



STATE OF NEW JERSEY

In the Matter of County Correctional
Police Officers, Essex County

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

CSC Docket Nos. 2023-26 and 2023-
27

Request for Reconsideration

ISSUED: June 28, 2023 (ABR)

The Essex County Superior Officers’ Association, Fraternal Order of Police, Lodge No. 106 (FOP106) requests reconsideration of the Civil Service Commission’s (Commission) final decision, rendered on May 18, 2022, which granted Essex County’s request to make temporary appointments of entry-level County Correctional Police Officers.

By way of background, the appointing authority presented that its county correctional facility continued to face an ongoing severe shortage of County Correctional Police Officers and had a dire need to hire additional officers to adequately and safely staff the facility. Specifically, it stated that approximately 80 vacancies existed that urgently needed to be filled. Further, the appointing authority indicated it was concerned about the possibility of systemic staffing issues based on rising COVID-19 rates. Therefore, given these circumstances, Essex County requested permission to make temporary appointments to the title of County Correctional Police Officer in accordance with *N.J.S.A.* 11A:4-13(c). FOP106 argued that Essex County was violating *P.L.* 2021, c. 406 by trying to make temporary appointments prior to the law’s July 18, 2022, effective date and because the Essex County Board of County Commissioners (County Commissioners) failed to adopt the requisite ordinance or resolution authoring hiring pursuant to that enactment. The Commission granted the appointing authority’s request based on the circumstances presented by the appointing authority, certification issues, and since Civil Service law and rules permitted the authorization of the subject temporary appointments.

However, the Commission reminded the appointing authority that while an ordinance was not required to make temporary appointments in accordance with *N.J.S.A. 11A:4-13(c)*, it would need to pass an ordinance or resolution in compliance with *P.L. 2021, c. 406* to make such appointments after July 17, 2022.

In its request for reconsideration, FOP106 argues that if the Commission had been aware of information established in the public record on and after May 25, 2022, the Commission would have deferred consideration of the appointing authority's request to make temporary appointments of entry-level County Correctional Police Officers. Specifically, FOP106 avers that the appointing authority did not seek permission from its governing body to divert from standard hiring practices until May 25, 2022, one week after the Commission's May 18, 2022, decision. FOP106 proffers that recordings from the May 25, 2022 and June 8, 2022, County Commissioners' meetings demonstrate that the appointing authority did not have the requisite approval from the governing body to make the subject temporary appointments or to seek Commission authorization for them. FOP106 further avers that the Essex County Department of Corrections' (appointing authority) administration, in response to the concerns expressed by FOP106 in April 2022, stated that it would "ask for forgiveness after they're hired," evidencing knowledge that they were willfully violating applicable law. Additionally, FOP106 maintains that the statute authorizing the subject temporary appointments, *N.J.S.A. 11A:4-13(c)*, requires appointees to temporary positions to meet the minimum qualifications of a title and it presents that among the "special qualifications" listed in the Commission's job specification for County Correctional Police Officer is a requirement that appointees pass psychological fitness and/or drug screening tests. However, FOP106 maintains that the special qualification was not met, as evidenced by two individuals being discharged for failing pre-employment drug screenings days after the Commission's determination. Furthermore, FOP106 proffers that the appointing authority began soliciting resumes from candidates who did not take the entry-level law enforcement examination (LEE) in March 2022, if not earlier, and that the appointing authority could have returned an outstanding certification from the County Correctional Police Officer (S9999A) list in February 2022 to facilitate the issuance of a new certification in March 2022 and proceed with the normal appointment process.

In response, the appointing authority, represented by Sylvia Hall, Esq., argues that FOP106 lacks standing in the instant matter, as the Public Employment Relations Commission (PERC) has certified New Jersey State Policemen's Benevolent Association, Local No. 382 (PBA382) as the exclusive representative for collective negotiations for all officers below the rank of Sergeant employed by the Essex County and FOP106 has not articulated any direct injury to it or its members, or any immediate danger to the same in the event that the Commission denies its reconsideration request. The appointing authority contends that, conversely, if the Commission were to reverse or modify its May 18, 2022, decision, it would directly affect employees outside of FOP106's collective bargaining negotiations agreement

and could invalidate the hiring of temporary County Correctional Police Officers prior to July 18, 2022, force those officers to lose temporary employment and directly impact current permanent County Correctional Police Officers. The appointing authority avers that even if FOP106 has standing, it has not met the standard for reconsideration. In this regard, it observes that the Commission's May 18, 2022, decision states, in pertinent part, that "an ordinance is not required to make temporary appointments in accordance with *N.J.S.A.* 11A:4-13(c)," but, in accordance with *P.L.* 2021, c. 406, is needed for appointments made after July 17, 2022. The appointing authority presents that on May 25, 2022, Essex County enacted such a resolution. The appointing authority maintains that it acted properly with respect to its utilization of the S9999A eligible list. It further contends there is no legal basis to support FOP106's claim that it needed to notify or seek consent from its County Commissioners before seeking permission from the Commission to make the subject temporary appointments. Similarly, it argues that there is no factual basis for FOP106's claims that it improperly discharged new candidates, improperly timed psychological and drug screening tests, or FOP106's other allegations about its hiring process. In this regard, it observes that the job description for the subject title warns that testing may be required of those appointed and that basic training occurs during a working test period. The appointing authority stresses that it had and may continue to have a dire need to hire County Correctional Police Officers and that it has acted in accordance with the Civil Service law and rules to address this need. Finally, it contends that the only new information in the record since its request for temporary appointments was approved by the Commission on May 18, 2022, is the debate and enactment of a resolution by the County Commissioners to hire temporary County Correctional Police Officers. In support, it furnishes various supporting documentation, including portions of collective bargaining negotiations agreements related to the representation of employees in the County Correctional Police Officer title series, and a copy of a May 25, 2022, ordinance from the County Commissioners approving the hiring of County Correctional Police Officers in accordance with *P.L.* 2021, c. 7.

In reply, FOP106 alleges that recordings from a "town hall" meeting facilitated by the appointing authority's Chief of Staff on April 7, 2022, demonstrate that the appointing authority was aware that it was circumventing relevant legal and regulatory requirements. It also maintains that one of the first people the appointing authority appointed following the Commission's May 18, 2022 decision was the nephew of the Deputy County Correctional Police Warden who was the administrator directing recruiting. FOP106 avers that it has standing because a 2018 collective negotiations agreement provides, in relevant part, that FOP106 is the exclusive bargaining agent for Investigators. It maintains that the hiring process at issue circumvents the permanently appointed investigators it represents, as the appointing authority assigned their duties and responsibilities to two retired County Correctional Police Officers who were rehired in civilian capacities and a number of actively employed officers. FOP106 also contends that while it does not represent

those below the County Correctional Police Sergeant title level, it has standing because it represents those held responsible for the actions and inactions of such lower-ranking employees under the *respondeat superior* doctrine and who accordingly face a risk of monetary and physical injury as a result of negligent hiring practices. Additionally, it reiterates that if the premise is that government officials willfully disregarded the law, there should be a more permissive view of who has standing to challenge such actions. Further, it asserts that since the appointing authority did not challenge FOP106's standing until late in the instant proceeding and the Commission docketed the instant matter, it is evident that FOP106 has standing. As to harm to others, FOP106 proffers that because the July 18, 2022, effective date for *P.L.* 2021, c. 406 has already passed and the majority of those hired under the emergency authorization provision have, are, or soon will be attending the academy, the appointing authority could, with Commission approval, amend their status to the now lawful "temporary appointments." FOP106 contends that there was a clear material error in the Commission's May 18, 2022, decision because the appointing authority omitted pertinent facts in its request to the Commission. Namely, that the request to hire was improperly before the Commission at its May 18, 2022, meeting and that the appointing authority was deviating from past hiring practices by hiring County Correctional Police Officers without prior approval from its governing body. It maintains that if the Commission does not reverse its prior decision, the appointing authority will continue to "ask for forgiveness" rather than "wait for permission" on matters involving the Civil Service law and rules. In support, FOP106 furnishes transcribed excerpts from the aforementioned April 7, 2022, meeting.

In further reply, the appointing authority maintains that FOP106 has not presented sufficient evidence to demonstrate that its members have suffered or will suffer an "immediate or threatened injury." It observes that all County Correctional Police Officers, whether hired recently or from a competitive list, are subject to basic training and a working test period. The appointing authority contends that FOP106's claim that it has standing because it represents superior officers who are accountable for the actions of individuals in the County Correctional Police Officer title is insufficient. In this regard, it avers that such mere possibilities and outcomes are too speculative and inadequate to confer standing and that standing cannot be conferred by consent. Additionally, it contends that it is the decisions of the County Commissioners that is material, not mere discussions, deliberations or public comments. As such, it is the May 25, 2022, resolution, not the June 8, 2022, discussion of the hiring of County Correctional Police Officers, that is relevant. The appointing authority maintains that the recording of the subject April 7, 2022, meeting that FOP106 is seeking to introduce is inadmissible, as the county prohibited recording of the meeting. It also argues that the recording is immaterial to the Commission, as the New Jersey Supreme Court has recognized that the text of an enactment of a legislative body, not the statements of individual legislators, guides the interpretation of legislative intent. Finally, the appointing authority denies that it

committed any “unlawful” act by hiring much-needed County Correctional Police Officers.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.S.A. 11A:4-13(c) states:

Temporary appointments may be made, without regard to the provisions of this chapter, to temporary positions established for a period aggregating not more than six months in a 12-month period as approved by the commission. These positions include, but are not limited to, seasonal positions. Positions established as a result of a short-term grant may be established for a maximum of 12 months. Appointees to temporary positions shall meet the minimum qualifications of a title;

N.J.S.A. 52:17B-68.1(b) provides:

A person shall be given a probationary appointment as a corrections officer or as a juvenile detention officer for a period of one year so that the person seeking permanent appointment may satisfactorily complete a basic training course for corrections officers or for juvenile detention officers conducted at a school approved by the Police Training Commission. The probationary time may exceed one year for those persons enrolled within the one-year period in a basic training course scheduled to end after the expiration of the one-year period. A person shall participate in a basic training course only if that person holds a probationary appointment and that person shall be entitled to a leave of absence with pay to attend a basic training course.

Further, on January 18, 2022, *P.L. 2021, c. 406* was signed by the Governor and became effective July 18, 2022. *P.L. 2021, c. 406* significantly amended *N.J.S.A. 11A:4-1.3* concerning exempting the requirement to take a competitive examination for entry-level law enforcement positions. Germane to the instant request, *N.J.S.A. 11A:4-1.3* was amended to read as follows:

The Civil Service Commission shall exempt from the requirement to take an examination for an entry-level law enforcement officer position, entry-level sheriff's officer position, or entry-level State or county

correctional police officer position a person who successfully completes a full Basic Course for Police Officers training course or a full Basic Course for Correction Officers training course at a school approved and authorized by the New Jersey Police Training commission within nine months from the date of hire as a **temporary entry-level officer under the provisions of this section** (emphasis added).

At the outset, the Commission finds that FOP106 does not have standing in the instant matter. *N.J.A.C.* 4A:2-1.1(e) provides that a party in an appeal may be represented by an attorney, authorized union representative, or authorized appointing authority representative. In this regard, the appointing authority has established that the authorized union representative for the County Correctional Police Officer title is PBA382. FOP106 avers that it nevertheless has standing because its members could be held responsible for those held responsible for the actions and inactions of County Correctional Police Officers receiving temporary appointments following the Commission's May 18, 2022, decision, based upon the doctrine of *respondeat superior* and the perceived risks to its members that could result from "negligent hiring practices." FOP106 argues in the alternative that there should be a more permissive view of standing where the premise is that government officials willfully disregarded the law. The Commission finds that because FOP106 is not the authorized union representative for incumbents in the subject title, per *N.J.A.C.* 4A:2-1.1(e), the supervisory relationship of FOP106's members to incumbents in the subject title is insufficient to confer standing to FOP106 in the instant matter. FOP106's concerns are theoretical in nature at this juncture and are more appropriately addressed through other appeal types. For example, a claim that disciplinary action against a supervisory officer represented by FOP106 is inappropriate because of any negligent hiring practices by the appointing authority would be more appropriately addressed by a full consideration of all relevant facts and circumstances in the disciplinary appeal process. Finally, FOP106's argument that there should be a more permissive view of standing because of a premise "that government officials willfully disregarded the law" is similarly without merit based upon *N.J.A.C.* 4A:2-1.1(e). Nevertheless, the following is provided for informational purposes only.

In the instant matter, even assuming, *arguendo*, that FOP106 has standing, it has failed to meet the standard for reconsideration, as it has not presented new evidence or additional information that would change the outcome of the Commission's prior decision or that a clear material error occurred. Additionally, even assuming, *arguendo*, that the appointing authority did not have the authority to make the subject appointments as of the Commission's May 18, 2022, decision date, the appointing authority's presentation that such action was ratified by the County Commissioners through a May 25, 2022, resolution would serve to quell that issue. In this regard, the Commission and its predecessor, the Merit System Board, have previously permitted governing bodies' amendments to ordinances to serve to

retroactively ratify appointments, based upon a recognition that the courts have generally taken a permissive attitude regarding ratification of imperfect governmental actions. *See In the Matter of Mark Competello* (MSB, decided January 25, 2006), *aff'd on reconsideration* (MSB, decided March 22, 2006) (Merit System Board found that a subsequent amendment to City ordinance creating two more Police Captain positions served to retroactively ratify appointments). *See also Larry S. Loigman v. Township of Middletown*, Docket No. A-906-02T3 (App. Div. November 7, 2003) (Appellate Division concluded that subsequent adoption of Township ordinance retroactively ratified Police Officer appointments effected in violation of *Reuter v. Borough of Fort Lee*, 167 N.J. 38, 43 (2001), which precludes appointments of police personnel not created by ordinance). *See also In the Matter of Police Captain (PM3536B), City of Hoboken* (MSB, decided January 28, 2004).

As to FOP106's arguments regarding certifications from the County Correctional Police Officer (S9999A) list, it is observed that the Commission's prior decision in this matter addresses these considerations and FOP106's arguments and speculation on reconsideration do not establish any material error in that reasoning.

Finally, the Commission observes that FOP106's claims regarding the appointing authority's hiring practices cannot be said to provide a basis for the Commission to reverse its initial determination in this matter. First, the Commission notes that the operative language in *N.J.S.A. 11A:4-1.3(c)* is that "[a]ppointees to temporary positions shall meet the *minimum qualifications of a title*" (emphasis added). The job specification for County Correctional Police Officer refers to medical and psychological examinations under the section heading labeled "special qualifications" and states in pertinent part that "[a]ppointees *may* be required to pass a thorough medical and psychological examination administered by the appointing authority" (emphasis added). Thus, while passing medical and psychological examinations may be a common prerequisite for County Correctional Police Officer candidates throughout the State, since the job specification does not mandate them, it cannot be said to be a "minimum qualification" for the title for purposes of *N.J.S.A. 11A:4-1.3(c)*. Therefore, it cannot be said that FOP106's contentions would have a bearing on the Commission's prior determination.

ORDER

Therefore, it is ordered that this request for reconsideration 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 28TH DAY OF JUNE, 2023

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