotiated between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is PERC. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4(c). Similarly, the Commission lacks jurisdiction to address the appellant’s complaint that the appointing authority has not submitted the CNA to PERC in violation of the EERA. *See N.J.S.A.* 34:13A-5.2 (*PERC* charged with enforcing and “implement[ing] fully all the provisions of” the EERA).

Turning to the issue of N.R.'s provisional appointment to the title of Librarian 3, *N.J.S.A.* 11A:4-13b provides, in part, that "[p]rovisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification . . ." *N.J.A.C.* 4A:4-1.5(a) provides, in part, that a provisional appointment may be made only when "[t]here is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment." As of October 19, 2020, a complete eligible list of five names for the title of Librarian 3 (PM1079A) existed, and certification PL200939 had yet to even be issued. Thus, the appointing authority acted prematurely in effecting N.R.'s provisional appointment on October 19, 2020. The appointing authority should have waited until the disposition of certification PL200939, showing that all five eligibles were only interested for *future* certifications, was recorded since it was only at that point that there was the "absence of a complete certification," *N.J.S.A.* 11A:4-13b, permitting the provisional appointment. Thus, this agency acted appropriately in correcting the effective date of N.R.'s provisional appointment to January 6, 2021, one day following the date the disposition of certification PL200939 was recorded.

However, the Commission will not go so far as to find that the appointing authority's effecting N.R.'s provisional appointment on October 19, 2020 was a *purposeful* or *willful* violation of Civil Service law and rules. In this regard, the appointing authority indicates that operational demands required that it fill the position; none of the five eligibles remaining on the PM1079A list at that time had expressed interest in the position as evidenced by the fact that none responded to the Vacancy Posting; the pertinent minutes of the Board of Trustees meeting indicated that N.R.'s provisional appointment was "pending CSC procedures," reflecting an acknowledgment that Civil Service procedures applied; and the appointing authority did request that a certification be issued.¹³ Citing *N.J.A.C.* 4A:4-4.1(a), the appellant claims that the appointing authority was obligated to request a certification upon identification of its vacancy in September 2020 and not later on October 8, 2020. *N.J.A.C.* 4A:4-4.1(a) provides:

When 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. Such request shall be submitted in advance under procedures set by the Chairperson or designee to enable the appropriate Commission staff to issue or authorize the necessary certification or advise that there is no appropriate eligible list.

¹³ The Commission notes these factors only as evidence that the appointing authority appears not to have *purposefully* or *willfully* violated Civil Service law and rules. The Commission nevertheless cautions the appointing authority to adhere to the rules concerning provisional appointments in the future.

The regulation requires the appointing authority to request a certification when it has determined to fill a vacancy. Contrary to the appellant's contention, it does not require that the request for the certification must come within any specified period of time after the determination to fill the vacancy has been made. Also contrary to the appellant's claim, it was hardly "too late" for the five eligibles remaining on the PM1079A list to indicate that they were currently interested in the position in response to certification PL200939 merely because the appointing authority had already effected N.R.'s provisional appointment. Those five eligibles retained the right to indicate current interest in the position. However, they chose instead to indicate only *future* interest, as was their right as well. And N.R., for her part, had no vested right to maintain her provisional appointment. *See O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987).¹⁴

The appellant complains that the appointing authority had him reporting to N.R. as his superior and that this was a major violation of Civil Service law and rules given that he has greater seniority than N.R. However, the appellant offers no substantive evidence of such a reporting relationship, and his PM4239C examination application indicates that from May 2019 to July 2021, his supervisor was another individual. Regardless, even assuming, *arguendo*, that the appellant reported to N.R., there is no Civil Service law or regulation that limits supervisory reporting relationships on the basis of seniority. Rather, so long as the titles involved are appropriate to the reporting relationship, one employee may permissibly report to another with less seniority. Thus, the appellant is not owed a payment of "restitution" even if he reported to N.R. in the October 19, 2020 to January 5, 2021 timeframe. In this regard, no harm has been established, and Civil Service law and rules do not contemplate that a payment of "restitution" will be made for the mere fact that one employee was assigned to report to another employee who was prematurely provisionally appointed to a supervisory title. *See N.J.A.C.* 4A:2-1.5.

The Commission proceeds to issues surrounding the PM4239C examination. The appellant alleges that in using a ranked UE rather than a written test, the appointing authority had a foregone conclusion in mind and wanted to bias him to the lowest ranking, thereby adversely impacting his disabled veterans preference rights. However, there is no substantive evidence of such bias in the record. Further, it must be emphasized that although appointing authorities are allowed to provide input, such as preference for a test mode, the responsibility for selection of the test mode ultimately lies with *this agency*. *See N.J.A.C.* 4A:4-2.2 (indicating that this agency has the authority to determine the most appropriate selection instrument to use in assessing candidates for a given competitive title). The UE is a valid selection instrument. *See N.J.S.A.* 11A:4-1a. Moreover, a right to a written test is not among the rights attendant to disabled veterans or veterans preference. *See N.J.S.A.* 11A:5-1 to -15 and *N.J.A.C.* 4A:5-1.1 to -2.3. Stated differently, there is no *requirement* that

¹⁴ Pursuant to Civil Service law and rules and *O'Malley*, the appellant had no vested right to *receive* the provisional Librarian 3 position. In any event, he opted not to respond to the Vacancy Posting.

the test mode automatically be a written test whenever a disabled veteran or veteran is in the applicant pool. The appellant also cites *N.J.A.C. 4A:4-2.7(a)*, which provides:

Following the announcement of a promotional examination, the Chairperson or designee may authorize the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list if:

1. The employee has been successfully tested in the basic skills required for the promotional title;
2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;
3. The number of interested eligibles for the promotional examination referred to in (a) above does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

In the context of this case, the regulation stands for the proposition that if veterans preference rights are a factor, then a qualified permanent employee in the career service cannot be promoted by regular appointment without competitive examination and without the establishment of an eligible list. However, in this case, there is no evidence that the appointing authority ever sought to promote upon waiver of a competitive examination and a competitive examination was held followed by the establishment of an eligible list. Thus, the appellant's citation to *N.J.A.C. 4A:4-2.7(a)* does not support his claim that his disabled veterans preference rights were improperly impacted.

Turning more specifically to the scoring of the PM4239C examination, the appellant argues that any time in which N.R. was performing Librarian 3 duties without having received a proper provisional appointment to that title should not be considered in the calculation of her score as such duties were out-of-title. *N.J.A.C. 4A:4-2.6(c)*, the out-of-title rule, provides in relevant part:

Except when permitted by the Chairperson or designee for good cause, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process.

However, it bears emphasizing at this juncture that the UE standard on which the scoring process for this examination was based gave full credit for up to ten years of

librarian experience. The definition section of the job specification for Librarian 2 states:

Under supervision, provides a variety of library services in one or more functional areas of the library requiring substantial professional knowledge of and experience with librarianship theories, principles and practices; may take the lead and coordinate work assignments of Librarians 1, and/or paraprofessional/ technical staff; performs related duties as required.

The definition section of the job specification for Librarian 3 states:

Under supervision, provides a variety of library services in one or more functional areas of the library requiring substantial professional knowledge of and experience with librarianship theories, principles and practices; may supervise library staff, services, programs and operations; or, in some jurisdictions, may supervise the staff and operations of a branch within a library system; performs related duties as required.

While *supervisory librarian* work is out-of-title for Librarian 2, *librarian* work obviously is not out-of-title for either the Librarian 2 or Librarian 3 title. And since N.R., like all the candidates, was only credited for librarian experience, and not supervisory librarian experience, in keeping with the UE standard, she in fact received no credit in the examination process for out-of-title experience. Thus, the Commission has no occasion to consider discounting any of N.R.'s experience from the scoring of her examination under *N.J.A.C.* 4A:4-2.6(c), and her final average was correctly determined. The final averages for I.W. and the appellant were also correctly determined, as noted earlier. The respective final averages for P.B., N.M., and B.P. were re-determined, as also noted earlier. No candidate received credit for completing additional job-related education.

It is appropriate to note here that under Civil Service rules, a list of eligibles who have passed a promotional examination appears in the order of the eligibles' scores regardless of veteran or non-veteran status. See *N.J.A.C.* 4A:5-2.2(b). When a single vacancy is to be filled from a promotional certification headed by a veteran, any veteran among the top three interested eligibles may be appointed in accordance with the "rule of three." See *N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:5-2.2(c). A non-veteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. See *N.J.A.C.* 4A:5-2.2(c). However, when a single vacancy is to be filled from a promotional certification headed by a non-veteran, any reachable eligible may be appointed in accordance with the "rule of three." See *N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:5-2.2(d). In this case, the appointing authority had a single vacancy to fill from certification PL210986, which was headed

by a non-veteran. Thus, the appointing authority had the right to appoint any reachable eligible and was not compelled to appoint the appellant. In light of the applicable rules, it is clear that the appellant's veterans preference rights were not violated within the context of the subject promotional examination.

The appellant requests other remedies. Specifically, he requests a disapproval of salary pursuant to *N.J.S.A.* 11A:10-1 for N.R., and the designation of a different appointing authority or the appointment of a monitor to oversee the actions of the current appointing authority. Disapproving salaries is infeasible in this case. For one, it is not the case that salaries must be disapproved any time a person is employed in violation of the Civil Service Act or a Commission order. In this regard, *N.J.S.A.* 11A:10-1 provides:

The Civil Service Commission *may* disapprove and order the payment stopped of the salary of any person employed in violation of this title or an order of the Civil Service Commission and recover all disapproved salary from such person. Any person or persons who authorize the payment of a disapproved salary or have employment authority over the person whose salary has been disapproved *may* be subject to penalties, including, but not limited to, the disapproval of their salaries and payment from their personal funds of improper expenditures of the moneys as may be provided by the rules of the Civil Service Commission. This section shall not be limited by the amounts set forth in *N.J.S.11A:10-3* (emphases added).

For another, *N.J.A.C.* 4A:10-3.1 outlines procedural steps, including the provision of a notice of salary disapproval with an opportunity to respond, that must occur before salaries may be disapproved. None of those steps occurred in this case, which would make moving directly to ordering a salary disapproval in this decision procedurally unfair. Also, the issue of the propriety of N.R.'s provisional appointment to the title of Librarian 3 has long since been resolved by the correction of the effective date from October 19, 2020 to January 6, 2021. Further, it is not the Commission's place to step in and choose a different appointing authority for the Woodbridge Library when the power of appointment emanates from its Board of Trustees, *see N.J.S.A.* 40:54-12 (Board of Trustees empowered to hire librarians and other necessary personnel), and that entity has in turn apparently empowered the current appointing authority to act on its behalf. Similarly, the appellant has not identified any source for the Commission's purported power to appoint a monitor to oversee the actions of the current appointing authority.

The appellant indicates that he fears reprisal from the appointing authority. *N.J.S.A.* 11A:2-24 provides:

An appointing authority shall not take or threaten to take any action against an employee in the career, senior executive or unclassified

service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority. An employee who is the subject of a reprisal action by an appointing authority for the lawful disclosure of information may appeal such action to the Civil Service Commission.

See also, N.J.A.C. 4A:2-5.1(a). Thus, if the appellant believes that the appointing authority has taken a reprisal action against him, or has threatened him with such action, he may file the appropriate appeal. *See N.J.A.C. 4A:2-5.2.* However, the appellant has not presented any evidence, or even claimed, that the appointing authority has engaged in any reprisal actions against him. Accordingly, the Commission will not act at this time on the appellant's general fear that the appointing authority may in the future take a reprisal action against him as the issue is not ripe for adjudication.

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 2ND DAY OF FEBRUARY 2022

Deirdre' L. Webster Cobb

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