



## STATE OF NEW JERSEY

In the Matters of Fabio Cologna, *et al.*, Hoboken

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2023-1728, *et al.*

Administrative Appeals

ISSUED: August 23, 2023 (HS)

Fabio Cologna, Kevin Robinson, Stephen Scrivani, and Andrew Frey appeal their non-appointments from the December 28, 2022 certification of the Fire Captain (PM1039V), Hoboken, eligible list.<sup>1</sup> These matters have been consolidated due to common issues presented.

As background, the appellants took and passed the promotional examination for Fire Captain (PM1039V), which had a closing date of September 30, 2017. The resulting eligible list promulgated on January 17, 2019 and expired on January 16, 2023.<sup>2</sup> The appellants' names were certified to the appointing authority on December 28, 2022 (PL221817) with a disposition due date of March 28, 2023. On February 2, 2023, the Division of Human Resource Information Services (HRIS) noted in a letter to the appointing authority that the certification had been issued within three months of the expiration date of the list. HRIS advised that to ensure appropriate use of the list in accordance with applicable decisions and rules, including *N.J.A.C. 4A:4-4.8(b)*, the appointing authority needed to provide evidence that genuine vacancies existed prior to the expiration of the list for all appointments made from the certification.

<sup>1</sup> Cologna, Robinson, and Scrivani are represented by Catherine M. Elston, Esq.

<sup>2</sup> The duration of the list was extended one year to four years—the statutory maximum. See *N.J.S.A. 11A:4-6*. To the extent that February 7, 2023 was indicated as the expiration date in agency records, such was an administrative error. No vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998).

HRIS also advised that anticipated vacancies and vacancies that were not genuine prior to January 16, 2023 would not be accepted. In pertinent part, *N.J.A.C.* 4A:4-4.8(b) provides:

The appointing authority shall notify the Civil Service Commission of the disposition of the certification by the disposition due date in the manner prescribed by the Chairperson or designee. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy.

The appointing authority, in response, noted that it had requested the certification based on retirements scheduled for February 1, 2023 and March 1, 2023. The appointing authority indicated that it did not have genuine vacancies before January 16, 2023 as the incumbents remained in their positions and were available for work until their retirements. Therefore, on February 10, 2023, the appointing authority returned the certification indicating no appointments made, and HRIS recorded the disposition that same date. On February 16, 2023, the new Fire Captain (PM2330C), Hoboken, list promulgated.

On appeal to the Civil Service Commission (Commission), the appellants request hearings and question the non-use of certification PL221817 to make appointments given the February 1, 2023 and March 1, 2023 retirements.

In response, the appointing authority opposes these appeals because it had requested certification PL221817 in good faith unaware of the genuine vacancy issue that HRIS had flagged. However, based on advice from HRIS, it determined that genuine vacancies did not exist on or before January 16, 2023.

In reply, Cologna, Robinson, and Scrivani maintain that given the retirements of Fire Captains Robert Chaneski and Francis Daliani, effective September 1, 2022 and October 1, 2022, there were two genuine vacancies as of the issuance of certification PL221817. They add that there was an additional genuine vacancy given that Fire Captain Leonardo Delviscio, whose last day of work was December 31, 2022, was “running down” his accumulated time ahead of his impending March 1, 2023 retirement date. They also question the enforcement of *N.J.A.C.* 4A:4-4.8(b) and the concern over genuine vacancies in their cases when similar concerns were not raised with respect to the April 20, 2022 certification (PL220549) from the PM1039V list<sup>3</sup> and the December 28, 2022 certification (PL221818) from the Battalion Fire Chief

---

<sup>3</sup> The disposition of certification PL220549 was due July 20, 2022 and was returned August 1, 2022.

(PM2153W), Hoboken, eligible list.<sup>4</sup> Additionally, Cologna, Robinson, and Scrivani suggest that the appointing authority delayed acting on certification PL221817, contending that the appointing authority took no action to promote in the time between the issuance of the certification and HRIS's February 2, 2023 letter despite its need to make Fire Captain promotions. They allege that the appointing authority did nothing until after HRIS's February 2, 2023 letter. In support, Cologna, Robinson, and Scrivani submit various exhibits.

In reply, the appointing authority indicates that the vacancies left by the retirements of Chaneski and Daliani were filled by appointments made from the April 20, 2022 certification (PL220549) and did not exist as of January 16, 2023. Thus, according to the appointing authority, those retirements were not discussed during the disposition of certification PL221817 as they were not relevant. The appointing authority also denies the claim that it took no action on certification PL221817 until after HRIS's February 2, 2023 letter. Specifically, it states that upon receiving the certification, it awaited responses from certified eligibles while taking steps to begin the promotion process. On January 6, 2023, the Public Safety Director began the process of scheduling interview times between February 2, 2023 and February 15, 2023. Per the appointing authority, as the interviews involved the Business Administrator, Fire Chief, and Public Safety Director, this was the earliest the interviews could be scheduled. The appointing authority maintains that it is purely coincidental that HRIS's February 2, 2023 letter was received the same week that interviews were scheduled.

## CONCLUSION

Initially, administrative appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978)*.

In the instant matter, the appellants are challenging the disposition of the December 28, 2022 certification of the Fire Captain (PM1039V) eligible list indicating no appointments made. They contend that genuine vacancies existed at that time due to Chaneski's September 1, 2022 retirement; Daliani's October 1, 2022

---

<sup>4</sup> The PM2153W list promulgated on October 3, 2019 and was due to expire on October 2, 2022. It was extended until February 14, 2023. *See In the Matter of Promotional Lists for Public Safety Titles* (MSB, decided April 7, 2004) (providing for the automatic extension of promotional lists for public safety titles for one year or until a new list becomes available, whichever occurs first). The new Battalion Fire Chief list (PM3385C) promulgated February 16, 2023. Certification PL221818 was issued with a disposition due date of March 28, 2023 and was returned February 13, 2023.

retirement; and the impending retirements on February 1, 2023 and March 1, 2023, which should have been filled via the PM1039V list. The vacancies left by the retirements of Chaneski and Daliani, per the appointing authority's un rebutted indication, had already been filled by the time certification PL221817 was issued. As for the impending retirements on February 1, 2023 and March 1, 2023, it must be emphasized that the PM1039V list expired on January 16, 2023. It is settled the extension of a certification disposition due date beyond the expiration date of a list should only be granted to fill current vacancies. See *In the Matter of William J. Brennan and Fire Lieutenant (PM1201T) and Fire Captain (PM1191T), Township of Teaneck* (MSB, decided April 9, 2003); *In the Matter of Police Lieutenant (PM1356W), City of Hoboken* (Commissioner of Personnel, decided December 17, 2002). In *Brennan, supra*, extensions of the certification disposition due dates were granted beyond the life of the eligible lists for Fire Lieutenant (PM1201T) and Fire Captain (PM1191T) in order to fill anticipated vacancies in the titles due to retirements. On remand from the Appellate Division, the former Merit System Board (Board) determined that genuine vacancies did not yet exist at the time the subject eligible lists were certified or when the certification disposition due dates were extended. In the meantime, new lists for Fire Lieutenant and Fire Captain were being promulgated. Thus, the Board concluded that vacancies must actually exist to justify revival of eligible lists or extend certification disposition due dates beyond list expiration dates. The Board stated that this approach would accommodate the policy of avoiding stale lists and the principle of merit and fitness. Similarly, in *In the Matter of Police Lieutenant (PM1356W), supra*, the Commissioner of Personnel determined that although it was permissible to revive and extend an eligible list to effectuate appointments to newly-created positions, good cause did not exist to extend a list due to anticipated future retirements. The Commissioner of Personnel observed that an intention to retire does not necessarily result in a vacancy, and hence, is not sufficient good cause to extend an eligible list. See also, *In the Matter of Police Officer (S9999B), City of South Amboy* (MSB, decided May 7, 2003) (Where the filling of vacant positions was contingent upon the receipt of funding, genuine vacancies did not exist until actual receipt of funding); *In the Matter of Police Captain (PM3536B), City of Hoboken* (MSB, decided January 28, 2004). It should be underscored that, in response to *Brennan*, the Commission amended *N.J.A.C. 4A:4-4.8*. Specifically, *N.J.A.C. 4A:4-4.8(b)* provides that "[u]nder no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist." As noted above, anticipated retirements do not create genuine vacancies. Therefore, although the appointing authority technically should not have requested the certification in the first place, its disposition of it was appropriate under the circumstances. Any alleged delay in the appointing authority's acting upon the certification once issued is, for those reasons, immaterial.

Further, Cologna, Robinson, and Scrivani question the enforcement of *N.J.A.C. 4A:4-4.8(b)* and the concern over genuine vacancies in the case of PL221817 when similar concerns were not raised with respect to the April 20, 2022 certification

(PL220549) from the PM1039V list and the December 28, 2022 certification (PL221818) from the Battalion Fire Chief (PM2153W) list. However, the circumstances of the certifications are distinguishable. In the case of PL220549, the certification was issued with a disposition due date of July 20, 2022, and the disposition was ultimately returned August 1, 2022. Both dates are before the January 16, 2023 expiration date of the PM1039V list, so HRIS was not confronted with the issue of whether the disposition due date needed to be extended past the expiration date of the list. In the case of PL221818, the certification was issued December 28, 2022 with a disposition due date of March 28, 2023. At the time of certification issuance, the PM2153W list had been extended for one year (*i.e.*, until October 2, 2023) or until a new list became available, whichever occurred first. *See supra* note 3. The disposition was returned February 13, 2023; the PM2153W list expired February 14, 2023; and the new Battalion Fire Chief list (PM3385C) promulgated February 16, 2023. Again, HRIS was not confronted with the issue of whether the disposition due date needed to be extended past the expiration date of the list. As such, certifications PL220549 and PL221818 did not implicate the same concerns.

### ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 23<sup>RD</sup> DAY OF AUGUST, 2023

*Allison Chris Myers*

---

Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Fabio Cologna (2023-1728)  
Kevin Robinson (2023-1729)  
Stephen Scrivani (2023-1730)  
Andrew Frey (2023-1823)  
Catherine M. Elston, Esq.  
Jason Freeman  
Michael Kraus  
Division of Human Resource Information Services  
Records Center