



procurement process to ensure the depth and range of services outlined in WIOA are met. Thus, Burlington County stated that it will need to restructure its LWDBs to conform to this new policy. It also confirmed that Sabir resigned from her position, and, therefore, it stated that there is no issue in terms of a provisional employee remaining in this title. Burlington County asserted that if it had known that the NJDOL guidelines were going into effect, it would not have pursued the appointment.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised 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, the appointing authority requests that the selection costs be waived due to the unforeseen circumstances of the NJDOL guidelines. Specifically, it explains that the unexpected change by the NJDOL on how the WIOA programs will be handled going forward made the appointment of a Civil Service position incompatible with the intent of the direction issued by the NJDOL. The NJDOL has advised that the function that was to be handled by the Management Specialist position would now be handled through a competitive bid process by a contracted vendor. The appointing authority also reiterates that the provisional employee has since resigned. Finally, it states that it believes that it acted in good faith in its original intent of making an appointment from the subject eligible list, and although an appointment will not be made at this time, it would like to reserve the right to utilize the list for future opportunities with Burlington County.

## 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 Sabir. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that new NJDOL guidelines have prohibited it from making an appointment at this time. Additionally, Sabir has resigned from her provisional position. Thus, in conjunction with the fact that there are no provisionals currently serving, there is a sufficient justification 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 Commission notes that the list in question will not expire until April 27, 2025. Further, the appointing authority has indicated that although an appointment will not be made at this time, it would like to reserve the right to utilize the list for future opportunities with Burlington County. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event it fails to utilize the subject eligible list by its expiration date of April 27, 2025, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

### **ORDER**

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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 18<sup>TH</sup> DAY OF JANUARY, 2023

*Allison Chris Myers*

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