



STATE OF NEW JERSEY

In the Matter of Miguel Acosta, *et al.*,
Police Captain (PM3806F), Trenton

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

CSC Docket Nos. 2025-388, *et al.*

Administrative Appeals

ISSUED: September 24, 2025 (SLK)

Miguel Acosta, Nathaniel Johnson, Kenneth Lugo, David Ordville, and Charles Steever, represented by Stuart J. Alterman, Esq.,¹ appeal the determinations of the Division of Agency Services (Agency Services) that they did not meet the requirements for the Police Captain (Captain) (PM3806F), Trenton promotional examination. The appellants also request retroactive appointment dates as Police Lieutenants and corresponding payroll adjustments. These appeals have been consolidated due to common issues presented.

The examination at issue was announced open to employees in the competitive division who currently serve in the title of Police Lieutenant (Lieutenant) and who had an aggregate of one year of continuous permanent service as of the August 31, 2024, closing date in that title. A total of 15 employees applied to the subject examination and nine were determined eligible. The list promulgated on May 22, 2025, and expires on May 21, 2028. Subsequently, certification PL250956 was issued containing the names of the nine eligibles and three were appointed.

A review of agency records indicates that the appellants were permanently appointed as Lieutenants from the PM4182C eligible list (certification PL231717)²,

¹ Nathaniel Johnson additionally submitted a separate appeal *pro se*.

² This certification was issued on September 1, 2023, with the appellants in positions one through five. It is noted that the PM4182C eligible list promulgated on April 21, 2023, and expired on April 20, 2025.

effective September 13, 2023. Therefore, Agency Services determined that the appellants were not eligible for the subject examination since they lacked one year of continuous permanent service as of the August 31, 2024, closing date in a title to which the examination was open.

On appeal, the appellants assert that if they had been permanently promoted to Lieutenant in a timely manner in accordance with Civil Service regulations and standard practices, they would have been eligible for the subject examination. They contend that the appointing authority failed to staff the Lieutenant positions adequately and permanently appoint them despite performing Lieutenant duties from the date of their “acting” appointments until their permanent appointments.

Specifically, the appellants state that they had been made “acting” Lieutenants on May 7, 2023, and performed Lieutenant duties prior to their September 13, 2023, permanent appointments as Lieutenants, which resulted in them lacking the required permanent service by 13 days. The appellants request that their “acting” Lieutenant time be credited for further promotional examinations as well as time in grade. They indicate that the appointing authority’s use of “acting” titles disenfranchises them when other titles, such as provisional, temporary, conditional, and/or emergency titles were available. The appellants highlight another matter which had been administratively resolved where the appointing authority agreed that previous “acting” appointments were more appropriately classified as provisional appointments, thus necessitating retroactive appointments. They note that the Civil Service Commission (Commission) has emphasized the need for proper regular appointments and updated personal records to reflect this. The appellants state that the appointing authority has long been guilty of using “acting” titles instead of provisional or other proper titles. The appellants provide that the appointing authority’s organization charts indicates that there are open Lieutenant positions. Therefore, the appellants request permanent retroactive appointments as Lieutenants, effective May 7, 2023, to be determined eligible for the subject examination, and payroll adjustments.

Additionally, the appellants submit a certification from their union President (President). The President submits documentation to demonstrate that the appellants were paid as Lieutenants, effective May 7, 2023. Further, he presents that under the city code, the Police Department needed to maintain 18 Lieutenant positions. Moreover, even with the appellants performing Lieutenant duties as of May 7, 2023, the department still had less than the 18 required Lieutenant positions and there is no evidence that indicates that the appointing authority took any action to remedy the situation. The President notes that on August 14, 2023, the appointing authority did request a certification to permanently appoint Police Sergeants (Sergeants) as of that date, but he asserts that the appointing authority neglected to request certifications for the permanent Lieutenant positions, and said appointments were not made until September 13, 2023, which was approximately four months and

six days since they began performing Lieutenant duties. The President emphasizes that if the appellants had been permanently appointed as Lieutenants, effective May 7, 2023, they would have met the required continuous permanent service for the subject examination. Therefore, they argue that it was the appointing authority's administrative delay which caused the appellants to lack the continuous permanent service requirement. The President attaches a statement from the City Attorney, which acknowledged the issue and expressed a willingness to resolve the situation as his email states that it was the Police Department's intent to promote the appellants to Lieutenant the week of May 7th. The President presents Civil Service rules and case law to demonstrate that "acting" appointments are not recognized under Civil Service and there are only permanent or provisional appointments. Also, the President highlights that three of the appellants are members of underrepresented minorities and contends that the appointing authority's continuous practice of using "acting" appointment undermines that merit-based advancement system. Finally, the President submits a September 20, 2024, letter from the Mayor supporting the appellants and requesting an administrative solution by this agency.

Concerning Johnson's separate appeal, he presents that on May 1, 2023, three Captains and one Lieutenant were abruptly forced to resign due to conduct unbecoming which resulted in the appellants serving as "acting" Lieutenants, effective May 7, 2023. He indicates that on August 14, 2023, there were Sergeants who were permanently appointed after the appointing authority requested certifications for that title, but it neglected to request certifications for the vacant Captain and Lieutenant positions due to the major reorganization within the department. Johnson believes that the appointing authority's alleged negligence in this regard has been a continuous practice of the appointing authority. He indicates that due to the appointing authority's alleged error in requesting a Lieutenant certification, which resulted in a four-month and 12 days delay in permanent Lieutenant appointments, the "acting" Lieutenants could not be "demoted" to Sergeant since these positions were filled on August 14, 2023. Johnson emphasizes that the Commission has previously warned the appointing authority to not use "acting" appointments as there is no such appointment type under Civil Service rules.

In response, the appointing authority, represented by A. Wesley Bridges, Esq. and Stephanie A. Katz, Esq., states that the appellants' arguments are misplaced as they knew that their "acting" status carried certain limitations. Further, while the appellants indicate that they seek equitable relief, it indicates that the appellants received pay based on their "acting" status. Additionally, it states that they knew that this time would not be credited towards the time in grade requirement for the subject Captain examination based on the appointing authority's past practice as well as their pay during this time, which did not include additional pension payments, stipends, overtime, holiday payments or longevity payments. The appointing authority acknowledges that the Commission does not recognize "acting" appointments. Further, it highlights case law that indicates that if the appellants

thought it was unfair that they were appointed to “acting” positions, the proper course of action was to file a position classification appeal.

The appointing authority asserts that promotions take time and the alternative in this situation was to wait to promote the individuals until all the paperwork was complete. It states that this would have denied them additional salary, which it notes they were willing to accept at that time. Further, while the appellants claim that the appointing authority intended that their time as “acting” Lieutenants count toward their time in grade, the appointing authority states that in reviewing past practice, this claim is not supported, and the appellants cannot honestly make this claim. Moreover, even if the appointing authority intended such a result, it emphasizes that this alleged intention would not be supported by Civil Service law and rules.

The appointing authority argues that the appellants’ claims based on prior Civil Service case law that the proper designations of their duties should have been provisional or temporary appointments, is misplaced as the Police Department did not name the appellants provisional or temporary appointments but instead named them “acting” Lieutenants. It presents that the appellants’ assignments did not meet the standard for provisional appointments because there was an active Lieutenant’s list.³ Additionally, the appointing authority indicates that it does not use temporary appointments and there is no requirement under Civil Service law and rules that it do so. Concerning the matter that was resolved administratively, it provides that the circumstances were completely different and not analogous to the present matter. It states that in the other matter, it agreed that the employees who previously were serving in “acting” appointments were more appropriately classified as provisional appointments, which is not the case here.

CONCLUSION

N.J.A.C. 4A:4-1.4(a) provides that a conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointment.

N.J.A.C. 4A:4-1.5(a)1 provides that a provisional appointment may be made only in the competitive division of the career service if there is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment.

N.J.A.C. 4A:4-1.6(b) provides, in pertinent part, that an interim appointment shall be made when a position/title is held by a permanent employee who (1) is on leave of absence; (2) is on indefinite suspension; (3) has been removed or demoted for

³ Agency records indicate that the prior Police Lieutenant (PM4182C), Trenton eligible list was active from April 21, 2022, to April 20, 2025.

disciplinary reasons and is awaiting final administrative action by the Commission on appeal; or (4) has accepted an interim appointment.

N.J.A.C. 4A:4-1.7 provides, in pertinent part, the Chairperson or designee may approve temporary appointment of not more than six months in a 12-month period and the temporary appointee shall meet the minimum qualifications for the title.

N.J.A.C. 4A:4-1.8 provides that the Chairperson or designee may authorize an emergency appointment for a period not to exceed 30 days when the appointing authority certifies that the failure to make such appointment will result in harm to persons or property.

N.J.A.C. 4A:4-1.10(c) provides that when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties.

N.J.A.C. 4A:4-2.6(a) requires, in pertinent part applicants to have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open and possess all the requirements specified in an announcement for a promotional examination by the closing date.

N.J.A.C. 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In this matter, the record indicates that the appointing authority had an immediate need to fill Lieutenant positions, which resulted in the appointing authority designating the appellants as “acting” Lieutenants, effective May 7, 2023. However, “acting” position are not recognized under Civil Service law and rules. Regardless, due to the appointing authority’s immediate public safety needs, it was appropriate for the appointing authority to assign the appellants Lieutenant duties at that time. Further, as there was an active Police Lieutenant (PM4182C), Trenton eligible list at that time, while the appointing authority could not promote the appellants provisionally, it should have immediately asked this agency for a certification to fill these positions even if there were certain processes that it needed to complete before it permanently appointed them. Moreover, if the appointing authority had done so, the appointing authority could have appointed the appellants to Lieutenant effective May 7, 2023. Finally, if the appointing authority had done so, the appellants would have been admitted to the subject examination.

The Commission notes that the dual purpose of the Civil Service system is to ensure efficient public service for State and local governments and to provide appointment and advancement opportunities to Civil Service employees based on

their merit and abilities. These interests are best served when more, rather than fewer, individuals are presented with employment opportunities. See *Communications Workers of America v. New Jersey Department of Personnel*, 154 N.J. 121 (1998). Therefore, as the appellants were actually serving in and performing the duties of Lieutenant, but their attainment of permanent status was delayed or hindered, the Commission finds good cause to retroactively appoint the appellants to Lieutenant, effective May 7, 2023, for Civil Service seniority and record keeping purposes. Further, the appellants shall be admitted to the subject examination and scheduled for a make-up test. Concerning the appellants' request for additional payroll adjustments, the record indicates that the appointing authority did pay them out-of-title Lieutenant's pay, and any claim that they are entitled to additional payroll adjustments based on the collective negotiations agreement or otherwise are outside of the Commission's jurisdiction and should be addressed in the appropriate forum.

One other matter needs to be addressed. The appointing authority acknowledges that "acting" appointments are not recognized under Civil Service law and rules; yet it appointed the appellants to "acting" positions. The appointing authority is warned that it should discontinue its use of "acting" appointments and failure to do so may subject it to fines under *N.J.A.C. 4A:10-2.1*.

ORDER

Therefore, it is ordered that these appeals be granted, in part. The appellants' appointments as Police Lieutenants shall be retroactive, effective May 7, 2023, for Civil Service seniority and record keeping purposes only. Further, they shall be admitted to the Police Captain (PM3806F), Trenton promotional examination and scheduled for a make-up test. No other remedies are provided.

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 24TH DAY OF SEPTEMBER, 2025



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