



STATE OF NEW JERSEY

In the Matter of Police Lieutenant
(PM3381E), Jersey City

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

CSC Docket No. 2024-112

Administrative Appeal

ISSUED: August 2, 2023 (ABR)

Jersey City, represented by Arthur R. Thibault, Jr., Esq., appeals the decision of the Division of Agency Services (Agency Services), which denied its request to rescind the promotional examination announcement for Police Lieutenant (PM3381E), Jersey City.

By way of background, on June 22, 2023, this agency contacted the appointing authority to inquire whether it should issue an announcement for the subject examination. In response, the appointing authority advised that it did not wish to move forward with the announcement. It further asserted that it had prevailed before the Public Employment Relations Commission (PERC) in asserting that it had the managerial prerogative to call for a promotional examination for any rank and had prevailed in an unfair practice charge filed by the union representing Sergeants, Lieutenants and Captains. In reply, on July 6, 2023, Agency Services indicated that it found that the appointing authority had exhausted/rendered the Police Lieutenant (PM4118C), Jersey City eligible list incomplete with the disposition of the January 24, 2023 (PL230105) certification.¹ As a result, the PM3381E examination announcement was automatically announced. Agency Services stated that it would hold the PM3381E announcement in abeyance until an opt-out request could be processed. On July 12, 2023, Agency Services denied the appointing authority's opt-out request. In this regard, Agency Services indicated that a review of its records had

¹ Agency records indicate that one eligible remains active on the PM4118C list, which expires on April 20, 2025. The PL230105 certification was disposed of on July 20, 2023.

shown that the appointing authority had recorded 44 provisional appointments to the title of Police Lieutenant in November 2022, that the appointing authority had submitted a request to certify the PM4118C eligible list for an additional 48 vacancies. Agency Services stated that because there were only 50 eligibles on the PM4118C eligible list and, given the number of provisional appointees and vacant positions, it appeared that the appointing authority was in need of a new eligible list for the title of Police Lieutenant. Accordingly, Agency Services indicated that it was denying the appointing authority's opt-out request and reinstating the PM3381E examination announcement.

On appeal, the appointing authority argues that it should be permitted to opt out of the 2023 Police Lieutenant promotional examination cycle. In this regard, the appointing authority asserts that it made a managerial decision to keep its Police Lieutenant staffing levels at its current level of 66 positions. It submits that on June 23, 2023, PERC denied an interim relief request from the Jersey City Police Superior Officers Association (JCPSOA), the union representing Police Sergeants, Lieutenants and Captains employed by the appointing authority, on the basis that a decision to promote or fill a vacancy was a managerial prerogative and that PERC also observed that included the prerogative of initiating or requesting a promotional examination process. The appointing authority submits that has no need for a new Police Lieutenant eligible list and has no intent to promote or fill vacancies. The appointing authority argues that against this backdrop, a promotional examination announcement would simply waste its funds, as well as the energy, emotion and financial resources of its Police Sergeants, on a meaningless examination. It also argues that Agency Services' decision is based on a faulty premise, as it has promoted at least 48 incumbents to the rank of Police Lieutenant and does not have an additional 44 provisional appointments in the title. The appointing authority proffers that its table of organization provides for a maximum of 80 Police Lieutenants premised on a department of approximately 1,200 members. However, it states that it presently employs fewer than 950 members in its Police Department and that it intends to maintain staffing at this current level for the foreseeable future. It further presents that this agency erroneously relied upon *In the Matter of Promotional Lists for Public Safety Titles* (MSB, decided April 7, 2004) to support its position of automatically issuing an examination announcement when a jurisdiction has an incomplete or exhausted eligible list for various public safety titles, including Police Lieutenant. In this regard, it avers that the foregoing decision only speaks to requests for list extensions when an appointing authority has a need to fill vacancies. Finally, the appointing authority contends that because Civil Service law and rules make clear that the decision to request a promotional examination rests solely with the employer, JCPSOA lacks standing to challenge the appointing authority's request.

In reply, JCPSOA, represented by Christopher A. Gray, Esq., avers that it has standing in this matter, as it represents 64 Police Sergeants who will be harmed by

the cancellation of the subject examination announcement.² Specifically, it proffers that these Police Sergeants would be harmed by a cancellation of the announcement because they will be deprived of the ability to secure testing and advancement through a merit-based process. Moreover, it states that some of its members could face the loss of thousands of dollars they paid for promotional courses after relying upon this agency's July 5, 2023 and July 14, 2023 announcements for the subject examination. As such, JCPSOA, relying on *N.J. State Chamber of Commerce v. New Jersey Election Law Enforcement Comm'n*, 82 N.J. 57, 67-69 (1980), avers that it and its members have standing given the appointing authority's adversity of their promotional interests, their sufficient stake in the outcome, and the substantial likelihood of harm in the event of an unfavorable decision. JCPSOA further argues that PERC's determination does not have a bearing on the outcome in this matter, as the subject PERC decision dealt with the interpretation of contractual provisions which were subject to PERC's review, while the instant matter involves the enforcement of Civil Service law, rules and policies which fall squarely within the purview of the Civil Service Commission (Commission).

As to the merits of the instant matter, JCPSOA argues that the Commission should uphold Agency Services' determination that a promotional examination should be announced. In this regard, JCPSOA argues that such action is consistent with the Legislature's clear articulation of policy preferences in *N.J.S.A. 11A:4-2* and *11A:3-2.1* and the authority vested in the Commission in *N.J.S.A. 11A:4-1* and *11A:2-6*, as well as the Commission's long-standing policy, as articulated in *In the Matter of Promotional Lists for Public Safety Titles*, *supra*. JCPSOA maintains that the appointing authority has routinely exhibited bad faith or incompetence with respect to Civil Service matters and that this history undermines the credibility of its representations in this matter. In support, it cites the Commission's denial of the appointing authority's request for to waive a Deputy Police Chief promotional examination in *In the Matter of Deputy Police Chief (PM0511W)*, *Jersey City* (CSC, decided November 21, 2018) and the appointing authority's conduct following the subject promotional examination. JCPSOA also cites the Commission's criticism of the appointing authority's failure to comply with reporting requirements in promotions for the titles of Police Sergeant, Police Lieutenant, Police Captain and Deputy Police Chief which were addressed in *In the Matter of Jersey City Promotional Appointments* (CSC, decided June 20, 2018). Additionally, JCPSOA presents that Jersey City's failure to properly account for the disposition of the PM4118C list's exhaustion in April 2023 supports Agency Services' determination. JCPSOA presents that 19 of 66 incumbents in the title of Police Lieutenant have 25 years of service and could immediately retire with full pension and healthcare benefits. JCPSOA further states that five additional Police Lieutenants will reach that service mark within the next year. Further, since newly enacted legislation permits police officers to retire with a 50 percent pension after 20 years of service, an additional eight Police

² Agency records indicate that this agency received a total of 66 applications for the PM3381E examination announcement between July 5, 2023, and July 17, 2023.

Lieutenants could immediately retire. As such, 32 out of 66 Police Lieutenants could retire and create additional vacancies. JCPSOA further submits that the need for the subject examination is further demonstrated through County and Municipal Personnel System (CAMPS) records, which indicate that there are still 44 appointees serving provisionally in the title of Police Lieutenant.³ JCPSOA also notes that the appointing authority recently sought to increase staffing levels when it requested a relaxation of the time-in-grade requirements in *In the Matter of Police Captain (PM3447C)*, *City of Jersey City* (CSC, decided September 22, 2021) and *In the Matter of Police Lieutenant (PM4118C)*, *City of Jersey City* (CSC, decided September 22, 2021) and that the record in both matters also revealed continuing issues with the appointing authority's personnel recordkeeping. Given the totality of this history and these records, JCPSOA argues that the appointing authority's representations cannot be relied upon, particularly as the appointing authority has not provided detailed information or records to demonstrate that Agency Services' records are erroneous.

JCPSOA further avers that allowing the testing process to proceed and an eligible list to promulgate does not impinge on the appointing authority's managerial prerogative, as this agency's policy has long held that when the list for a supervisory police title is exhausted with vacancies remaining, a new list will automatically be issued. JCPSOA also maintains that the record is devoid of an explanation from the appointing authority about how it can say with certainty that it will have no need to promote any incumbents to the rank of Police Lieutenant within the next three years. JCPSOA acknowledges that the promulgation of a new list would not guarantee that any of its members will receive promotional appointments, but that against the totality of the backdrop it describes, it would be far superior to have a merit-based promotional list in place if the appointing authority chooses to do so. JCPSOA suggests that even if no Police Sergeants are promoted from the subject examination announcement, the appointing authority will still benefit from having their incumbents take additional courses and enriching their bases of knowledge. JCPSOA further contends that following through with the subject examination is consistent with contractual terms requiring the continual maintenance of a promotional list, the police preference of avoiding temporary or provisional appointments and the legislative and constitutional goals of promoting merit-based promotions in public employment. Finally, JCPSOA maintains that the current administration for the appointing authority has indicated that this will be their last term in office and that because a new promotional list would likely promulgate in February 2024, it would extend into a new administration and allow that new administration to promote from a list if it so chooses.

³ Agency records indicate that, as of July 24, 2023, a number of the regular appointments from the disposition of the PL230105 certification were not reflected in CAMPS.

CONCLUSION

N.J.S.A. 11A:4-1(a) states, in pertinent part, that the Commission shall provide for the announcement and administration of examinations which shall test fairly the knowledge, skills and abilities required to satisfactorily perform the duties of a title or group of titles. *N.J.S.A.* 11A:4-2 states that a vacancy shall be filled by a promotional examination when considered by the Commission to be in the best interest of the career service. *N.J.S.A.* 11A:4-4(a) provides that the Commission shall provide for the establishment and cancellation of eligible lists. *N.J.S.A.* 11A:4-5 states that once the examination process has been initiated due to the appointment of a provisional or an appointing authority's request for a list to fill a vacancy, the affected appointing authority shall be required to make appointments from the list if there is a complete certification, unless otherwise permitted by the commission for valid reason such as fiscal constraints. If the Commission permits an appointing authority to leave a position vacant in the face of a complete list, the Commission may order the appointing authority to reimburse the Commission for the costs of the selection process. *N.J.A.C.* 4A:4-2.17(e) states, in pertinent part, that application processing fees shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

In *In the Matter of Promotional Lists for Public Safety Titles, supra*, the Commission's predecessor, the Merit System Board (Board) initiated a new public safety promotional list extension and announcement procedure at the request of the Division of Selection Services (Selection Services).⁴ The Board ordered that eligible lists for certain public safety titles be extended for one year, not to exceed four years, or until a new list became available, whichever occurred first. The Board further ordered that a new announcement be automatically listed in conjunction with the list extension whenever a continuing need to fill vacancies was supported by historical data.

Initially, a review of the record demonstrates that JCPSOA has standing in this matter, as the rights of the members it represents, particularly those who submitted applications for the PM3381E examination announcement are implicated in the Commission's review of the appointing authority's request. *See In the Matter of Peter Corbo, et al.* (CSC, decided September 15, 2012), *aff'd on reconsideration* (CSC, decided December 19, 2012), *aff'd on appeal, In the Matter of Peter Corbo, Sheriff's Officer Captain (PC0989N)* and *Sheriff's Officer Lieutenant (PC0993N), Essex County, A-2275-12T2* (App. Div. October 20, 2014).

In the instant matter, a review of the record supports the determination of Agency Services. The Commission observes that the purpose of the action ordered in *In the Matter of Promotional Lists for Public Safety Titles, supra*, was to ensure that appointments and promotions were able to be consistently awarded based on merit

⁴ The Division of Selection Services was the predecessor of Agency Services.

and fitness by automatically issuing announcements for public safety promotional titles in jurisdictions where historical data demonstrated an ongoing need to fill vacancies. The Board noted that while provisional appointments could be made in the absence of a list, a basic tenet of the Civil Service law and rules is that appointments and promotions are awarded based on merit and fitness, as measured by competitive examinations. Thus, this process serves to ensure that fully-qualified candidates may be appointed from lists rather than untested provisional employees. Here, the Commission finds that the record amply supports Agency Services' determination that the PM3381E examination announcement should be generated. Clearly, the record, as analyzed by Agency Services, evidences Jersey City's historical and ongoing need for appropriate public safety protection and that with the exhaustion of the PM4118C eligible list, the PM3381E announcement was appropriate to ensure that fully-qualified candidates from a complete list could be appointed to the title of Police Lieutenant if the appointing authority's needs to fill vacancies the subject title were to change in the near future. Beyond this, the Commission cannot ignore the harm that will occur to the 66 individuals who already submitted applications for the subject examination. Conversely, the appointing authority has not made a significant showing of how it will be harmed if it does not utilize a list that promulgates. JCPSOA has rightfully acknowledged that even if the subject list promulgates, its members will not have a vested right of appointment from it. Nevertheless, it submits that its members would still prefer to take the chance that the list will be utilized, as compared to the risk of vacancies arising without such a list in place, particularly given the time and expense a number of them have invested in preparing for the examination process. As such, these considerations also weigh in favor of denying the appointing authority's request and allowing the PM3381E announcement to proceed.

ORDER

Therefore, it is ordered that this appeal 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 2ND DAY OF AUGUST, 2023

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