



STATE OF NEW JERSEY

In the Matter of Payroll Supervisor
(M0364D), Vineland School District

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

CSC Docket No. 2023-1277

Appointment Waiver

ISSUED: February 22, 2023 (AMR)

Vineland School District requests permission not to make an appointment from the May 16, 2022 certification for Payroll Supervisor (M0364D), Vineland School District.

The record reveals that Vineland School District provisionally appointed Jean Massey, pending open competitive examination procedures, to the subject title, effective July 26, 2021. An examination was announced with a closing date of March 21, 2022, that resulted in a list of 11 eligibles promulgating on May 12, 2022 and expiring on May 11, 2025. It is noted that Massey was separated from her provisional position when she was appointed provisionally to the title of Comptroller effective November 3, 2022. Furthermore, there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

The appointing authority returned the subject certification and requested a waiver of the appointment requirement, stating that the first candidate on the certification did not express interest in the subject title and the next four candidates interviewed, who were all tied at a number one ranking, were “not remotely qualified” or prepared for the duties and responsibilities of a Payroll Supervisor. Furthermore, it stated that the working test period for any of these candidates “would result in lack of continuation due to a comprehensive lack of knowledge, training or experience for what is conducted on a daily basis by a large public school district Payroll Supervisor.”

The appointing authority’s request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed

for the costs of the selection process in the amount of \$2,048. The appointing authority responded, reiterating that the top four interested eligibles “do not possess the experience or comprehension of the job duties of a Payroll Supervisor.” It stated that the Payroll Supervisor is “not a learn-on-the-job role,” but rather, it requires “an independent professional who must complete all responsibilities without assistance.” The appointing authority indicated that these candidates would not be successful during a working test period in the subject title. Consequently, it acknowledged the possibility of an assessment of the selection costs associated with the time and effort expended in conducting the appointment process. It is noted that the appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to its processing.

CONCLUSION

Initially, 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. June 14, 1989), the court stated that this agency is required to issue a certification 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 this agency was correct in interpreting *N.J.S.A. 11A:4-5* to find that it was a clear legislative response to pervasive violations of Title 11A, and that non-compliance with this statute is not a mere technical violation, but rather it undermined the purpose and intent of the constitutionally-based merit 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 the appointing authority 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 Civil Service Commission (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).

Therefore, 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 Massey. After a complete certification was

issued, the appointing authority later requested an appointment waiver, explaining that the first candidate on the subject certification did not express interest in the subject title, and the next four candidates interviewed, who were all tied at a number one ranking, were “not remotely qualified” or prepared for the duties and responsibilities of a large public school district Payroll Supervisor. However, a negative assessment of an ability prior to employment is not a basis to render a candidate ineligible for appointment since abilities are demonstrated upon serving in a position. *See e.g., In the Matter of Margaret Snyder and Meghan Heuser* (CSC, decided April 14, 2010). Moreover, this agency found that the candidates on the subject eligible list met the minimum requirements for the position as announced. Nonetheless, Massey’s provisional appointment was terminated, and she was provisionally appointed to Comptroller effective November 3, 2022. 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 appointing authority’s determination that it could not appoint any of the first five eligibles, and it no longer needed to fill the Payroll Supervisor position as evidenced by Massey’s separation from the subject title after it requested an examination, does not provide a basis on which to waive the selection costs. Additionally, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the 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 22ND DAY OF FEBRUARY, 2023

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