

While the County uses the Trainee title, there was also a FSW (C0347D) open competitive examination announcement. The closing date for the C0347D examination was March 21, 2022. The requirements for the C0347D examination were a Bachelor's degree. In the alternative, applicants who did not meet the above education requirement could have substituted professional experience on a year-for-year basis with 30 semester hour credits being equal to one year of experience. The experience must have consisted of work performed in gathering social and other information from clients, determining their needs, and planning and carrying out a prescribed treatment plan or service and referral program designed to meet needs of individual clients, or in examining, adjusting, determining, reconsidering, or authorizing eligibility or entitlement for cash awards or benefits in a public or private agency such as a welfare board or agency, Social Security Administration, Veterans Administration, a social service agency, or similar agency or organization, or in coordinating a public welfare program(s) or in the review, analysis, evaluation, revision, and implementation of such program(s). A total of 315 candidates applied for the C0347D open competitive examination, and 263 were admitted to the test, which was administered on September 22, 2022. A total of 128 candidates were determined eligible. To date, the County has appointed 65 eligibles from the C0347D eligible list as FSWs off various certifications. Additionally, certification OL240031 has been issued, and its disposition is due April 5, 2024. The C0347D list expires on October 26, 2025.

On appeal, the CWA states that it requests that the Commission disapprove the appointment of employees to the non-competitive title of Trainee in the County because it asserts that the County can directly appoint FSWs through the open competitive examination process. The CWA notes that C0347D is an active list; yet it presents that the County is appointing some candidates from this list while appointing others to FSW from the Trainee title. It argues that public policy, based on the State Constitution, gives preference to appointments resulting from competitive examination. The CWA highlights that the County has regularly made appointments to the FSW title over the years using open competitive lists. However, the County, at the same time, is also using an alternative approach by appointing Trainees from the non-competitive division to FSW without those employees going through the competitive examination process. It highlights that the State Constitution provides that Civil Service appointments shall be made according to merit and fitness as practicable through the competitive examination process. The CWA asserts that it is practicable for the County to appoint FSWs by way of competitive examination as demonstrated by its past and continued appointments from the C0347D eligible list. Further, it contends that since competitive testing is practicable for FSWs, the criteria for allocating a title to the non-competitive division has not been met. The CWA notes that the requirements for the Trainee title are similar to the FSW title. Therefore, it argues that the Trainee title should also be allocated to the competitive division. The CWA states that if the County was having an issue directly hiring FSWs after competitive testing, there would be a basis for a

non-competitive Trainee title. However, it contends that is not the case here. Additionally, since an applicant can be eligible for either the FSW title or the Trainee title by having the same or similar background, it believes that there is no use recruiting less qualified employees for the FSW title by using the Trainee title. Therefore, the CWA argues that the only basis for using the Trainee title in this matter is so that the County can hire employees as FSWs without being limited to candidates who qualified through competitive testing, which is not the purpose of a Trainee title, and such practice interferes with the State Constitution's intent that hiring be based on merit and fitness. It believes that the use of the Trainee title in this case is similar to when job banding for promotions was invalidated since those promotions were not subject to competitive testing. The CWA also contends that this matter is similar to a case where a State agency used advancements from a Trainee title instead of a special employment list, and the Commission found that the special reemployment list needed to be exhausted prior to making appointments from the Trainee title.

In reply, Agency Services presents that typically, appointing authorities have discretion in determining its organization structure. It states that despite the existence of an open competitive eligible list for a related journeyman title, an appointing authority may still opt to fill vacancies by appointing to a non-competitive trainee title. In this regard, Agency Services indicates that the existence of the C0347D open competitive list does not prohibit the County from appointing Trainees. Concerning CWA's claim that the County is circumventing Civil Service law and rules, it highlights that since the C0347D list promulgated in October 2022, that eligible list has been certified on three separate occasions and resulted in more than 60 appointments in the County while the County has only made 12 Trainee appointments to FSW in that time. Therefore, Agency Services asserts that the County has demonstrated its willingness to use the C0347D list, and it finds no basis to disapprove future Trainee appointments by the County.

In response, the CWA states that Agency Services' determination does not address the arguments it presents. It contends that Agency Services has offered no rebuttal to its argument that the County should be prevented from using the Trainee title under the present circumstances. Further, CWA argues that even though the County has made over 60 appointments from the C0347D, this signifies that the County has circumvented the eligible list 12 times.

CONCLUSION

N.J.A.C. 4A:3-3.6(a) states, in pertinent part, that the Commission may determine that a new title or title series is necessary. *N.J.A.C.* 4A:3-1.2(a) states that the Commission shall allocate and reallocate career service titles between the competitive and non-competitive divisions. *N.J.A.C.* 4A:3-1.2(c) states that a job title may be placed in the non-competitive division on an ongoing or interim basis when it

is determined that competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job.

N.J.A.C. 4A:3-3.7(a) provides that trainee, apprentice, recruit, and intern titles may be established in State and local service to provide for entry level employment.

N.J.A.C. 4A:3-3.7(j) provides that the advancement of the successful, permanent trainee, apprentice, recruit, or intern, as applicable, to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate primary title.

N.J.A.C. 4A:3-3.7(j)1 provides that to effect advancement, the appointing authority must certify the employee's successful completion of the training period.

N.J.A.C. 4A:2-1.4(c) provides that provides in pertinent part that the burden of proof shall be on the appellant.

In this matter, the record indicates that the Commission approved the creation of the non-competitive Trainee title to facilitate the recruitment and hiring of employees into entry level titles requiring no experience. Therefore, it was appropriate to allocate this title to the non-competitive division. Further, since the C0347D promulgated in October 2022, the County has made 77 FSW appointments, 65 from the C0347D open competitive list and 12 from the Trainee title.

CWA argues that the County should be prevented from appointing Trainees and then advancing them to the FSW title when it can appoint FSWs directly who have been competitively tested because under the State Constitution, there is a preference that appointments be made from competitive testing. Initially, it is noted, that other than a general State Constitutional argument, the CWA has not provided any authority that indicates that under the current circumstances, an appointing authority cannot use both an open competitive list and a Trainee title to appoint to the journeyman title. Specifically, this matter is inapposite to job banding and involves filling a significant number of entry-level positions in a short time for a specific need after Trainees received on-the-job training whereas job banding involved a general practice of promoting for non-entry level positions without the need for competitive testing. Additionally, regarding the special reemployment rights case, under *N.J.A.C.* 4A:8-2.3, employees who have been laid off have been granted special reemployment rights that take precedence over trainees. However, the concerns for a laid off employee do not exist for an applicant who is only an eligible on an open competitive list and does not have any vested rights to a position. Additionally, the County has discretion on how it wishes to determine its organization structure. Moreover, the County has made most appointments from the open competitive list. Therefore, the record does not indicate that the County is attempting

to circumvent Civil Service law and rules by also using the non-competitive Trainee title to fill some of these positions. Instead, the Commissions finds that the County is using all available options to efficiently fill its needs.

Regarding CWA's claim that the Trainee appointees to the FSW titles are less qualified than those that were appointed from the open competitive list, the eligibility requirements for the Trainees position are similar to the FSW title. Further, the Trainees are required to complete a 12-month training program, including successfully completing a four-month working test period. Therefore, it cannot be said that Trainees are less qualified than FSWs who passed a competitive examination but have not successfully gone through a training program.

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 7TH DAY OF FEBRUARY, 2024

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