
Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

*"Testimony from invited guests on new rules proposed by the
Civil Service Commission concerning a job banding program"*

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: June 19, 2013
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Robert M. Gordon, Chair
Senator Raymond J. Lesniak
Senator Linda R. Greenstein
Senator Thomas H. Kean Jr.



ALSO PRESENT:

Michael R. Molimock
*Office of Legislative Services
Committee Aide*

Francisco Maldonado
*Senate Majority
Committee Aide*

Frank Dominguez
*Senate Republican
Committee Aide*

Meeting Recorded and Transcribed by
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COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE
FROM: SENATOR ROBERT M. GORDON, CHAIRMAN
SUBJECT: COMMITTEE MEETING - JUNE 19, 2013

The public may address comments and questions to Michael R. Molimock, Committee Aide, or make bill status and scheduling inquiries to Sherri M. Hanlon, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSLO@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Legislative Oversight Committee will meet on Wednesday, June 19, 2013 at 11:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The committee will meet to take testimony from invited guests on new rules proposed by the Civil Service Commission concerning a job banding program.

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SENATOR ROBERT M. GORDON (Chair): Good morning, everyone.

I call the Senate Legislative Oversight Committee to order.

May I have a roll call, please?

MR. MOLIMOCK (Committee Aide): Senator Greenstein.

SENATOR GREENSTEIN: Here.

MR. MOLIMOCK: Senator Lesniak.

SENATOR LESNIAK: Here.

MR. MOLIMOCK: Chairman Gordon.

SENATOR GORDON: Here.

Welcome. Today we are hearing about an important issue related to the Civil Service Commission and recent proposals of theirs.

On February 28, 2013, the Civil Service Commission -- the CSC -- proposed amendments to its administrative rules and proposed new rules creating a *job banding program*, which would merge groups of titles -- or titles series -- into a number of broadbandings consisting of title levels with similar duties, responsibilities, and qualifications. These proposals represent a fundamental change to our current Civil Service system; arguably, the most drastic since its inception. For example, objective testing requirements for promotion to a higher title would be waived in many, if not most, cases. Managers and administrators would have an unprecedented level of discretion when advancing employees, potentially opening the door to favoritism and patronage.

The proposal also substantially changes disciplinary and appeals procedures. Employees are currently able to file appeals directly with the CSC, whereas the proposal would transform this practice into an in-house

grievance practice, potentially creating a situation in which the very department or person that is the subject of the grievance is the one adjudicating that grievance.

Most alarming among these proposed changes is the effective elimination of veterans' preference. I find it very troubling that our government would consider denying veterans this very small token of gratitude.

This Committee has been convened not only to examine the substance of these proposed changes, but the manner in which they are being undertaken. The CSC is attempting to overhaul the current structure through the administrative rules process. It argues that a lack of definitions of key terms in the statute make changes to those terms the subject of regulatory -- not statutory -- provisions, and that they are thereby alterable through the rulemaking process.

While our laws may arguably allow for changes this sweeping to be made through rulemaking, I have to believe that such wide-ranging changes affecting so many people's livelihoods would be better carried out through the legislative process which is heavily based on good faith negotiations and compromise by the various parties and stakeholders involved.

In that vein, I would like to point out that the substantial reforms to the Civil Service process that have been achieved through the discussions on Senate Bill 2 -- bipartisan legislation developed by Senators Sweeney and Kyrillos to promote shared services-- That bill contains job banding provisions that would take effect in a limited fashion when towns consolidate. Under the bill -- in a municipal consolidation where Civil

Service plays a part -- the parties can request that the CSC relax certain Civil Service provisions regarding layoff, tenure, and bumping rights so that the parties may instead employ a stratified layoff process. The stratified layoff process would limit the bumping and tenure rights of Civil Service employees to prevent a dominoes situation -- where top-level employees bump those below, and each employee below bumps the next employee down until the bottom employee is laid off. The bill does this while also preserving the rights of Civil Service employees to appeal employment decisions such as layoffs or transfers. Likewise, any processes for appeal of employment decisions set forth in applicable collective bargaining agreements would still apply under that bill.

S-2 is an example of how positive reform can be reached through thoughtful and open negotiations with invested parties. By making changes through the legislative process the key issues can be openly debated in a number of public hearings, providing the public ample opportunity to weigh in with their thoughts and concerns. It is my understanding that there has been very little discussion between the CSC and the stakeholders on the proposals before us today. In fact, only one public hearing was held by the CSC to discuss the proposals, with little consideration given to public accessibility or convenience. It is my hope that this hearing will bring about better transparency and openness on the part of the CSC to this very important reform process.

With that, I'm going to turn to our witnesses; and I should say at the outset that this Committee extended an invitation to the Civil Service Commission, and they formally declined to appear -- which is disappointing.

I would, first, like to call on Senator Lesniak to offer a statement.

Senator.

SENATOR LESNIAK: Thank you, Mr. Chairman, members of the Committee.

I have submitted for the record an op-ed editorial that was published in the *Star-Ledger* on June 13, 2013, on this issue. And with regard to that, first of all I want to note that it's been argued that the Judiciary has such a similar broadband scheme as the Civil Service Commission has proposed. However, number one, that was negotiated with the parties and, number two, the Judiciary is not involved by law -- by Constitution -- in the politics. Therefore, the protections that the current Civil Service system gives, and the immunization from political patronage involved in the hiring, promotions, and assignment process is not -- does not present the problem that is one of the reasons why the Civil Service system was installed in the first place; and the problem that we see that is rampant, for instance, at the Elizabeth Board of Education, where employees are intimidated to work on campaigns, contribute hundreds of thousands of dollars, and where their promotions and assignments and, indeed, actually even job positions are based on their political involvement.

There is no doubt that broadbanding can be beneficial for some efficiencies. But there is no doubt that broadbanding done without negotiations will-- Those efficiencies will be eclipsed and erased by the politics that will be injected into a system unless these issues are negotiated with the parties -- the very same politics that Civil Service was designed to keep out of our public employment system.

As you mentioned, Mr. Chairman, as a veteran myself, I am personally offended by what this does to the veterans' preferences. We have veterans' preference because men and women have sacrificed a lot to serve our country, to defend our country, and to protect the freedoms that we enjoy. This proposal by the Civil Service Commission is nothing more than an end run around veterans' preferences, and it should be defeated either by reversal by the Civil Service Commission or by a joint resolution of both houses for that issue alone; in addition to the fact that it will just open up to all Civil Service workers the similar types of political interference in doing their jobs that we see so rampant at the Elizabeth Board of Education. That's why I particularly have an interest here, because I see it firsthand.

This is a very, very dangerous proposal that must be defeated.

Thank you, Mr. Chairman.

SENATOR GORDON: Thank you, Senator. I certainly share your views.

Senator Greenstein, do you have a statement?

SENATOR GREENSTEIN: Yes, thank you, Mr. Chairman.

As you stated so well, the Civil Service Commission was created more than 100 years ago to ensure that State workers are not at the whims of the spoil system, and that hiring, firing, and promotion decisions are made on merit and fitness of the employee. And here's what's most important: Our current system works very well. We have a system of fair promotions based on evaluated performance rather than patronage. There is now a promotional list and a fair testing process, and qualified veterans cannot be passed over.

Under the new broadbanding proposal, bands of Civil Service title classifications are created and replace objective promotions with what they call *advancement through the band*. Within these bands, management at all levels of government would be able to group job titles and make job decisions based solely on their assessment of competency without objective testing. And this would also eliminate veterans' preferences.

This new approach will clearly lead to political patronage and favoritism -- as you said, Senator, the very thing that we were trying to stop with the Civil Service system. Another problem is that under the current-- Well, under the current system, appeal of a denial of promotion has to be made to an objective third party. But under these new rules, the department that made the original decision can review appeals, which is the fox guarding the henhouse.

This proposal eliminates the one objective measure of a worker's ability: the Civil Service exam. It's in the public interest for public employers to have to explain their decisions. The very process by which this rule change was done -- with one public hearing -- is clearly a defective process. This is a large, large change that's being proposed; I would prefer it be done legislatively with lots of discussion and lots of hearings, and really be looked at seriously. But if it's going to be done by rules, there has to be a much more extensive process. So I'm unhappy with the change itself; I'm also unhappy with the process. But I am interested in hearing more.

Thank you.

SENATOR GORDON: Thank you, Senator.

We've had a number of people who have signed up to speak. I should say at the outset that Beth Schroeder of the NJEA is opposed to these new rules but has no need to testify.

We would like to hear from Hetty Rosenstein, the State Director of the CWA.

Hetty.

HETTY ROSENSTEIN: Thank you so much, Senator Gordon, for holding this hearing. Thanks very much to Senator Greenstein and Senator Lesniak. You've been stalwart in your support for open government and good government, and that is really what we're talking about today.

This is the third time that I've testified about these regulations. And I've testified once before the -- somebody with a tape recorder at the Civil Service Commission. Not before the Commission -- there wasn't anybody there. And I testified at the Assembly hearing, and now here. There have been no evening meetings that members can come to. We have, in the past, been able-- There have been representatives from disability rights groups, from advocacy groups, from veterans' groups that have come out, but it's increasingly difficult to ask folks to be able to speak in the middle of the day, in the middle of the week, and only in Trenton. And that really gets to the heart of what the problem is in terms of this process.

There is so much wrong with these regulations -- with these proposals -- that I could start today and finish tomorrow. And I submitted 20 pages of comments which I have copies of here for members of the Committee and for any members of the press. It is my understanding that there were hundreds of pages of comments -- maybe more -- submitted. I

have no confidence that they'll be read and considered. There is just nothing about this process that can give anybody any confidence that this is deliberative -- complicated and slightly challenging, which is what rules are, that has somehow been recast into inefficient, annoying, and bad. But government, and employment of several hundred thousand workers, and the production of services for 8 million people is not simple. And our lives and our government are bigger and more important than a sound byte and a few bullet points.

The Administration has and is successfully using the fact that it takes an hour or so to understand what they're doing to camouflage the impact of what they're doing. They're counting on the fact that many people don't want to wade through rules and regulations and look at hypothetical impact. And what they're doing is they're sliding through breathtaking and far-reaching changes to public employment. They are dismantling the Civil Service system and its purpose by regulation.

And I want to talk today about how difficult it has been to get any information from the Commission on the impact of these regulations, on workers, on testing, on veterans.

So as you know, the Administration denies that their regulations will impact veterans' preference -- and that is just a lie. It is a lie. And they are ignoring the fact that there is a constitutional requirement that State jobs have to be awarded based upon competitive testing, where practicable. And they have refused to supply information that would demonstrate conclusively the impact of the rules. I requested, at a meeting with the Commissioner, information. I was told, "Submit your questions in your comments." I then called the Civil Service liaison, whose job it is to

provide information to the unions -- that's what they do. I called and I said, "I want some information about what tests have been given and what veterans' preference has been utilized in the last several years." He told me he would get back to me. He then called me and said, "I can't give you the information. You have to OPRA it."

I then submitted an OPRA request, where I asked for lists of the examinations that have been given -- promotional examinations -- and where veterans' preference had been exercised. Civil Service then denied my OPRA request claiming that they did not have the lists. They have the data, but they would have to print it out for it to be a list. So they denied my OPRA request.

So then I asked our lawyer, "Do me a favor, please. You write the OPRA request for me in a way that they cannot deny it." So he submitted the OPRA request asking for the information. And now they come back and they say, "We'll give it to you, but we can't give it to you before July 2," which just happens to be after the next Civil Service Commission hearing where, perhaps, they will decide to pass the rules.

There isn't any way to responsibly write these rules that will eliminate up to 90 percent of the competitive examinations for non-uniform promotions and not have put together some of this information. I mean, you don't know what the impact will be? Well, that might be worse than you're just not going to tell us. They are trying not to answer this question. They are eliminating open competitive testing as well for entry-level jobs by moving jobs into the non-competitive division -- we have asked for the list of the jobs that they are moving to non-competitive -- and by suspending open competitive testing. And then they're using these regulations to

eliminate nearly every promotional examination. And that dismantles a good system of appointment and promotion that has been in existence for, I don't know, a hundred years, without answering questions about it. They're not even answering any questions about it.

When the press asks they say, "Veterans will still have preference in open competitive and promotional examinations." But they fail to mention that they will have virtually no open competitive examinations and they're eliminating almost all promotional examinations. So the fact that technically people will have some kind of a preference when those conditions for the preference aren't available is deceptive. This is not an accident. That is deceptive.

SENATOR LESNIAK: Disingenuous.

MS. ROSENSTEIN: Disingenuous.

And then they just are going to ignore facts. This is a corrupt State -- whether we like it or not, the Governor as well as county and municipal bosses will have the right to hire their friends and their allies to do public jobs. And these rule changes will make it easier for them to do so. And every effort must be made to reveal the perfidy of these proposals.

But there is more. The rules say that once an appointing authority decides about a job band, all they have to do is inform the Civil Service Commission. And then the Commission after that is only a record keeper. They no longer have oversight over any of these promotions or over any of these titles. They have eliminated the oversight for local government in all areas.

So county governments, large city governments, municipal governments currently under the auspices of Civil Service will be allowed to

make their own decision about what is a job responsibility, what is the criteria for a job, what the job will be paid, who will be hired, who will be promoted through it. And there is no oversight. And this is New Jersey.

The regulations do away with the appeals to the Civil Service Commission as was mentioned. And the same very county, city, municipality gets to make a decision in the first place -- no oversight.

Every effort has to be made to question each and every claim being made by the Civil Service spokespeople, who aren't talking, and by the Governor's Office that mostly just is nasty and aggressive in reply. And that shouldn't be mistaken for righteousness. It's really a diversionary tactic. Careful questioning of eliminating the entire personnel system for the State is really appropriate. And these proposals are terrible -- they will harm services, they will result in discrimination, they will make it harder for everyday people to do their job and get ahead. Every advancement will be based upon favoritism, and in the case of the State, they are illegal and violate the Constitution. The criteria will be the lowest common denominator instead of merit and fitness. And if you read it, that is what it says. They will decide what the criteria is; whoever is eligible for that criteria is now eligible for the advancement. You are specifically saying that you are going to have mediocrity instead of merit and fitness.

And at the risk of seeming alarmist, I really want to point out that it's not only a workers' rights issue; how government hires and whether or not it's responsive and open and transparent, and whether or not everyday people have equal access to government resources including employment, is a democracy issue. And when people don't have equal access to government -- when jobs and contracts and services and resources

are based upon politics and favoritism, we don't have a democracy; we have a banana republic. And that is really what these rules do.

I would answer any questions anybody has. I don't have that many answers. But I would certainly answer any from what I can.

SENATOR GORDON: Ms. Rosenstein, here's a question I think you can answer.

There have been changes to the Civil Service system in the past. What kind of process was used?

MS. ROSENSTEIN: It has never been like this. In fact, before the regulations would be published, even in administrations where the unions might have significant disagreements, we were called into meetings. There was a labor advisory board. There was a discussion about what was being considered and why it was being considered. And there would be a discussion even before there was any publication of anything in the New Jersey Register for consideration.

After the publication there would be a series of public hearings in all parts of the state -- in the evening as well as during the day. We almost always had a hearing in Essex County, in Paramus, in Mercer County, in Camden County, in Burlington; we would have anywhere from -- three to five public hearings would be held.

But aside from that, we would have discussions. You would have discussions with the Commissioner, with the staff. They answered questions. It's not as if we agreed. Lots of times we were having big disagreements. But they would answer questions and they would be responsive. And they would say things to you like, "Well, that is a good point. We hadn't thought of that."

And when I had a discussion, the only thing they would talk to us about was layoffs, because the regulations say that you have to consider the union if it's a layoff matter. So they would talk to us a little bit about layoffs. When I pointed out that they didn't understand what they were doing to -- in job banding, what they were doing to titles that have variance, you couldn't engage with them because they wouldn't admit that maybe they didn't know, or anything. They just had no interest.

So it's been very, very different in that way. There has not been a meeting of the Labor Advisory Board called since the Christie Administration came in. The Commissioner has the authority to do that, and has not and has no interest, obviously. And not just the Labor Advisory Board -- there is supposed to be stakeholders from all different groups who are called to consult with the Civil Service Commission, none of which has happened.

SENATOR GORDON: Senator Greenstein.

SENATOR GREENSTEIN: Thank you.

I wanted to find out, have the changes in the past ever been as extensive as this? Or is job banding a more extensive process than has ever been done?

MS. ROSENSTEIN: This is the most-- This is really very far reaching. And it's far reaching in two ways. Job banding has been proposed before, and we've had real discussions about job banding. And each time it's been abandoned because it's really too large to do it with this kind of a system. And we have talked to them in other years about trying to band-- Look at the clerical titles, for example. We have lots and lots of clerical titles. There may be an area where you would generalize and create job

bands, right? We've talked to them about job banding and the places to do it. But there's never been something that has a big, giant open door that says, "Job banding, where you want to do it, with no explanation of how many titles, whether or not it's title series. Nothing like this has been proposed. And the other thing is, I don't know that-- I've never seen rules that propose doing this with promotional exams -- ever.

SENATOR GREENSTEIN: Where does the idea of job banding come from? And do any other states do it?

MS. ROSENSTEIN: Yes, there are lots of places that do it. It's been around. You will find it-- Where it's done, it's generally-- It's done in two places: places where you don't have a lot of titles and people do similar kinds of work, or you're trying to combine what was done in terms of Judiciary -- you're trying to combine many counties or something like that. And it's also done as a direct attack on Civil Service regulations. So it's mixed. It's not by itself -- job banding doesn't have to be a terrible thing. There could be places where job banding is appropriate, as was said. The idea of doing job banding inside of title series in order to limit some bumping might be something that would make sense. We wouldn't automatically oppose that. But this is just a huge gigantic hole that goes way beyond that.

SENATOR GREENSTEIN: And I guess the last question I would have -- and this is really almost more a question for someone on the other side of the issue, but I am wondering about your opinion: How have they defined -- no one on the other side of the issue is going to come out and say, "We want to destroy Civil Service."

MS. ROSENSTEIN: Close.

SENATOR GREENSTEIN: Well, I don't know, maybe they have. (laughter)

But I want to know how they've defined the problem that they're solving. Because I'm not sure I see the problem here.

MS. ROSENSTEIN: They don't. They don't define the problem that they're solving except, if you look in their statement, they say it will provide for greater discretion for management in determining advancement and that-- And they try to claim that it provides for other kinds of competition. But really the words-- If English is at all meaningful, then the words are that we don't figure out who is most meritorious. We just figure out the basic competency and pick from there. So they could say one thing as to what their purpose is, but if you read the words -- and English has any meaning -- you can see that it's not. It is really the opposite of that.

SENATOR GREENSTEIN: I see your point that they're really not going to get the best of the best. They're going to get the people with the basic knowledge -- which is the opposite of the--

SENATOR LESNIAK: And who contribute to most of their campaigns. (laughter)

SENATOR GREENSTEIN: Right, right.

Thank you.

SENATOR GORDON: Any other questions for this witness?
(no response)

Seeing none, thank you very much, Ms. Rosenstein.

We'll hear next from Eric Richard of the AFL-CIO.

ERIC RICHARD: Chairman Gordon and members of the Committee, good morning. Thank you very much for this opportunity to speak with you.

My name is Eric Richard, representing the AFL-CIO. And, again, we'd just like to thank you for holding this hearing. As Hetty Rosenstein had mentioned, this is the third hearing of its kind in which, to date, we have still yet to have any presence from any of the members of the Civil Service Commission to address any of the concerns -- not only of employee representatives such as ourselves, but from elected officials such as you. I find it ironic that we have an Administration that prides itself on transparency. And here we have our third public hearing, and we cannot get a single representative from the Civil Service Commission to answer your questions. I understand that they view organized labor, perhaps, as a thorn in their side when it comes to these regulations. But you are our elected representatives. You have chosen to explore this issue and ask for answers from the Administration. And the silence is deafening. It is disrespectful not just to our members, but to you as our elected representatives. And I feel as if this Committee should send a strong statement to the Civil Service Commission, to this Administration, that this type of behavior is not only shameful, but it's bad government. This isn't the type of process that we should be engaged in with the enormity of the issue that is before you today.

The AFL-CIO obviously has significant concerns with the proposed regulation. In our opinion, the proposed rule gives management wide latitude in determining which public employees get promoted, and eliminates test-based promotions and undermines veteran preferences due

to changes in the ranking system. Furthermore, as Senator Lesniak mentioned, we take exception to the categorization in this proposal that because banding is being performed in Judiciary, that it makes sense to be broadly implemented for all State and local government workers. It must be understood that the Judiciary bands were implemented through bargaining, where employee representatives had a seat at the table to negotiate a program that was in the best interest of all parties involved. The proposal before you today is, indeed, not being negotiated. It is being railroaded.

We would also like to bring to the Commission's attention, as Hetty Rosenstein also mentioned, that by law the publication of this type of rule requires a previous meeting of the Labor Advisory Board. That meeting has never occurred.

Furthermore, the proposed rule ignores important information detailing what type of criteria is going to be used to develop these bands. The rule only speaks to this in the broadest of terms, and it is unclear how these bands will be developed.

Furthermore, we need certain questions answered, such as how many examinations there would be in particular appointing authorities, and how this would be impacted if the titles are broadbanded. What type of impact this would have on employees is an important issue that the Civil Service Commission simply refuses to answer. In fact, this is the third public hearing of its kind and, again, a representative of the Commission has not been present at any of them.

We have received -- our organization, the AFL-CIO -- has received an outpouring of opposition from our members to this proposal, as

have other affiliated and nonaffiliated unions that are present here before you today. Our office, in particular, has been contacted by 781 individuals objecting to this rule and petitioning the Civil Service Commission to hold more hearings on its impact. Copies of those letters were submitted to the Civil Service Commission during the common period and at the first public hearing.

In closing, it's our opinion that the responsibility of the Civil Service Commission is to administrate a system that ensures a balance -- a balance between the needs of management and the protection of employees' rights. This proposed rule, in the simplest of terms, dismisses this balance system completely in favor of management. The rule needs to be tabled, and we ask for your help in trying to achieve that.

Thank you very much.

SENATOR GORDON: Thank you, Mr. Richard.

Members of the Committee -- any questions? (no response)

MR. RICHARD: Thank you.

SENATOR GORDON: Thank you very much.

We'll here next from Rex Reid of AFSCME.

R E X R E I D: Good morning to the Committee, and I thank you for holding this hearing. It is definitely needed.

The Civil Service Commission has stonewalled anybody who has asked them questions. They have thumbed their nose; they didn't even have-- At their own hearing they had a hearing officer and not a member of the Commission -- which is dreadful in the thought that they are going to put this rule through and speak to nobody about it.

My name is Rex Reid and I'm a Legislative Representative for the American Federation of State--

SENATOR GORDON: Mr. Reid, is your microphone on?
(referring to PA microphone)

MR. REID: I thought it was on.

SENATOR GORDON: Okay.

MR. REID: My name is Rex Reid and I'm the Legislative Representative for the American Federation of State, County, and Municipal Employees -- AFSCME -- New Jersey, Council 1; Sherry Gordon, Executive Director.

We strongly oppose the amendments to the New Jersey Administrative Action Code Title 4A. The functions currently performed by the Civil Service system take on a significant necessity of objective information and classification, and decisions unaltered by labor or management pressures. Protection of the rights of the represented and the unrepresented employees in public service, and as an independent body which can hear employees' appeals in an impartial manner are all vital to the efficient and economic operation of State, county, and municipal government.

The system protects the public by ensuring the workforce is comprised of qualified individuals appointed on the basis of relative ability, knowledge, and skills, after a fair and open competition which ensures that all receive equal opportunity to garner the best applicant for the job. The merit and fitness principles of the current Civil Service system are significant to ensure equal opportunity rights at all levels of public service.

Civil Service ensures that applicants and employees alike receive fair and equitable treatment in all aspects of personnel and management processes without regard to political affiliation, race, color, religion, national origin, sex, sexual preference, marital status, age, handicap condition -- and all with proper regard for their privacy and constitutional rights.

The Civil Service system provides for the public good, and the hiring and promoting of employees on the basis of ability, with open competition and initial appointments providing fair compensation on the basis of equal pay for equal work -- with equal being determined by job duties within title, not a series of titles; retaining employees on the basis of performance, correcting the inadequacies of performances, and separating those whose inadequate performance cannot or will not be corrected to meet the required standard; training employees, as needed, for high quality performance and standards of integrity and concern for the public good; assuring fair treatment of applicants and employees at all aspects of personnel administration without regard to race, color, religion, sex, national origination, age, disability, sexual orientation, marital status, and with proper regard for their privacy and constitutional rights as citizens; protecting employees against political coercion and prohibiting use of official position to effect an election or nomination for office -- as was stated earlier.

Without a merit-based Civil Service system there will be little to no consistency among departments, divisions, and agencies, with managers making personnel decisions based on subjective criteria like favoritism, racism, and politics -- with its spoil system that hired, fired, and

promoted and gave pay increases based on who won the election and whose campaign you worked on.

Broadbanding positions under the proposed changes would allow appointing authorities to create new job bands with new titles and title series that allow for them to select who would advance in the job band. This opens the door to patronages, favoritism, and all other Civil Service violations the system currently protects against.

Banding allows for duties under banded titles to be comingled -- making their salary ranges within the broadbanding called into question: equal pay and equal work. Under the proposed changes, the working test period would go to six months with no probationary report or corrective action at a given interval, at the end of which an employee could be let go without right to appeal.

Hiring has always been management's right. But advancement in the Civil Service system was based on an employee's relative knowledge, skill, and ability in a competitive testing situation. Broadbanding of titles takes that away and places an employee's career ladder solely in management's subjective hands by linking performance reviews -- PARS -- to competencies for advancement void of objective, measureable criteria.

This proposed rule change will return us to an era void of diversity in the workplace, where people of color, women, the handicapped, and the veterans are all barred entry to government employment. Broadbanding changes, as proposed in these rules, undermines the legislative intent and the statutory mandate. Therefore, AFSCME New Jersey opposes these new regulations.

Thank you.

SENATOR GORDON: Thank you, Mr. Reid.

Any questions from the Committee? (no response)

Thank you very much.

We will hear next from Adam Liebttag, CWA Local 1036.

A D A M L I E B T A G: Thank you, and good morning.

I have two handouts here for the Committee -- one is a copy of my written testimony for this morning, and the other one is the public comment document that Local 1036 submitted to the Civil Service Commission. We submitted these comments pursuant to the public comment period, and the comments to the Civil Service Commission are more detailed than the testimony I'll provide today. And I would ask that you pay attention to both of them.

My name is Adam Liebttag. I'm the President of CWA Local 1036. We represent about 7,400 public employees around the State of New Jersey. Our Local is affected by this rule proposal in every aspect. We represent State executive branch employees, we represent Judiciary employees. And part of my testimony today will focus on the inaccurate comparisons and false reliance on the Judiciary's job banding system.

We also represent thousands of county and municipal employees who are affected by this job banding proposal. And I want to highlight, during sections of my testimony, the impact on local government titles -- which would be easy to push aside and only focus on the State Executive Branch. But I want to make sure that the members of this Committee fully appreciate the damaging impact of these rules on county and municipal government.

So first, a couple of brief overall comments. The pilot program that was used by the Civil Service Commission was deeply, deeply flawed. They converted a couple of titles in the Civil Service Commission itself and the Department of Treasury to a job banding system. They did this pilot program over a matter of months. They did not invite public comment from the unions on this type of approach. They've banded together these certain titles in the Commission and the Department of Treasury -- these titles do not have representation rights or collective bargaining rights. So they essentially banded together a small number of their own employees.

By my estimation, there are 170 individuals in that pilot program -- 170. There are 70,000 State executive branch employees. So they conducted a pilot on 0.25 percent of the State employee population and then called it a *raging success*. When you consider the thousands of public employees in county and municipal government who are also in the Civil Service system, the sample population shrinks further. So if any other agency came into the Legislature or proposed a rule amendment to one of its internal rules and said, "Don't worry. We conducted a sample of 0.25 percent of the affected population and everything went well; we self-certified it as a success," I think the Legislature would have every right to call them in and hold them accountable, and make them prove that their rule really would be a success on a larger sample population. So right off the bat, their pilot program was a sham.

They talk about the Judiciary system as a basis to say that banding works. Well, we represent thousands of Judiciary employees. So let me give you a little bit of insight into that system. First of all, as mentioned previously, that system was negotiated into multiple collective

bargaining agreements over a decade ago. It was negotiated not only by CWA, but by other unions -- AFSCME, OPEIU, IFPTE, Teamsters. And that system was negotiated into existence because the statewide court system was unified. They were unclassified at the time; they were outside the Civil Service system, and we needed to come up with a classification, job duty and compensation system that made sense and could be applied across the board to all the different county courthouses.

So a number of unions and the Judiciary Administration at the time sat down and bargained a job banded system. It is far from perfect. We have plenty of issues with that system, including work compression, title compression, and the frustration of having people hired in from the outside and put in at a higher level within the band than existing employees. So we have plenty of concerns about the Judiciary system.

But I want to highlight a couple of very important difference that the Civil Service is conveniently ignoring. First, the Judiciary also uses the existing Civil Service rules. Not all Judiciary employees are unclassified and are in job bands. Some Judiciary employees retained and still are in the Civil Service system. So the Judiciary itself recognizes and uses the Civil Service rules for some of its employees. And the CSC conveniently washes that fact aside.

Second, and also importantly, we, as part of the Judiciary job banding system, had negotiated a neutral oversight board called the Classification Review Board. This entity has equal members from labor and management, and employs an outside neutral third party to reach decisions. This Classification Review Board has oversight over classification disputes. So if an employee believes that he or she is working out of title, as doing the

duties of a different title, and is seeking a promotional advancement, they file their claim and ultimately any dispute goes before this neutral body. So again, it is neutral -- it has equal labor/management participation and an outside expert in the field.

The Civil Service Commission is not making that change as part of its rule proposal. The Civil Service Commission wants to retain and, in fact, expand its oversight authority. That Commission is wholly comprised of political appointees. There are five seats: Currently one is vacant; one is the Chair of the Commission, Robert Czech; and the other three are appointed by the Governor. One of them is in the private sector and runs a financial services company and has no involvement in public employment or Civil Service. I don't know what qualifies him to be on that Board, to be quite frank.

But, again, this rule proposal wants to retain all decisions of classification disputes at that Commission level and, as you noted, Senator Gordon, wants to take responsibility for grievances. So now a dispute of a Civil Service Commission decision would be handled through a "grievance" and be decided unilaterally by that Commission based on its review of whether there's any merit to the complaint. They won't even hear the complaint; they'll just decide if the complaint has merit and then possibly dismiss it.

So it's very different system -- a very different system in the Judiciary. And although it has its problems, it does have some benefits of a neutral oversight board to resolve disputes, and again, the fact that the Judiciary itself does use Civil Service.

On a legal basis, we believe that this rule proposal conflicts with legislative intent. There are clear parameters, clear definitions, clear language usage in Title 11A and the New Jersey Constitution where it talks about merit and fitness appointments. It talks about the public policy of testing and examinations for hiring and promotions. And everywhere in Title 11A it specifically talks about titles -- not job bands, not groups of titles. It uses the word *titles*. The very first couple of lines in the Civil Service Commission's rule proposal say that it will replace the word *title* with *job band* throughout the Civil Service regulations. So right there it's a direct conflict with Title 11A and the other statutory governing principles. The legislative intent was clear. If you wanted to say *group of titles* or *occupational group* or *band of titles*, you would have said it. You didn't. And the Constitution doesn't say that. So they are trying to bypass legislative intent, bypass existing statute, and change it unilaterally through rulemaking.

A couple of other points and then I'd be happy to take any questions, especially on the Judiciary system -- if you're interested.

The rule proposal -- aside from the problems with the pilot project or the pilot program, aside from opening up the door to patronage, favoritism, and discrimination as we know that it will -- it's really incontrovertible that creating this banding system will actually make it more difficult for local government managers to run their towns and their counties. And what do I mean by that? Also part of the rule proposal is that certain titles would be selected for banding. There is no criteria in the rule proposal that establishes what would be reviewed, what would be considered to convert a competitive title to a banded title. So there really is

no way of knowing which titles or how many titles would be banded together. But this presupposes that some titles will not be banded and will remain under the current system. So now, as a local government manager, I not only have to worry about the Civil Service system and following all of those rules, but there will be a back door system, a second system, a parallel system to administer. That will be extremely difficult for management to effectively manage, and operate, and administer their towns and their workforce. So the CSC really is not making things easier; they're just creating a parallel system that we know will lose a lot of the safeguards that the current system has.

We don't know which titles would be banded. They won't answer those questions. We don't know what the criteria would be to determine if a title is banded. They won't answer those questions. We believe that this second system is, essentially, trying to open a back door for greater management discretion, patronage, favoritism, and we ask you to strongly oppose it. We don't believe it's the right thing for New Jersey's State Executive Branch, and we don't believe it's the right thing for municipal or county government. And based on our own local experience with the Judiciary, we know that this proposal will be very different in practice from what we have negotiated in the Judiciary.

Thank you.

SENATOR GORDON: Thank you very much.

Any members of the Committee with a question?

Senator Greenstein.

SENATOR GREENSTEIN: Thank you.

To what extent are you having discussion? To what extent are you able to have contact with the Administration on this, and are they cutting off discussions in any way?

MR. LIEBTAG: I can tell you that-- Well, a couple of things. First, Hetty Rosenstein has been the main point of contact with the Administration, with the Commission; and as a CWA New Jersey representative, I believe, is a member of the Labor Advisory Board. So I would rely and defer to her answers about being stonewalled at that level.

On my level, at the sole public hearing on this issue, at the Commission, CWA collected over 2,600 letters -- individual letters -- requesting an additional public hearing. And when you combine that with what Eric Richard from the AFL-CIO delivered -- another 600 or 700 -- you're well over 3,000 individuals who asked for additional public comment, additional deliberations, and additional discussions. And all of those 3,000-plus letters have not been responded to individually -- number one. And number two, as Eric said, the silence is deafening. So we know that they're denying the ability for any public hearings. The public comment period closed. There's been no further communication, to my knowledge, to those requests. But again, if this was any other agency -- be it Community Affairs, DEP -- trying to make a rampant and widespread rule change, and you had 3,000 citizens saying, "We have problems with this; let's have some additional conversation," you know, I think it would behoove the Administration to acknowledge that.

SENATOR GREENSTEIN: One of my thoughts, Mr. Chairman -- and I don't know if this is something under consideration -- I believe-- I'm not a regular member of this Committee, but I believe the

Committee has subpoena power. Can we try to subpoena people from the Administration, the Civil Service Commission in a further hearing? Because certainly it would be good to hear from the other side and to try to bring this out in any way possible. I just don't know what solutions are being considered.

SENATOR GORDON: To answer your question, this Committee does have subpoena power. I don't know the last time it was exercised, if at all. But that's certainly something we should consider. I'm very disappointed and, in fact, offended that we did not get any kind of response or presentation from the Civil Service Commission to refute or confirm what we've been hearing today.

SENATOR GREENSTEIN: Mr. Chairman, I also wanted to ask -- and I don't know if this is something that can be discussed by CWA and other unions at this time -- but are lawsuits or other approaches being considered? Has anything like that been done at this point? I'm thinking what's being looked at from a solution point of view. And with your indulgence, I don't know, perhaps Ms. Rosenstein would like to be up here as well.

SENATOR GORDON: Ms. Rosenstein, can you answer that question?

MS. ROSENSTEIN: Certainly, sure.

We're certainly considering our legal options and we submitted to the Civil Service Commission a legal memo from our attorneys regarding the fact that they believe these rules to be unconstitutional and why. So we're absolutely looking at that and considering that.

I would just mention that we made three separate requests -- official requests for additional hearings and for discussion -- or just a meeting. And we were refused in terms of those additional meetings and hearings, separate from the 3,000 citizens who made the request.

SENATOR GREENSTEIN: But one last question. Other than-- I know there a couple of bills to call on the Administration to do something here. What would you like to see us do, as a Legislature?

MS. ROSENSTEIN: Well, I think in addition to calling on the Administration and doing what you're doing, I think that we're actually assembling a lot of our questions that we've asked in terms of OPRA and following up. And we'll ask for the Legislature to follow up with that.

But one of the things that occurs to me that-- I'm not sure I understand why you can end up having a public hearing for the Civil Service Commission and not have anyone participate and come. And since they don't seem to think that they need to come to their own public hearing or to any legislative public hearing, it seems to me they should be required to. And I don't know if that's another legislative way of addressing this, legislatively. We would-- If we are looking into legal action, we will be reaching out also to the entire Legislature to assist us with that, and I think as amicus, in helping us. I think that it really does defy all legislative intent -- these rules.

SENATOR GREENSTEIN: You know they don't always come to Budget hearings when we have those? They stay away when they want to.

MR. ROSENSTEIN: These are their own hearings they didn't come to.

SENATOR GREENSTEIN: Thank you.

SENATOR GORDON: Senator Lesniak.

SENATOR LESNIAK: Mr. Chairman, does this Committee and the Legislature have the power over regulations by joint resolution?

SENATOR GORDON: My memory of the rules is that if each house passes a concurrent resolution, we can overturn regulations that we feel are not in keeping with legislative intent.

SENATOR LESNIAK: Correct.

SENATOR GORDON: And that was-- I think when this Committee was established, I think -- may have been considered during the Whitman Administration when some educational legislation was enacted that -- I think Senator Matheussen felt that the rules were not in keeping with legislative intent.

SENATOR LESNIAK: Well, I happen to be around long enough to remember when Senator Zane passed the constitutional amendment to allow us to do that.

SENATOR KEAN: The 1947 Constitution -- right? Is that what that is? (laughter)

SENATOR LESNIAK: It was the year after I was born. (laughter)

That certainly, I would think, would be the best avenue, and something that we can and should do.

MR. LIEBTAG: May I make one more suggestion in response to Senator Greenstein's question?

With the pension and benefits reform legislation, there was this plan design committee which was created to have joint oversight and

authority over the State Health Benefits plan. Perhaps this would be another area to create a joint labor/management oversight committee, over Civil Service reforms. That you could do legislatively -- create that committee, and invest in it the authority that any sort of Civil Service regulatory changes would have to be vetted and approved by that joint committee. So at least with that sort of step you'd have input from all sides. You could have municipal and county input, State input, certainly stakeholder input from the represented organized labor membership, and you could have a more full-throated discussion of the issues. We have ideas on how to reform Civil Service as well, and that might be a good way to have some mutual discussion and benefit. So I offer that also as a legislative suggestion.

SENATOR GORDON: Sounds like a very productive exercise. That's something we will certainly investigate.

Any other questions for these witnesses? (no response)

Seeing none, we will now hear from Darnell Hardwick of Camden NAACP.

DARNELL HARDWICK: Good afternoon, Senator Gordon and members of the Oversight Committee.

The NAACP would like to thank you for having this special meeting in regards to Governor Christie's and the Civil Service Commission's attempt to turn back the hands of time by proposing this new initiative called *job banding*.

My name is Darnell Hardwick. I am the Vice Chair of the New Jersey State Conference of the NAACP branches Labor and Industry Committee. I am also a 32-year employee at the Department of

Transportation, and a Shop Steward for CWA Local 1032. I have personally experienced and witnessed this Administration's attack on basic workers' rights, civil rights, and fundamental due process.

Before I go into my statement, on a personal note: I have experienced how difficult it is to advance with scoring high on Civil Service lists. I have never in my 32-year career at the NJDOT received a provisional title -- which is a title from management before we get into the test. I had to score on the test to be appointed. In 1999, I finally complained, and retaliatory actions began. I was not given interviews on illegitimate 30 percent interview rules. When I scored high on the exam I was bypassed by the "rule of three." Internally, political influence denied my appeals. I had to go to the Federal EEOC; they agreed that I was denied promotions based on my race, and retaliated against based on those issues.

Eventually, I settled out of court in 2005. Make no mistake that if this rule was passed, advancement by Shop Stewards, minorities, whistleblowers, and older workers would be next to impossible.

I'd like to go on with my statement.

SENATOR GORDON: Proceed.

MR. HARDWICK: The NAACP rejects all attacks on the Civil Service system. It is a terrible idea to create generic titles and opens it up to a system of enormous abuse in a number of ways. I'm going to discuss some of the ways the system could be subject to that abuse. But first, I want to relate some facts and statistics I found in the State's own 2011 Workforce Profile, and give an analysis on how I think those facts relate to the proposed rules.

We know that in 2010 this Administration started their title consolidation project, during which they have consolidated hundreds of titles and placed dozens of titles more into the noncompetitive division. That is a non-exam part of the Civil Service. Out of the total of 67,302 people in the Executive Branch of the State government, only 48,633 were in competitive titles. Page 9 of the 2011 State Government Work Profile is the page where you find that information. So already about 19,000 positions out of the 67,000 are potentially fully subject to political patronage.

We also know that under this Administration it expanded its own positions in the Governor's Office by 18 percent -- which is on page 4 -- over what it was in that office under Jon Corzine, at the same time that the workforce was decreased by 5 percent and that new hiring in State government decreased by 13 percent. And so the State Government Workforce Profile shows us that even before the Governor began his wholesale attack on Civil Service system and its competitive titles, that there is a preference by this Administration for patronage positions and they will use them whenever possible.

This is what politicians do; we know that. That was the reason for Civil Service in the first place. Moreover, we know that this Governor, from his history, will choose individuals with suspect qualifications for the purpose of exerting influence, rather than selecting individuals based upon merit. And we have seen in that the nominations to the Supreme Court, to the Public Employment Relations Commission, and to the Civil Service Commission and elsewhere. We also know this type of abuse exists elsewhere in the State, and at the local government and at the county level.

And hardly a week goes by where we don't hear stories about people in power selecting members of their good old boy clubs for positions and bypassing the regular citizenry. This is also seen in the Governor's Cabinet, where many of the members are associated with the U.S. Attorney's Office of New Jersey, the Governor's former employer.

The New Jersey NAACP got a firsthand look at numerous abuses in the recent union busting, job banding, and waiving of Civil Service rights of the Camden City Police Department. In our effort to evaluate, investigate, and inform the public of this important public safety issue, we discovered great difficulty and roadblocks. The City of Camden and the County of Camden would not divulge information, and there were no transparencies, in our estimation, to thwart any legal challenges. The County asserted that the one-year Civil Service waiver was to expedite hiring and promotions.

In approving the waivers, the Civil Service Commission decision cited job banding as a legitimate selection process. There was great concern from the unions that potential candidates could be influenced by "machine" politics. The CSC shrugged those concerns off and asserted that the steps included "in the pilot program are essentially no different than what would have occurred if open competitive lists were issued to fill these positions," which isn't true. Regrettably, the Civil Service Commission approved a pilot program to waive the very rules that they are vested to protect, and which we believe are unconstitutional.

This proposed new rule appears to be a change for the convenience of the appointing authorities and the CSC, and not a change for efficiencies. Problems with Civil Service will not be solved by merely

freeing management from rules and limits. Appointing authorities, given the flexibility, will not automatically do what is right. It is important to keep in the forefront the principles of the Civil Service that provide crucial protections for employees from arbitrary and discriminatory treatment. This rule would not protect the public from patronage, cronyism, racism, sexism, retaliation, discrimination, and promoting fairness; or create a professional and stable workplace.

The Civil Service system has been a gateway to the middle class for women and minorities, and the employment statistics show that women and minorities have great representation in the public sector. Any attack on the employment rights of public workers therefore disproportionately impact women and minorities. The New Jersey State Chapter of the NAACP is also deeply concerned with the lack of affirmative action/workforce development plans at State agencies, per New Jersey S.A. 11A:7-8, under this Administration. State agencies have not submitted a plan since 2008, which were filed in 2009. We learned through Open Public Records requests that the State agencies were advised by the Division of Equal Opportunity/Affirmative Action in October 2010 to stop all work on the plans until further notice -- and they have not received any further instructions. Those plans document yearly hiring and promotion data for State agencies. So how are they going to promote and influence things with affirmative action/equal opportunity when there's no plan in place?

In closing, we allege that the mechanism in place to protect employees from abuse of job advancements are not adequate. Currently we allege that filing complaints with the internal Civil Rights units, grievance

procedures, merit system board, and the PERC are fruitless due to that same political influence. This new proposal of job banding needs to be halted for the protection of the public and the Civil Service Act.

Thank you.

SENATOR GORDON: Thank you very much.

Any questions from the Committee? (no response)

Thank you very much.

I'd like to bring up the last two witnesses; I'd like to bring them up together: Alan Hardy and Anil Desai, CWA Local 1032.

Mr. Desai.

A N I L D E S A I: Thank you, Mr. Chairman, and Committee members.

This hearing is so important to my heart, and to the work I do and the way I should be rewarded. I'm going to read my written testimony so that I cannot miss any of the points that I will try to make here.

My name is Anil Desai, Civil Engineer by profession. I work for the New Jersey Department of Transportation as a Project Engineer.

Today, I'm testifying as the President of Branch 5 of Communications Workers of America Local 1032, representing NJDOT employees.

I am honored and thankful for the opportunity to testify in front of this Committee regarding the proposed job banding program by the Civil Service Commission and the adverse effect it will have, if implemented, on the finest employees of the NJDOT and other agencies.

Let me tell you about myself a little bit. In 1981 I immigrated to this great country of ours from India. I joined NJDOT in 1983. Throughout my employment I have served the people of New Jersey with

the utmost professionalism. In my humble opinion, my excellent work ethic and engineering skill have helped me to contribute to make our highways and bridges safe and efficient. I have received numerous letters from the people of New Jersey thanking me for my work.

I was able to be rewarded with job promotions because of the current Civil Service examination system in place.

Back when I started, it was rare for an Asian American to get a provisional promotional appointment. These provisional appointments were completely at the discretion of the local management. So we took advantage of Civil Service examination system in order to move up on the professional ladder through Civil Service lists and permanent promotions.

This proposed job banding program, with its elimination of Civil Service exams for most promotions, will make it tough to advance for the employee like me and will demoralize the finest employees. We should continue to utilize the talent of our employees and reward them, and in turn make our State system more efficient to serve our citizens.

I strongly urge you to preserve and embrace the current fair system of job promotion. The present Civil Service regulations should not be replaced with the job banding program, as it will cause a devastating impact on the government workforce and the efficiency with which they serve New Jersey.

The proposal will result in cronyism, nepotism, and favoritism. Also, it will result in underutilization of the talent -- and that's the worst part of it. The Civil Service Commission was set up in 1908 to curtail cronyism. They should not depart from their core principles and do exactly the opposite.

There may be some obvious problem with the current system which needs to be tweaked or improved upon. That does not mean we should eliminate the system completely. You do not kill someone who has a bad knee or, in other words, don't send a nice car to the junkyard for having a wiper problem.

I call upon you intelligent people to do the right thing by exerting pressure on the Civil Service Commission not to implement this ill-advised reform. And, by the way, these are not reforms; in my opinion, it is a giant leap backward.

Let us use the best pool no matter what kind of accent they have. And, you know, we should utilize them. That's the American tradition and that must be New Jersey's tradition to keep this one great State.

Thank you again for listening.

SENATOR GORDON: Thank you very much.

Mr. Hardy.

ALAN HARDY: I thank the Committee for holding this hearing and for hearing our testimony.

My name is Alan Hardy. Today I'm testifying as an Executive Board Member and Shop Steward of Communications Workers of America Local 1032. I've been a State employee for 32 years. Currently I'm a supervising Software Development Specialist 3 at the New Jersey Office of Information Technology -- OIT.

For a number of years, the primary route to promotion at OIT has been the classification appeal. In the last year alone, there were over

100 hundred appeals in an agency of just over 700 -- over half of these appeals were successful.

Under the current classification appeals system, when the classification appeal is filed by the union or by an individual, the determination of the appropriate classification is made by a classification reviewer at the Civil Service Commission. This review by a classification expert not employed by the agency employing by the appellant ensures that the appeal process is both fair and accurate.

The reason that so many classification appeals have been initiated by the union or individuals recently at OIT is that OIT has been unable to obtain permission from the Treasurer to promote significant numbers of people. Many managers at OIT have advised their direct reports that a classification appeal is the only way in which they will be able to gain a promotion.

The job banding proposal before the Civil Service Commission would end these appeals for most titles. On page 15 of the proposal it is explicitly stated that "recodified paragraph c(7) would be amended to provide that Commission-level classification appeals in State service shall not apply to an employee's title level within a job band." On page 15 it also states that "appeals shall be under the Civil Service grievance regulations, rather than under the contractually required classification appeal procedure."

The proposed rule also makes clear that the decision of the agency will, in almost all cases, be the final resolution. On page 14 of the proposal it states that, and I quote, "appeals pertaining to an employee's title level within a job band are governed by N.J.A.C. 4A:3-3.9(c)4 and 5."

On page 9 of the proposal, in explaining the new grievance appeal procedure, it states that the Civil Service Commission “may dismiss the matter without further review of the merits of the appeal where issues of general applicability are not fully presented.”

In short, for most current promotional opportunities, classification appeals will no longer exist. Instead, there will be a so-called grievance procedure without an adequate and fair means of resolution that has not been negotiated with the union. No independent classification expert will be involved.

Since over the years there have been constant pressures from the Treasury not to promote employees when the promotion is at the discretion of the department management, the classification appeal has been the only method by which deserving employees can be promoted to the title appropriate to their duties.

We believe that the elimination of classification appeals will greatly increase the number of people who are misclassified. The unfairness of the situation in which employees will not be properly compensated for the level of work performed is obvious.

However, misclassification also has serious negative consequences for productivity. If, for instance, a person's classification requires them to only perform the simplest tasks when they are capable of much more, there will be an understandable reluctance by many supervisors and managers to assign the more advanced tasks that the person is capable of performing if the person is not being properly compensated.

Thank you very much.

SENATOR GORDON: Thank you, Mr. Hardy.

Any questions from the Committee?

Senator Greenstein, Senator Kean? (no response)

Well, thank you very much.

We haven't received any other slips. Does anyone else wish to testify? (no response)

Seeing none, let me just close with a couple of comments.

I have no doubt that there are opportunities to improve the efficiency of the Civil Service system. But I am personally concerned about the impact of these wholesale changes to a system that has served us reasonably well since 1908. And I'm concerned that if we simply throw these out the window, there is the potential to return to the spoil system of the 19th century. And so I hope the Legislature will consider its options. We talked about concurrent resolutions to overturn this effort by the Executive Branch once the rules are released. We may consider our subpoena powers as well. I certainly think that there have been major problems with the process -- clearly something that has such an impact should have been discussed more openly and more extensively. And I hope this Committee, at least, has helped in airing some of these issues.

And I want to thank everyone for appearing here. I want to thank my colleagues for their participation. And we will be pursuing the issues raised here today.

Thank you very much.

(MEETING CONCLUDED)

APPENDIX

Thank you . . .

Importance.

Hetty Rosenstein, NJ Director

CWA represents over 50,000 public sector workers.

This will be the third time I have testified about these Regulations and I try to make each effort different.

There is so much that is wrong with the Civil Service Regulations that I could start today and finish tomorrow and still not get through it all.

I have submitted 20 pages of comments, and hundreds of pages of appendices, to the Civil Service Commission, which I have no doubt will not be read or responded to. I have copies of my comments. I understand that there are hundreds of pages of comments. I urge the committee and the Press to take the time to read them and to understand this issue.

Complicated and slightly challenging has been recast as inefficient, annoying and bad. But government and the employment of several hundred thousand workers and the production of services for 8 million people is not simple. Our lives and our government is bigger and more important than a sound bite or a few bullet points.

The Administration has and is successfully using the fact that it takes an hour or so to understand what they are doing, to camouflage the impact of what they are doing. They are counting on the fact that many people do not want to wade through rules and

regulations and look at hypothetical impact do that they can slide the most breathtaking and far reaching changes to Public employment in 100 years.

They are dismantling the Civil Service system by regulation.

We have tried to get information from the Commission about the impact of these regulations on veterans and on testing. As you know, the Administration denies that the Regulations will impact on Veterans Preference – that is a lie – and they have also merely ignored the Constitutional requirement that State jobs are awarded based upon competitive testing.

In addition, they have refused to supply the information that would demonstrate conclusively the impact these rules would have.

I requested information in a meeting with the Commissioner. I was refused the information and told to submit my questions with my comments. I then called the Civil Service Liaison and asked him for information as to what examinations had been given and where Veterans Preference would be used. He told me he would try to get the answers for me, but later emailed me back and told me that I would have to submit an OPRA request.

I then submitted an OPRA request asking for lists of what examinations had been given where Veterans Preference was exercised. Civil Service denied my OPRA request because although they had data with which to produce the lists, they didn't have them in list form prior to printing them out, and so they claimed they didn't have to answer my OPRA request.

I then had my lawyer request the information. Now they have responded that they will reply by July 2.

There is no way that you could responsibly write rules that will eliminate 90% of the competitive examinations for non-uniform workers in the State and not have put together some of the information as to its impact. They don't need until July 2. They are trying not to answer the question before the Civil Service Commission votes on the regulations.

They are eliminating Open Competitive testing for entry level jobs by moving jobs into the non-competitive divisions or by suspending the Open Competitive test, and they are using these regulations to eliminate nearly every promotional examination.

This dismantles a good system of appointment and promotion that has been in existence for more than 100 years and it is being done so with barely a question asked or answered.

When we ask, they refuse to answer. When the Press asks, they just lie and say Veterans will still have Preference in Open Competitive and Promotional exams, failing to mention that there won't be OC and Promotional exams.

And then they just ignore the facts. This is a corrupt State and the Governor as well as County and Municipal bosses will, have and want to hire their friends and allies into public jobs and these rules will make it much easier for them to do so.

Every effort must be made to reveal the perfidy of these proposals.

But there is more. These Rules say that once an appointing authority decides to job band and do this, all they have to do is inform the Civil Service Commission and that the Commission will at that point only have record keeping authority.

Folks need to understand this. Civil Service will not have oversight over local government selection and appointment. They

will merely be a record keeper. That means that County Government and large City governments currently under the auspices of Civil Service will be allowed to make their own decisions about what is a job responsibility, what is the criteria for a job, what the job will be paid, and who will be hired without any oversight at all. Are you getting this?

And – the regulations due away with appeals to the Civil Service Commission. Appeals are only to the very same County, City, Municipality that made the decision in the first place.

No oversight.

Every effort must be made to question each and every claim made by the Civil Service spokespeople and by the Governor's office. Nastiness and aggressiveness in reply should not be mistaken as righteousness. It's just a diversionary tactic.

Careful questioning is appropriate here.

These proposals are terrible for the State. They will harm services. They will result in discrimination. They will make it harder for everyday people to just do their job and get ahead.

Every advancement will be based upon favoritism.

The criteria will be the lowest common denominator instead of Merit and Fitness.

At the risk of seeming alarmist, I need to point out to this committee, that this is not only a workers rights issue. How government hires, and whether or not it is responsive and open and transparent, and whether or not every day people have equal access to government resources, including employment, is a democracy issue.

And when the people don't have equal access to government.
When jobs and contracts and services and resources are based upon
politics and favoritism, then we don't have a democracy. We have
a Banana Republic.

That is what these Rules will bring.

Christopher M. Shelton
Vice President
District 1



HETTY ROSENSTEIN
NJ Area Director

5/17/2013

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312

Dear Mr. Maurer,

Attached are my Comments regarding the March 18, 2013 Proposals. As you know, I have requested certain information from the Civil Service Commission regarding examinations and veterans and appointments. The Commission was unwilling to supply me with that information and I had to submit several OPRA requests, none of which I have received a reply to as of yet.

I am asking that the record remain open until I receive those documents so that I may supplement these comments with facts learned from those documents and with the records themselves. Some information is due today and some is due by early next week.

Please advise whether or not the record will remain open as I have requested.

Thank you for your attention to this matter.

Hetty Rosenstein
NJ Director

Communications Workers of America

6x

To: Henry Maurer, Director

From: Hetty Rosenstein, NJ State Director Communications Workers of America

Re: Comments on Job Banding Proposals

On March 18, 2013, the Civil Service Commission proposed the following:

Proposed Amendments: N.J.A.C. 4A:1-1.3; 4A:2-3.7; 4A:3-1.2, 2.3, 2.6, 2.9, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, and 4.9; 4A:4-1.9, 2.4, 2.5, 3.2, 5.1, 6.3, 6.6, 7.1, 7.1A, 7.6, and 7.8; 4A:7-3.1; 4A:8-1.1 and 2.2; and 4A:10-1.1 and

Proposed New Rule: N.J.A.C. 4A:3-3.2A

These proposed rules are attached as Exhibit A.

In these comments we will discuss how these proposed regulations:

- A. Potentially eliminate all but a handful of promotional examinations, making tens of thousands of positions that are currently subject to a formal examination process, subject to management determined "advancement".
- B. Will encourage, support, and foster patronage, cronyism, discrimination, and directly contravene the historic mission of Civil Service, the purpose of Merit and Fitness, and the Constitutional requirement for examination.
- C. Eliminate specifically determined and tested for Knowledge, Skills and Abilities replacing them with vaguely determined "competencies."

- D. Reduce thousands of opportunities for individual veterans and disabled veterans to exercise veterans preference in promotion to what could easily be fewer than a hundred such opportunities.
- E. Boldly exceed the Commission's regulatory authority by implementing Regulations that directly contravenes the letter, mission and spirit of the Statute and New Jersey Constitution.
- F. Undermine statutorily protected layoff and recall rights and create a discriminatory process of layoff for employees with bilingual variants.
- G. Are deliberately vague so as to make it impossible to fully determine the impact and to understand the breadth and depth of change.
- H. Are being considered without fair knowledge of the public and without the opportunity for fair input.

The Judiciary Broad Banding System vs. these Proposals

The proposed rules begin with a Summary Statement that explains that the Commission proposes to amend Title 4A of the New Jersey Administrative Code to create a job banding program "similar to the system that has been used successfully in the Judiciary for nearly 15 years." The summary also states that Job banding has also been implemented in a well-received pilot program in the Executive Branch of State Government.

The Job Banding proposal is not similar to the Judiciary job banding system. Significant differences between the proposed system and Judiciary system will be explained in a more detailed fashion in the comments of Adam Liebttag, President of CWA Local 1036 and I refer the Commission to those comments. The fact is that the

proposal that is being made by the Civil Service Commission, is vastly different from both the Judiciary system and the small pilot project in State Government.

*A list of all titles in both the Unclassified and Career Service is attached as **Exhibit B.***

Exhibit B lists titles in alphabetical order, and provides information on each title's Title Code, Title Name/Variant Name, Classified or Unclassified Service, Class code, Department code, if it is a State or Local Government title, number of each employee in each title, and the exam area and exam section.

A review of this list indicates that there are nearly 7000 titles and approximately 4000 of them are in the classified service, and over 150,000 permanent classified workers in State and Local Government are impacted by these rule proposals.

The Judiciary had fewer than 80 titles, their consolidation and banding took place as part of the consolidation and transfer of the individual vicinages from the Counties to State Government, and significantly, the banding of titles and integration of duties and wages was done in negotiations with the Unions as part of contract negotiations. **There is no legitimate comparison between the Judiciary banding and the proposals made by the Commission with regard to content, impact or process.**

The summary then goes to great lengths to argue that since there are no statutory definitions of the words "title" and "title series" and "promotion" or "class code", and the Commission can merely redefine these generally and historically understood terms and claim that providing higher level duties and additional responsibility, more money and possibly a different reporting mechanism is no longer a "promotion." It can now be called "advancement" and the Constitutional and Legal requirements attributable to promotions will no longer apply.

It is the responsibility of the Civil Service Commission to establish regulations that implement the intent of the Constitution and Statute. The Commission is exceeding its authority when it seeks to redefine commonly understood English terms, terms that have been historically defined within the regulations, and terms that were understood by the Legislature at the time of the passage of 11A and amendments to 11A. For decades, both prior to the passage of the 1948 Constitution and afterwards, employees were promoted from one "title" to another by examination when practicable. The Civil Service Commission cannot merely change the word title to band and no longer meet its constitutional obligation to competitively test inside a Merit and Fitness System.

CWA is providing a very brief legal memo arguing that these rules violate the New Jersey Constitution's mandate for examination while practicable and that memo is attached as Exhibit C.

Discussion of Job Banding and its definition

The proposed N.J.A.C. 4A:3-3.2 provides that the Civil Service Commission will not only establish classification plans with job titles, with a job specification for each title, but also a list of job bands, and that "a single specification may also be used for a job band." Job bands will be used for a "grouping of titles" or "title series into a single band."

It is not clear whether or not a job band would be something like an Auditor Job Band with an Auditor 1, 2 and 3, or if it could be something like an Administrative Job Band that included everything from Clerk, Senior and Principal Clerk series, to Data Entry Machine Operators, to Secretaries, to Clerk Drivers, to Aides, Legal Secretary, to Administrative Assistant, to Executive Secretary to what could be literally hundreds of clerical and administrative titles, covering tens of thousands of State and Local Government employees that range in pay from anywhere from \$15,000 a year to \$90,000 a year. What in this case is the "next higher title level within the job band"? If a worker was a Clerk and is a Range 6 in the Compensation System, and s/he receives a

promotion to Senior Clerk and goes to a Range 8, that is an increase of 2 ranges of pay. But if a worker is a Clerk and is a Range 6, and s/he is placed in an Administrative Job Band with hundreds of other administrative titles, and one of those titles is a Range 7, does this Clerk "advance" to a Range 7 as opposed to "promote" to a Range 8?

The lack of clarity in these rules as to what a Job Band is, how many titles it can encompass and how broad the band can be, makes it virtually impossible to evaluate the impact of this proposal in terms of how it impacts not only the career path of workers, but also how it can possibly track Merit and Fitness components, and also how it relates to the legally established Compensation System which must be negotiated with the exclusive Collective Bargaining Representatives of the impacted workers.

This lack of clarity acts to prevent all transparency in determining whether or not there can be any legitimate method of following whether or not job bands accurately reflect any type of particular work, and whether or not established pay rates relate in any way to actual work, and whether or not there is any genuine evaluation of the so-called "competencies" needed to engage in particular work, or whether or not workers within a Job Band are being consistently evaluated, "advanced" or considered for advancement.

Without a much fuller definition of Job Band and what titles can be in a Job Band and how that is determined, (and how it is appealed), it is nearly impossible to fully comment on these proposed rules. The problems that will exist if a job band is 3 titles in a Title Series, expand exponentially if the band is 6 titles within 2 title series, or 9 titles within 3 titles series, or potentially hundreds of titles encompassing such things as "Financial Services" or "Social and Family Services" or "Health services."

The Public and the Commission members themselves deserve to know what the meaning of the core of these changes are prior to the comment period being closed.

Discussion of the differences between “Advancement” and “Promotions” and how this violates the Constitutional and Statutorily required system of Merit and Fitness.

Under the current system, which is consistent with the Constitution and Statute, promotional examinations have three parts. First, there is the application, which determines whether or not the employee has met the eligibility requirements for the position. Then there is the formal examination. That examination can be in the form of an actual test or a submitted resume that is specifically and individually evaluated and scored and certified. Once certified, based upon the Rule of Three, employees are selected for promotion and appointed to a Working Test Period. During the Working Test Period, employees are to receive Interim Evaluations. The Working Test Period is 3 months long in Local Government, and 4 months long and can be extended to 6 months in State Government.

Eligibility for a promotion is as of a specific date and time, and the certified examination list exists for a particular length of time and applies to a particular examination scope.

This is what provides for the clear evaluation of Merit and Fitness through competition. At a given moment in time, a given number of employees are eligible to compete, they do compete, and they are scored *against each other*.

Under the proposed 4A:3-3.2, there is no moment in time during which a given set of eligible workers are compared with each other to determine who is most meritorious and most fit. Instead, workers achieve “competencies” on a rolling basis, and management selects whom they want. There is no objective competition between a given pool of workers to determine who is best qualified for the job, rather the competition is between workers to determine who is most liked by the “advancer” – management.

Those workers who are chosen then complete a "development period" instead of a Working Test Period.

If a worker "fails" to complete the six-month period (this language appears to be an absurdly tortured attempt to differentiate failing advancement instead of failing promotion) then the worker can file a non-contractual grievance that will be reviewed by the same management that failed him or her, whereas under current rules the worker could file an appeal and be heard by a neutral Administrative Law Judge.

This entire process is designed to bolster an entirely false construct in which advancement is differentiated from promotion. Why? Because the law and the Constitution require that promotion be competitively determined by examination, and require that promotions be made on the basis of Merit and Fitness and not favoritism and require that workers who fail a probationary promotion be entitled to mount a challenge if the failure was due to Bad Faith.

The historic mission and purpose of the Civil Service system is:

1. Make sure that Government is staffed by the those who have been objectively and competitively determined to be most meritorious and fit to serve;
2. Protect Government service from political pressure
3. Protect individual Government Workers from political pressure

In redefining promotions between titles to advancement within a job band, 4A:3-3.3 not only fails to meet the requirements of the historic mission and purpose of the Civil Service System, it directly encourages the opposite. There is no competition among workers as to ability, only as to favor. Since the choice as to who to advance is anyone who meets the "competencies," by definition all those who do are equal, and not selected based upon who is most meritorious and fit. There is no prohibition or way of monitoring a prohibition for making a decision to appoint one individual who meets the competency level over another based upon political patronage, favor, cronyism,

discrimination or otherwise, and there is no way for any worker not selected for advancement or "failed" during advancement to present before a neutral body, evidence that they were not selected or were failed because of political pressure.

In addition, the prospect of relying upon the "advancement" system vs. the promotional system, obviously chills open political differences, debate, protected union activity, demand for fairness and equity, and protection of the public interest over the interest of the "advancer."

Over 150,000 workers employed at every level of government will have to balance the likelihood of advancing in their career or pleasing or angering their supervisor or manager. This will be true even if they previously demonstrated their extreme competence and excellence in their job. Even those with the greatest capacity for excellence will be equal with those who marginally meet the competency level. The distinguishing characteristics between workers will be how well they please the "advancer" as opposed to their work.

This proposal fosters mediocrity, patronage, discrimination, and political extortion. Not only that, but it removes the small failsafe when such abuse slips through the cracks under the current system. It removes the Bad Faith standard and the right to be heard by the Office of Administrative Law.

Other parts and sections of new rule 4A:3, including 3.3, 3.5, 3.6, 3.7, 3.9 and the paragraph recodifications under subsections (c), eliminate Civil Service and Administrative Law review where an employee challenges out of title work, or what level on a job band they are placed or other title challenges. In all cases, these are turned into grievance appeals to the appointing authority.

In Local Government, Civil Service will have no responsibility for monitoring, advising, overseeing, reclassifying or overturning any change in any title level or classification. It becomes nothing more than a record-keeper.

The rule, effectively, turns Civil Service on its head, turning a competitive process that results in the most meritorious and fit going to the top of a list for appointment, to a process where everyone is part of a pool at the margins of competency, and individuals are selected based upon favoritism.

The proposed Rules impact Collective Bargaining Agreements and Units

Depending upon how broadly titles are banded, there will be job bands that cross collective bargaining units. The wage scales for bargaining units can differ and that could mean that the next pay rate for the next higher level in a band, could also be different. For example, if CWA represents Widget Makers, and IFPTE represents Gadget Makers, and they both end up in the Widget/Gadget/Cigar Makers band, and the CWA wage scales are different from the IFPTE wage scales, what does that mean in terms of pay advancement? If there are other terms and conditions of employment that relate to pay scales, for example, how much someone gets as a bonus depending upon their pay scale, or whether or not they get a Clothing Allowance, and they end up in combined union band, how does that impact those terms and conditions of employment?

(It was exactly because different unions represented similar workers in the Judiciary and that there were different terms and conditions of employment and different wage scales, that the job banding for Judiciary was negotiated, very complex and took many months to accomplish.)

There are Local Government units where the Collective Bargaining Agreement states that workers fall under the CBA only after the worker passes the Working Test Period. These Agreements sometimes refer to a 90 day period after which the employer begins to deduct dues. If a worker "advances" to another level where they are represented by a different union, how does that impact the CBA that discusses the Working Test Period.

Veterans Preference and the New Rule

Because Veterans and Disabled Veterans cannot be bypassed by non-Veterans and non-disabled veterans on a certified promotional list – the elimination of promotion directly eliminates this legally and morally promised advantage for veterans. Depending upon how broad the job bands are, this rule will permit the bypassing of Veterans and Disabled Veterans in advancement in almost all jobs. Veterans and Disabled Veterans will only be able to claim that advantage when there are actual “promotions” between non-supervisory bands and supervisory bands. In order to be eligible for promotion to a supervisory band, veterans and disabled veterans will have to have been “advanced” to the top level of whatever band they are in, at the discretion of management. **They can be bypassed for advancement.** If this Rule is passed as is, Veterans who would have had to have been appointed to a higher level, will be able to be bypassed. The proposed rule again seeks to replace the word promotion with the word advancement and in doing so will now allow for the bypassing of eligible veterans and disabled veterans in moving up in their careers. Once those veterans are bypassed for “advancement”, they are no longer eligible for “promotion” and it is only in promotion that they maintain a preference.

The fact is that 4A:3-3.2 effectively eliminates statutorily guaranteed Veterans Preference for thousands of veterans and disabled veterans.

I made a specific OPRA request of the Civil Service Commission for statistics on Veterans and Disabled Veterans and promotional examinations. I have not as of yet received any records, however, I think it is useful to review a hypothetical scenario to see what happens to Veterans and Disabled Veterans under these proposed rules.

Let's assume that there are 236 Accountant 1's, 182 Accountant 2's, and 122 Accountant 3's, and there are 92 Supervising Accountants.

Assume that 5% of all Accountants 1, 2 and 3 are Veterans or Disabled Veterans.

Assume that all of the Veterans or Disabled Veterans pass the promotional examinations for any of the Accountants 2, 3 and Supervising Accountants and are higher than the last 3 positions on the list.

If so, at least 12 Accountants 1, 9 Accountants 2 and 6 Accountants 3, a total of 27 Veterans, would have the opportunity to exercise Veterans Preference for Accountant 2, 3 and Supervising Account positions. In other words, if all Veterans pass the examination, they will all at some point have some opportunity to exercise Veterans preference.

In order to compare what happens to Veterans under promotions and what happens to Veterans under "advancement", I assume that advancement or promotion happens in order, with first Accountants 3 promoting to Accountant 2 and then Accountant 2 promoting to Account 1 and so on.

12 Veteran Accountants 1, would all take the examination for Accountant 2, not get bypassed and be appointed to Accountant 2 positions. Then there would be 21 Accountant 2s who could take the examination for Accountants 1, not get bypassed and be appointed to Accountant 1. Then there would be 27 Accountants 3 who would all be eligible to take the examination for Supervising Accountant, they would pass and they would not get bypassed and they would all get appointed to Supervising Accountant.

However, if we take this same scenario under Job banding, and of the 12 Veteran Accountant 1's, even though all achieved competency, only 6 are chosen to advance to Accountant 2, and then out of the 6 advanced Veteran Accountants and the 9 original Accountant 2's, management chooses to only advances 4 to Accountant 3, then there would only be the 4 advanced Accountants 2 and the 3 original Veteran Accountants 3 who could take the promotional examination for Supervising Accountant. Only 7 Veterans would have the opportunity to exercise their rights under broad banding.

One could argue that management might choose more than 6 to advance to Accountant 2, and more than 4 to advance to Accountant 3, but in fact, management

could choose to advance fewer than 6 and fewer than 4. *No matter what, advancement reduces the number of Veterans and Disabled Veterans who will be eligible to use preference in an examination.*

Like other workers, Veterans and Disabled Veterans have to pass an examination and they have to score higher than non-veterans to not be bypassed. They have to otherwise prove their Merit and Fitness for the position. The Statute however give Veterans the one advantage of not permitting management to bypass them using a Rule of Three. In *Foglio*, the Court said that management had to choose the top candidate, but could have a legitimate reason to select from the top three. With Veterans and Disabled Veterans, Management is expressly not given that discretion in the Law. Veterans or Disabled Veterans status makes that worker more qualified for the job and they cannot be bypassed.

The proposed Rule is directly contrary to the Law and the recognition that being a Veteran or Disabled Veteran, makes that worker more Meritorious for the purposes of advancement if they have a higher score no matter what. The proposed Rule makes all those who achieve competencies equal without regard for either their ability as demonstrated by a higher score on an examination or their status as a Veteran or Disabled Veteran.

The New Rule is a back door attack on the Compensation System

N.J.A.C. 4A:3-4.9 provides for a change in advancement pay adjustments. Current rules explain how pay is adjusted in promotion. This paragraph again makes clear that advancement is, in reality, no different from promotion, except as to make it possible for the Commission to skirt the law and make it possible to advance individuals who would not otherwise be eligible for promotion and bypass individuals who would have been appointed to a promotional position. In addition, the description in the new paragraphs that will permit for advancement pay even where employees appointed to a

title with a higher class code but who have not served in a lower title continuously for at least four month preceeding the advancement's effective date is very confusing. This lack of specificity and clarity as to what titles are in a job band and who and how one advances through that band opens the door for abuse in the compensation system.

Civil Service jobs are designated into titles, with class codes that correspond to pay rates, with job descriptions, and knowledge, skills and abilities that correspond with benchmarks that correspond to ranges on a Compensation System. This Compensation System makes sure that there is a direct relationship between the job and its rate of pay, and that advancement in career appropriately corresponds to advancement in pay.

New Jersey has been the scene of scandal after scandal where non-Civil Service jobs, outside of the Compensation System are outrageously compensated, or even compensated for not doing anything.

These proposals appear to permit New Jersey Government to manipulate all positions, not only unclassified positions – with full impunity. Titles and bands and classifications and pay rates can all be revised with nothing more than a report to the Civil Service Commission, and in the end, individuals can effectively be paid or receive an “advancement pay adjustment” without anyone truly understanding what they are doing that is different or more difficult, and why they should receive that adjustment. In the end, this regulation will result in a **wage grab** for those who are politically connected, or favored by the politically connected.

Layoffs and Job Bands

Under the proposed rules, layoff rights attributable to titles would be attributable to job bands. Evaluating the impact of job banding on layoff rights without having an adequate definition of job band is nearly impossible.

After the rules were proposed, I met with representatives of the Civil Service Commission, in response to a request to meet and discuss these rule proposals. The Commissioner agreed to meet with a limited number of union representatives to discuss only the impact of the proposals on layoffs. Only CWA, AFSCME and IFPTE were invited to the meeting, in spite of the fact that workers represented by Civil Service Associations, Teamsters, UAW, IBEW, OPEIU, SEIU and possibly dozens of other unions are impacted by these rules.

At the meeting, we were provided with the very limited scenario where two title series made up two job bands: in this case – “Widget Makers 1, 2 and 3” and “Gadget Makers 1, 2, and 3”. Representatives of the Commission demonstrated for us examples where if seniority and bumping were limited to the band, instead of the title, there was a reduction in the number of “bumps.”

However, the explanations of layoff scenarios vanished when the representatives were asked what would happen if the band included more than one Title series. Layoff and seniority rights are guaranteed by statute. It may not be objectionable or in violation of the statute if the order or displacement of a worker is determined inside a title series instead of individually inside titles. This changes radically, however, if Widget Makers and Gadget Makers and Cigar Makers are in a Widget/Gadget/Cigar layoff band, instead of in separate bands, particularly if a Supervising Cigar Maker can ensure that Cigar Makers are protected over Widget and Gadget Makers by advancing Cigar Makers in the band and not Widget and Gadget Makers. Once again, the lack of specificity and clarity in the definition of what a job band makes evaluating the impact of layoffs on job bands nearly impossible.

In addition, at the meeting on layoffs, the Commission representatives were unable to reasonably explain what occurs with variants in job bands and how they would be handled in a layoff. I was told that a Gadget Maker Bilingual, for example, would be outside of the Gadget Maker band. Under current rules, where there was a Gadget Maker 1,2,3 and a Gadget Maker Bilingual, a Gadget Maker Bilingual targeted for layoff would

have the right to displace either less senior Gadget Maker Bilingual workers *or* less senior Gadget Makers in the general title.

It appears that under the proposed rule, there is a significant narrowing of layoff rights for workers in variant titles, and workers in bilingual titles will be segregated from workers in general titles.

The Proposed Rules will exacerbate an already significant problem of patronage and abuse.

The 2011 State Workforce Profile, attached here as **Exhibit D** indicates some interesting facts about the State workforce.

The Profile indicates that there are 48, 633 employees in the Career Service in the Executive Branch of State Government and 18,719 employees in the unclassified service. That means that nearly 19,000 positions out of 67,352 are potentially subject to patronage and political pressure.

Under Governor Christie, the unclassified and unrepresented employees in the Governor's Office were increased by 18% over the number of employees under Governor Corzine, during the same time that the overall workforce decreased by 5% and new hiring in State Government decreased by 13%.

Also under Governor Christie the title of "Governor's Office Secretarial Assistant" began to be used throughout all Departments of State Government. These are unclassified appointments of clerical workers and there are approximately 75 of them working outside of the Governor's Office.

*A copy of a list of these appointments is attached here as **Exhibit E**. That list shows that none of these workers are employed in the Governor's office.*

There are also hundreds of Government Service Representatives, 1, 2 and 3. All of these are unclassified positions, they are all patronage appointments and they are throughout state government in a dozen different departments. They all do different jobs. They are paid at different amounts. They sit next to and do the same jobs as other Classified workers but are generally paid more.

A copy of a list of these appointments is attached here as Exhibit F.

Neither the Governor's Office Secretarial Assistant nor the Government Service Representative has a Job Specification. The Governor's Office Secretarial Assistant is not even listed on the Civil Service Website. The Government Service Representative is listed, but when the Job Specification is "clicked" on an error message comes up that says:

"The page you have requested cannot be displayed because it does not exist, could have been moved, or is temporarily unavailable. The job description may not have been input to our data base or a job description may not exist. . . ."

A copy of that page is attached here as Exhibit G.

The fact of the matter is that even with a Career Service system, this Administration (and others before it) has displayed contempt for the Merit and Fitness system, sliding in hundreds, and even thousands, of political appointments even at a time when the State Workforce is shrinking. We could provide thousands of examples of purely patronage appointments in State Service, and examples of how those workers employed under the Career Service are better qualified, more dedicated to public service, and are paid less.

In Local Government it may be even worse. What better example is there of the mischief that is made when politically connected individuals abuse their positions for the

purpose of influence and greed than that involving the Middlesex County Sheriff, Joseph Spicuzzo who received between \$5,000 and \$25,000 from individuals "seeking positions or promotions in the sheriff's office."

A copy of the Attorney General's Press Release on his indictment is attached here as Exhibit H.

We could demonstrate dozens, perhaps hundreds, of examples of abuse of the public purse in hiring, and promoting and gaming the system, from the largest employers such as the State of New Jersey and the New York/New Jersey Port Authority, to the tiniest burghs in New Jersey. The fact is that hiring and promotions for political purposes is part of the underside of public employment and the Civil Service Commission should be seeking to find ways to prevent it as opposed to encouraging it.

Several other examples of patronage abuse are attached here as Exhibit I.

The Civil Service System has helped to promote a diverse workforce. The proposals will reverse these gains.

The State workforce profile shows us that in 2011 the workforce was 56% female and 43% people of color. 71% of all workers were women or people of color. (page 37) In other words, this is a workforce that is overwhelmingly made up of people who are discriminated against in the private sector. There is a reason for this, and that reason is that the hiring, promotions, separations from employment, wages and terms and conditions of employment are not based upon individual prejudice, but are instead based upon objective measurement, Merit and Fitness system, and seniority and collective bargaining.

Argument has been made that public employment should be more like private employment, but it is precisely because public employment is NOT like private employment, that we do not have the same level of discrimination that exists in private

employment. Under the current Civil Service System, women do not earn \$.77 for every \$1.00 men earn in the same job. If the current promotional system is replaced, however, with generic job bands and meaningless job descriptions and "advancement" instead of promotions and no appeals and no oversight, there is every reason to believe that the public workforce will begin to mirror the private workforce, that is that advancement will be pale, male and discriminatory.

There are no industries in the private sector where there are middle class jobs with wages of over \$50,000 a year and pensions and health benefits, where 71% of the workforce is women and minority. What private sector area of employment is there with 43% of the workforce people of color where there are opportunities for advancement based upon merit, and there is internal mechanism to raise issues of discrimination.

The public workforce has long been a place of employment for people with disabilities, where they could get in the door and then advance based upon their abilities, and not be left behind based upon their disabilities. At the single public hearing the Commission held, Ethan Ellis, the President of Next Step and a former Division Director and Civil Servant, testified as to the impact these rules will have on people with disabilities. No one from the Commission bothered to attend this hearing, and therefore did not see this severely physically disabled but remarkably brilliant and able individual testify about the critical role that the examination system played in giving him opportunity. Nevertheless, I urge the Commissioners to review Mr. Ellis' testimony and ask one of the staffers who ran the tape recorder what it was like to be in his presence. It is sad but true that even well-meaning individuals hold prejudices, assuming that people who speak with an accent, or who have a disability are less intelligent, or less capable, or irrationally thinking that certain jobs are better suited for men, or for someone younger.

(I was present at an Assembly Hearing where the then Mayor of Orange testified that he wanted to eliminate Civil Service because in a layoff, he would like to be able to lay off "a senior secretary and *hire younger and more energetic ones.*" Since that time,

Mayor Hawkins lost election, but was rewarded for his illegal sexist and ageist testimony by being provided with a patronage appointment heading up the Governor's Urban Affairs function.)

The negative impact of these proposals will disproportionately affect women, minorities, people of color, veterans, LGBT workers, workers with disabilities and other protected classes of worker.

The process of collecting public comment on this Rule has been wholly inadequate and violates at least the spirit if not the letter of the Law.

These Rules were proposed on March 18, 2013. A single public hearing was held on April 10 at 3 p.m. at the Civil Service Building in Trenton in a room that did not hold more than 50 people.

In more than 30 years that CWA has represented State Workers, we have never seen such a far reaching set of proposed Rules, other than those proposed to implement 11A. During that time, every time Civil Service has published rules and we have asked for hearings throughout the State, the Commission has always held such hearings.

In fact, I spoke with Henry Maurer shortly after the release of the proposals and asked for such additional hearings and he indicated to me that if I requested them, such hearings would be scheduled. I sent a letter requesting the hearings on March 26.

That letter is attached here as Exhibit J.

The Commission rejected my request for further hearings, in spite of the fact that these rules impact not only State Government but Local Government as well, and a mid afternoon hearing in Trenton is obviously not sufficient to permit a full hearing of the matter.

Over 3000 New Jersey Residents submitted requests for further hearings and the Commission rejected those requests as well. (Those individual requests have been submitted to this record by Adam Liebttag and by Eric Richard.)

When the single hearing in Trenton was held, no member of the Commission attended. Over 200 people had to wait outside of the building and had no opportunity to hear what was said at the hearing or to testify themselves.

The Commissioner has refused to answer questions about what the meaning of the proposals are. The Commission has not heard from a single individual as to why there are concerns about the rules. The Commissioner refused to have any member of his Staff or Commission appear before the Assembly State Government Committee to explain the regulations.

Every effort has been made to pass the most far reaching change to the Civil Service System in 100 years, without review, without answering questions and without careful consideration by the public.

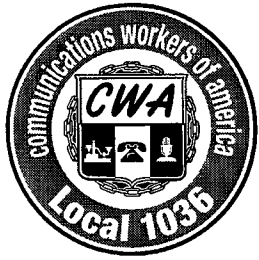
What should be done instead.

CWA recommends that the Civil Service Commission leave the public record open while engaging in a series of public discussions with stakeholders, including representatives of Unions to explore better options.

These options could include, but not be limited to:

- 1. Enhancing outreach and assistance for employing Veterans and Disabled Veterans in the Classified Service;**
- 2. Exploring and negotiating generic clerical titles where appropriate, and using electronic examinations to provide for effective and efficient testing of such titles.**
- 3. Set standards for consolidation of titles and title series where appropriate.**
- 4. Enhance oversight of the appointment and selection process so as to curb political and patronage abuse.**

We also recommend the rejection of job banding, the rejection of any actions that narrow the rights and opportunities of Veterans and Disabled Veterans to exercise preference in public employment, and we recommend the rejection of any change to Civil Service Rules that eliminates competitive testing, and that will disproportionately injure and disadvantage women, people of color, workers with disabilities, LGBT workers, older workers, and veterans.



Communications Workers of America Local 1036

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June 19, 2013

Testimony to the Senate Legislative Oversight Committee Opposing the Civil Service Commission's proposed "job banding" rule proposal

To the Members of the Committee,

Please accept this brief testimony opposing the "job banding" rule proposal currently issued by the Civil Service Commission.

In addition, attached is a copy of my comments submitted to the Civil Service Commission as part of the public comment period. These comments contain important additional arguments opposing this rule, **including the legal argument that the rule proposal conflicts with legislative intent, the NJ Constitution, and other statutes.**

Essentially, the Civil Service Commission is attempting to bypass all existing statutory definitions of "title" and the procedures established for "merit and fitness" to examine and select candidates for hiring and promotion, to effectively and fairly determine layoff rights, and to protect against discrimination, favoritism and patronage in NJ government agencies.

Communications Workers of America Local 1036 strongly opposes the proposed "job banding" rule proposed by the Civil Service Commission and asks the Legislature to oppose it as well. The rule proposal from the CSC contradicts legislative intent in that it will demolish major personnel components of the New Jersey Administrative Code and its underlying statutory framework which establish merit and fitness, protections against discrimination in public workplaces, and veteran's preference. Most importantly, the civil service system has defended against patronage and favoritism in all levels of government – not always perfectly – but the CSC's rule proposal will explicitly open the floodgates by banding titles and directly allowing "management" to determine who to hire, who to promote, who to demote, and who to lay off at its sole discretion without examination or outside review of qualifications.

CWA Local 1036 represents about 7,400 members working in all levels of NJ government, at the state, county, and municipal level as well as in the NJ Judiciary. In the state executive branch, we represent the Department of Environmental Protection, Department of Health, and the Department of Agriculture. The majority of our membership at each level of NJ government is in the civil service system and although we certainly have our complaints about the system and about the Civil Service Commission overall, this rule proposal would not be "reform" ... it would be a dismantling.

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On April 10, the CSC held a public hearing on the rule proposal in a small meeting space that could hold only about 40 people. The meeting was the only opportunity for public comment and questions in person on this rule, which affects over 100,000 public workers across the state.

The "job banding" rule consideration process is fatally flawed.

a. The public hearing process was a sham.

CWA and other organizations delivered close to 3,000 letters from members and the community asking for additional public hearings to be scheduled so full public participation could be engaged. Despite this outpouring of requests for additional public hearings, and in contrast to prior CSC administrations which have scheduled multiple public hearings around the state and at times convenient for public input, the current CSC has denied our requests. Therefore, the sole public hearing was essentially held in a closet, on a weekday at 3pm when all of the impacted workers and most NJ residents were unable to attend.

b. Decision makers have no experience with civil service, are potentially unqualified to administer this system.

The decision whether to approve, reject, or modify the rule proposal will be made by the appointed members of the Commission. Of a 5-member Board, currently one seat is vacant. The other four seats are made up of:

Robert Czech, the Chair appointed by Gov. Christie; a cabinet appointment.

Richard Williams, whose public sector experience is as an administrator in Somerset County, which is a largely-unclassified, non-civil service county.

Thomas Perna, the CEO of a privately held financial securities company; (no public sector experience, no civil service experience.

Robert Brenner, a Somerville attorney specializing in auto insurance and personal injury cases.

In short, the decision-makers on this rule proposal are not only the usual political-appointees but they literally have almost no experience with the civil service system, no loyalty to its goals or practices, and no basis for making an informed decision.

c. The CSC conducted a flawed “pilot” program over a few months on less than 1% of the public sector workforce and declared false success.

In the rule proposal document, the CSC claims it conducted a “pilot” by banding certain titles in the Department of Treasury and the Civil Service Commission itself. All pilot program titles are non-represented and confidential. They essentially have no rights of complaint or union representation since their complaint would be directly to the CSC administration that chose to band their titles.

From our estimation, the pool of employees in the pilot project was less than 175 in total. Assuming there are 70,000 state executive branch employees, that means the job banding pilot was conducted on ***only .25% of the workforce – a quarter of one percent***. The pilot was also conducted without notice or input from the various union representative organizations in the state.

Further, there were no county or municipal government units included in the pilot and the pilot only ran for a few months. Comparing the small pilot population to the total of executive branch and thousands of civil service county and municipal government units, the pilot sample was exceedingly small – fractions of a percent of the public workforce.

The pilot does not point to future success – it points to a flawed and self-certified process. The sample was tiny. It wasn’t representative of the state employee population. It wasn’t representative of the local government population. It was comprised entirely of positions that are confidential and totally under Administration control and really can not complain or grieve without fear of reprisal. No wonder it was such a success.

The CSC cites the NJ Judiciary “banded classification system” as the purported template for the “job banding” rule; the Judiciary’s system is actually much different than the CSC’s rule, was negotiated in labor contracts, and includes labor representation on dispute resolution panels – none of which are in the CSC proposal.

First, it is important to note that CWA Local 1036 in particular has extensive experience with the Judiciary’s banded classification and compensation system. We represent 2,000 employees in three different bargaining units in the Judiciary and have worked with the banded system since its inception a decade ago. We confidently and unequivocally state to you: the CSC job banding system is NOT the Judiciary’s system.

The Judiciary's system applies to a much smaller workforce than is being proposed by the CSC in its rule. The system administers a smaller group of titles, for a smaller and less varied group of functions in a closed system – not the thousands of different functions performed by a workforce in municipal, county and state agencies.

Perhaps most importantly, Judiciary job bands were **negotiated** with the Judiciary a decade ago across a bargaining table. As part of judicial unification of the individual county courts into a system, it was necessary to merge titles, pay scales, and job duties into a coherent and unified classification/compensation system. Multiple unions negotiated a banded system with the Judiciary. The classification system was incorporated into contracts and has been modified over time through the collective negotiations process, not by rule proposal which is essentially the unilateral will of the Governor.

We were able to create a banding system from scratch because unification presented a challenge and an opportunity to do so. We were not throwing out a single, unified system such as civil service that preceded banding. It also took many months of intense negotiations, use of outside experts in classification, and full input from many stakeholders to create the Judiciary's broad banded system. Although there have been disagreements over the years about title usage and such, its creation was a product of such careful, detailed, and full-throated discussion that is completely lacking in the current CSC process.

Further, the Judiciary workforce has both unclassified (not in civil service) and classified employees (in civil service). Therefore the Judiciary actually does adhere and use the existing civil service rules for some of its employees, and broad banding for other unclassified workers. The broad banding system is a specific classification system negotiated and creating parameters for a unclassified workforce, not the classified workforce. If the CSC really wanted to adopt the Judiciary's broad banded system, it would do so for unclassified workers, not the classified service. Instead it is seeking to apply a system for unclassified workers to all classified workers, which is really just a backdoor way to make all workers unclassified.

The CSC job banding rule is also notably different from the Judiciary's system in the lack of its management of the new proposed system. In the Judiciary, the banding system is managed by a Classification Review Panel upon which union representatives and outside neutrals sit. It is a panel with management, labor and outside experts reviewing classification disputes – not a politically appointed board. The CSC proposal does not create a classification review panel. It does not create union seats on such a panel. It does not use an outside neutral expert in classification on such a panel. Instead it locates all power within a chair or a commission of wholly political appointees.

Ironically, CWA and other unions are currently in active negotiations with the Judiciary and it has had extensive discussion with us to expand the bands and create new additional titles which would show differentiation. In other words, it sees the limits in broad banding and finds that title variation is advantageous to management.

The rule itself is confusing and will make government workplaces MORE difficult to administer, not less.

The CSC's rule proposal states that banding would only be applied to certain titles, not all titles. Which titles would be banded? Why? Which titles would be excluded from banding? Why? There are no answers to these questions.

Banding would create a more complicated system that runs in parallel to the existing system – some titles would be under existing rules and some would be banded. How is this “more streamlined” for local government managers and employees? We believe that running a new parallel system with less rigorous standards of review, less merit and fitness, and less anti-corruption and anti-patronage safeguards is opening a very dangerous door.

The rule is not clear on what happens with existing promotional lists, special reemployment lists, and reclassification appeals. There are hundreds of actions awaiting response from the CSC to appoint qualified, tested, and ranked candidates to important positions in our governments. Are they being held up while the banding rule is considered?

If you oppose the idea of giving more flexibility to public agencies to hire political patrons through a non-competitive process, or if you oppose career public servants like Research Scientists, Nuclear Engineers, Child Protection workers, Newborn Screening staff, and others being hired and fast-tracked based on subjectivity rather than experience and examination, then oppose the CSC's rule.

Sincerely,

A handwritten signature in black ink that reads "Adam Liebtz". The signature is written in a cursive, slightly slanted style.

Adam Liebtz
President



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May 17, 2013

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
PO Box 312
Trenton, NJ 08625-0312

Via hand delivery

Re: Comments on Proposed "Job Banding Program"
Proposal No. PRN 2013-049

Proposed Amendments: N.J.A.C. 4A:1-1.3; 4A:2-3.7; 4A:3-1.2, 2.3, 2.6, 2.9, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, and 4.9; 4A:4-1.9, 2.4, 2.5, 3.2, 5.1, 6.3, 6.6, 7.1, 7.1A, 7.6, and 7.8; 4A:7-3.1; 4A:8-1.1 and 2.2; and 4A:10-1.1 and
Proposed New Rule: N.J.A.C. 4A:3-3.2A

This letter is submitted as comment on the Civil Service Commission's "job banding" proposal to amend various sections of the New Jersey Administrative Code as detailed above.

I am the President of Communications Workers of America Local 1036, which represents 7,400 members who work for every level of New Jersey government. Our members are public employees in the state executive branch, NJ Judiciary, various county government units in Burlington, Hunterdon, Cumberland, Monmouth, Atlantic, Mercer, Bergen, and in over 25 municipalities around the state. We represent classified and unclassified employees in many different bargaining units, including white collar, blue collar, professional, clerical, and supervisors in technical, professional, legal and other fields.

This letter also memorializes the submission of over 2,700 letters from other individuals submitting public comment opposing the rule proposal and requesting additional public hearings. Each of these individual letters should be recorded by the Civil Service Commission ("Commission") as public comment submitted in accordance with the public notice. The public comments addressed to Director Maurer are attached as Appendix A. The letters addressed to Chair Robert Czech are attached as Appendix B.

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Many of these individual letters express opposition to various specific aspects of the banding proposal. In addition, over two thousand of them specifically request additional public hearings to be held on this issue so that adequate public input can be collected and many questions regarding the proposal can be answered. Despite the delivery of these thousands of requests for additional public hearings to the Commission on April 10, 2013 to both Mr. Maurer and Commission Chair Robert Czech, there has been only one public hearing on this subject.

We therefore – both individually and collectively – reiterate our requests for additional public hearings prior to action on the proposal.

My comments on the rule proposal are as follows:

I. There are procedural grounds to delay action on the rule proposal.

The Commission's proposal radically alters a civil service system that has been in place for over two decades and is used by hundreds of public sector employers ranging from the state executive branch, to agencies and commissions, to county employers and subsidiaries, to municipal units. The proposal was launched after a brief pilot that lacked public input at the outset and Commission disclosure of its results. "Job banding" would change the classification system for over 100,000 public employees and their employers, yet there has been little opportunity for meaningful public input and zero expression of support for the proposal.

For a proposal of this magnitude and import, full public access must be given and entertained from stakeholders. The Commission scheduled a single public hearing on April 10, 2013 at 3pm on a workday. It is inconceivable that most affected employees or employers could attend this hearing. The hearing itself was held in a small meeting room that legally accommodates about 50 persons. Public access to comment on this rule has been frustrated by the scheduling of this single hearing in both timing and location.

At the public hearing, those who did testify raised several significant issues dealing with job banding's effect on political patronage, discrimination and civil rights, career promotional opportunities, and other issues. Not a single person in attendance testified in favor of the rule proposal.

The Assembly State Government Committee, a legislative body, convened a special public hearing on the job banding proposal on Monday, May 13, 2013. Again, all those who testified were in opposition to the proposal and raised similar concerns. There are no

visible public supporters for this rule and there is no known request for the Commission to undertake the banding approach.

There is a lack of clarity within the proposal itself, which obfuscates the purpose and impact of the proposal. For example, the proposal states that “title” and “title series” will be replaced by “band” in certain sections of N.J.A.C. 4A, but how can both title and title series be replaced? Does the “band” replace the singular or the group? Either or both replacements could lead to questions and comments from the public on the proposal, but the lack of clarity and lack of answers from the Commission to any query frustrates public input.

In the past, major alterations to civil service were scheduled for multiple public hearings. For example, the “mandatory furlough” rule was open to multiple public hearings in different locations and at different times. It can hardly be asserted that this banding rule is any less controversial or has any less impact on the public sector workforce. This Commission appears deliberately recalcitrant to offering any additional opportunity for public input. As stated in the introduction to this letter, the thousands of letters poured in to the Commission seeking additional hearings have been met with stubborn silence.

II. The Commission relies upon a “successful” pilot program to justify job banding, but the pilot was self-validated and self-fulfilling, was conducted with a tiny sample of state titles for only a few months, included no local service positions, and does not predict future success for job banding.

In the rule proposal, the Commission claims it conducted a “job banding pilot program” by banding certain titles in the Department of Treasury and in the Civil Service Commission. (*In The Matter Of Job Banding For Human Resource Consultant, Personnel And Labor Analyst, State Budget Specialist, And Test Development Specialist Title Series Pilot Program 5/16/2012*). There are several problems and factual inaccuracies in the Commission’s description of the pilot, which ultimately undermine its reliance on this pilot to support the rule proposal.

First, all pilot program titles are not represented by a union and are designated confidential. They essentially have no rights of complaint or union representation since their complaint would be directly to the Commission, which chose to band their titles in the first place. The piloting of Commission titles had a chilling effect and it is likely that there are complaints from among the employees subjected to the pilot over promotional opportunities, assessment of their competencies by managers, or other issues. The

Commission's proposed rule omit any mention of employee complaints during the pilot or how those complaints were resolved.

Second, only four title series were included in four job bands. There are hundreds of titles in state government, so the piloted four title series represents a fractional sample of the population.

From our estimation, the pool of employees in the pilot project was less than 175 in total. Assuming there are about 70,000 state executive branch employees, which means the job banding pilot was conducted on only .25% of the workforce – one-quarter of one-percent. When adding in the thousands of local service classified employees who will become banded if the proposal is adopted, the pilot program only sampled an infinitesimal population and then declared "success."

Third, the pilot was conducted without notice or input from the various union representative organizations in the state. As unions, we must adhere to and seek to enforce N.J.A.C. 4A, N.J.S.A. 11A, and all related civil service procedures in many bargaining units in all levels of government. We are stakeholders and would offer valuable input, but we are also responsible for enforcing these rules and regulations to ensure equity, transparency, and merit to hiring, promotions, and layoffs in government units.

Fourth, no input on the pilot was solicited from local service employers and no report was made to these employers on the outcome of the pilot. These local employers rely on civil service procedure to operate effectively for the public, so despite the superficial assurances in the Commission's rule proposal explanation, the reality is that it proposes a very new and very different classification system for hundreds of local units that are unprepared, uneducated, and ill-equipped to use banding in addition to the existing procedures.

The pilot did not include ANY titles or title series from local service. In fact, the titles in the pilot (Human Resources Consultant, Personnel and Labor Analyst, State Budget Specialist, and Test Development Specialist) are limited to use in state service only. The reality is that the pilot did not take into consideration the effect of banding on local service, the effect on local service collective bargaining agreements, or the effect on or input from local service employers and administrators to learn and utilize an entirely new classification system. It is completely flawed to apply the pilot to county or municipal local service.

Fifth, although the rule proposal states "the evaluation of employees for attainment of the competencies was documented twice a year on Competency Assessment Review (CAR) forms" the plain fact is that the pilot was only in effect for nine months (5/16/2012 through 3/18/2013) when the rule proposal was published. It is impossible that

competencies were reviewed “twice per year” when the pilot was only in existence for nine months.

Put simply, the pilot program was a sham. It omitted any local service titles which comprise thousands of employees who would be affected by the banding rule and local service is a very different animal from state service. The pilot only sampled Commission employees where the Commission had complete, unfettered control and no input, scrutiny, or opportunity for challenge from a union or elsewhere. The pilot was self-validated by the Commission after less than a year on a sample population of less than one-half of one percent of the affected employees, should this rule be adopted.

III. The proposed rule violates the Constitutional requirement for a “merit and fitness” system, and is in direct conflict with specific statutory provisions of N.J.S.A. 11A.

The proposed regulations are contrary to long-standing civil service law and to the New Jersey Constitution’s guarantee of appointments, selection and testing that free from political influence in that such actions are to be based on merit and fitness. The Legislature has made clear in its passage of Civil Service legislation and various reforms over the years that it is fully capable of addressing any issues that arise.

The Civil Service Commission has no authority to do what it seeks to do here – re-write the law. It’s claimed difficulties in administering exams and doing its statutory duty are not justification to violate statute. If such issues exist, they are for the Commission to bring to the attention of the Legislature to seek additional resources. The Commission is not permitted to do the Legislature’s work in rewriting civil service procedures and, there is certainly no basis for the Commission to rescind established civil service law by way of a proposed regulatory action.

The proposed regulation overturns key components of Title 11A in this *ultra vires* regulatory approach. The proposed regulation re-writes fundamental parts of Title 11A that link compensation to your “knowledge, skills and abilities” (not “competencies”). The proposal also disregards clear language specifying that “titles” are central to appointment and promotion (not “job bands”), and ignores the requirement that “titles” be filled by examination and testing, not the discretion of an employer.

The Commission is charged with implementing the Legislature’s findings and declarations that guide the specific provisions of Title 11A in subpart 1 of the New Jersey statutes. This direction requires that the Commission recognize meritorious performance and to separate

employees on the basis of performance, free from political coercion. To that end, the findings declare “the public policy of the state is to advance employees on the basis of their relative knowledge skills and abilities.” Knowledge, skills and abilities are tested for now, not ill-defined “competencies”, and if the Commission wants to change that it should go to the Legislature to seek such relief. The Legislature further declared that recognition of “such bargaining and other rights as are secured pursuant to other statutes and the collective negotiations law” is the public policy and yet the proposed regulations will, as noted herein, violate those bargaining and other rights. Local government collective bargaining agreements, for example, set different compensation levels for each title classification and the Commission’s banding will interfere with those agreements.

The proposed regulations directly contradict the Classification provisions of 11A:3-1 which only recognize “titles” as the basis for the classification system. In fact, the entirety of subpart 3 of Title 11A contains zero authority for the creation of the “job bands” that are the basis of this proposed rule. The quoted statutory section below illustrates the central importance of “titles,” not “job bands” to the Legislature’s promulgation of the civil service system. If the Legislature had intended to create ill-defined job bands that would supersede titles, it would have done so. It did not. The specificity of the Legislature’s vision, which is directly contradicted by this *ultra vires* proposed regulation is shown by the quoted section of Title 11A, 11A:3-1, below:

The Civil Service Commission shall assign and reassign titles among the career service, senior executive service and unclassified service. The commission shall:

- a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions;*
- b. Establish, consolidate and abolish titles;*
- c. Ensure the grouping in a single title of positions with similar qualifications, authority and responsibility;*
- d. Assign and reassign titles to appropriate positions; and*
- e. Provide a specification for each title.*

[N]SA 11A:3-1].

Specifically, subsections b. thru e. of the citation above make it clear that the Legislature is using “titles” as the basis for its classification system. There is no mention of “job bands.” The mention of grouping only refers to positions being grouped into a single title and the remainder discusses assigning appropriate titles. There is no authority for a wholly new system of job bands. This is a Legislative decision, not a Commission decision. If the Commission wants to implement job bands – not only as new nomenclature but as a new

function/structure for its classification system – then such a change requires legislative action. The Commission cannot change statute by rule proposal or adoption.

Third, the proposed regulations essentially remove competitively tested titles from the competitive division to a non-competitive system based on competencies measured at management's discretion, not by testing. This violates NJSA 11A:3-2 which recognizes the need for two divisions, competitive and non-competitive. The changes proposed here are not authorized and in fact the system proposed would also allow further politicization by transforming promotions that are competitively tested into "advancements" that are not.

Fourth, the proposed regulations violate the requirement of NJSA 11A:3-7 by changing the compensation plan for State employees without any negotiated agreement with the majority representative and by changing the compensation plan for all civil service employers to this unauthorized band system. The compensation system is predicated upon titles that are evaluated based on knowledge, skills and abilities. This change to a band system is not authorized by the statute and further fails because it is being done unilaterally. Further, subpart d of 11A:3-7, which concerns political subdivisions specifically provides that "titles" are the measure of salary. It states that "[e]mployees of political subdivisions are to be paid in reasonable relationship to titles and shall not be paid a base salary below the minimum or above the maximum established salary for an employee's title." Again, this is violated by the proposed regulations.

Subpart 4 of Title 11A is also blatantly violated by the proposed regulation. Among other things, the Commission's proposed regulation violates 11A:4-1, which states, in relevant part that:

The commission shall provide for:

- a. 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. The examinations may include, but are not limited to, written, oral, performance and evaluation of education and experience;*
- b. The rating of examinations;*
- c. The security of the examination process and appropriate sanctions for a breach of security;*
- ...*
- e. The right to appeal adverse actions relating to the examination and appointment process, which shall include but not be limited to rejection of an application, failure of an examination and removal from an eligible list.*

The proposed regulation further violates the Certification and Appointment section of the statute, NJSA 11A:4-8 which deals with the ranking of eligibles on a test and appointment from that certification. That ranking, like the tests that are held under subpart 4 of the statute all relate to titles and demonstrate further the Legislature's commitment to examination for titles as the basis for appointment. Job bands, competencies and advancement are concepts that are not statutorily authorized and if the Commission wants that authority it needs to get legislative approval for same. It cannot unilaterally take it when that is not authorized by well-established civil service law.

Finally, the proposed regulations violate legislatively enacted protections against arbitrary layoffs. In the guise of fixing the system, the Commission is proposing to eliminate established protections. The statute has one lengthy and specific statutory section in subpart 8 of Title 11A, and that is subsection 1, which addresses title rights. That statutory section requires that when a permanent employee is to be laid off that his or her "title" rights are protected. I quote this at length because it illustrates the centrality of a person's title to civil service law. Starting with subpart b of 11A:8-1, the Legislature states:

b. Permanent employees in the service of the State or a political subdivision shall be laid off in inverse order of seniority. As used in this subsection, "seniority" means the length of continuous permanent service in the jurisdiction, regardless of title held during the period of service, except that for police and firefighting titles, "seniority" means the length of continuous permanent service only in the current permanent title and any other title that has lateral or demotional rights to the current permanent title. Seniority for all titles shall be based on the total length of calendar years, months and days in continuous permanent service regardless of the length of the employee's work week, work year or part-time status.

After describing layoff units in the State and in political subdivisions, the Legislature then turns again to title rights. In subpart e it defines lateral title rights and in subpart f, demotional rights. In each, a person's title is the measure, not his or her job band. The Commission cannot ignore or violate these clear statutory statements, which are reproduced below:

e. For purposes of determining lateral title rights in State and political subdivision service, title comparability shall be determined by the commission based upon whether the: (1) titles have substantially similar duties and responsibilities; (2) education and experience requirements for the titles are identical or similar; (3) employees in an affected title, with minimal training and orientation, could

perform the duties of the designated title by virtue of having qualified for the affected title; and (4) special skills, licenses, certifications or registration requirements for the designated title are similar and do not exceed those which are mandatory for the affected title. Demotional title rights shall be determined by the commission based upon the same criteria, except that the demotional title shall have lower but substantially similar duties and responsibilities as the affected title.

f. In State service, a permanent employee in a position affected by a layoff action shall be provided with applicable lateral and demotional title rights first, at the employee's option, within the municipality in which the facility or office is located and then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations and shall indicate job locations at which the employee will accept lateral and demotional title rights. In local service, a permanent employee in a position affected by a layoff action shall be provided lateral and demotional title rights within the layoff unit.

The Commission acknowledges in the introduction and explanation that its current civil service rules and procedures satisfy the mandates above of “merit and fitness.” There is no dispute. The Commission argues though that it can and does waive current procedures “on the grounds of impracticality” (p4). The default requirement and position therefore is to use current civil service procedures, including testing, ranking, and evaluation based on objective criteria unless doing so is “impractical.” Impracticality is the standard that must be met to waive these rules – not inconvenience, not preference, not political agenda.

It is illogical to say broadly that it is impractical to administer current civil service procedures for hiring, promotional and layoff situations. Each situation, promotional action, or layoff must be determined based on its own practical circumstances. For example, it may be impractical to administer an exam for a specific promotional action where only 1 person is eligible to compete for that position. Current civil service rules allow for waiver of testing requirements or certification of a promotional list in such a situation. There is no reason to create a new “job banding” system to address it.

A diminishing number of employees to test for promotions logically means there is less impracticality to testing. There are fewer candidates to test, less to rank, and selection for appointing authorities should be easier as the candidate pool is smaller. Further, there should be less pressure to bypass or waive examinations.

Based on the diminished workforce in state, county and municipal government units over the last several years, there may be urgency to fill senior positions in the organization, such as supervisory or highly technical positions which have been vacated through retirements. However, the "urgency" to backfill these positions does not prevent the application of existing civil service testing procedures. In fact, if these senior positions are supervisory or highly technical, there is increased rationale and requirement for evaluation of experience and education, for testing of merit and fitness, for ranking on a certified promotional list, and for selection of a candidate based on the current process rather than on subjective managerial evaluations.

The examples of 74 State service promotions and 83 local service promotions on page 5 of the explanatory comments to the proposed rule are neither convincing nor probative that the current procedures are impractical. There are hundreds of promotional actions initiated by local service and state service every year, so the mere citation of 150 combined total actions where the Commission waived promotional examinations does not in any way prove that examinations are impractical, or unwarranted. The fact is that these waivers are not publicized and are internal determinations made by the Commission and communicated to the appointing authorities. Union organizations are not necessarily made aware of these waivers and therefore, there is very little opportunity to challenge such a waiver. Employees in these organizations do not know whether a waiver is granted or why, so they cannot challenge such a decision either. Essentially the Commission self-determined to waive an exam process for these 150 actions last year and now cites these decisions as proving the reason to waive all exams for banded titles in the future. It is self-serving.

IV. The Commission cites the NJ Judiciary "banded classification system" as the purported template for the "job banding" rule; the Judiciary's system is actually much different than the Commission's rule, was negotiated in labor contracts, and includes labor representation on dispute resolution panels - none of which are in the Commission's proposal.

At the outset, it is important to note that CWA Local 1036 in particular has extensive experience with the Judiciary's banded classification and compensation system. We represent over 1,500 members in three different Judiciary bargaining units and have worked with the banded system since its negotiated inception a decade ago. I confidently and unequivocally state for the record: the Commission's job banding system is NOT the Judiciary's system. Many of the reasons that the Judiciary's banding system has worked over the past decade are the very structural items omitted in the Commission's proposal.

The Judiciary's system applies to a much smaller workforce than is being proposed by the Commission in its rule. The total workforce of the Judiciary is less than 10% of the state and local service workforce. The Judiciary's "broad banding" classification system administers a smaller group of titles, for a smaller and less varied group of functions in what is essentially a self-contained system – not the thousands of different functions performed by a workforce in municipal, county and state agencies.

Within the NJ Judiciary, twenty-five titles in the Professional Non-Case Related (PNCR) unit, seventeen titles in the Support Staff (SS) Unit, and two titles in the Support Staff Supervisory (SSS) unit are represented by CWA and other unions. Many of these titles have only a couple of levels in the series and relatively few employees, such as Attorney 1 and Attorney 2 in the PNCR unit or Support Staff Supervisor 1 and Support Staff Supervisor 2 in the SSS unit. These titles series are "banded" but the concept of banding is nearly irrelevant since they are limited series with distinct functions from any other titles, with relatively few incumbents, and their functions are consistent in any of the Judiciary appointing authorities.

Further, each of these title series is afforded its own "band" with no other titles in the band. There is only one title to advance to promotionally. Essentially, it wouldn't matter if they were treated as title series or as bands. This scale of banding is very different than what is proposed by the Commission's rule, which could band together titles, like Clerks with thousands of combined employees in State and Local service, spread across dozens or hundreds of appointing authorities across the State.

Most importantly, the Commission fails to observe – perhaps deliberately – that Judiciary job bands were **negotiated** by various unions and the employer a decade ago across a bargaining table and this system is incorporated into our collective bargaining agreements. As part of judicial unification of the individual county courts into a system, it was necessary to merge titles, pay scales, and job duties into a coherent and unified classification/compensation system. CWA and other unions bargained the broad banded system under NJ law, as a classification and compensation system. The Commission's effort bypasses any collective bargaining process and attempts unilateral alterations to a well-established system used by both labor and management.

We were able to create a banding system from scratch because unification presented a challenge and an opportunity to do so. We were not throwing out a single, unified system such as civil service that preceded banding. It also took many months of intense negotiations, use of outside experts in classification, and full input from many stakeholders to create the Judiciary's broad banded system. Although there have been disagreements over the years about title usage and such, its creation was a product of such careful,

detailed, and full-throated discussion that is completely lacking in the current Commission process.

It is also important to understand why the Judiciary and unions negotiated a broad banded system into existence. We did so because most, but not all, of the Judiciary workforce is unclassified and we therefore created the broad banded classification system to apply a consistent classification and compensation system. For the classified employees of the Judiciary, both the Judiciary and the unions continue to recognize and adhere to existing civil service procedures for hiring, promotions and other title actions.

Therefore the Judiciary currently utilizes the existing civil service rules for some of its employees, and broad banding for other unclassified employees. The broad banding system is a specific classification system negotiated for creating parameters for an unclassified workforce, not for the classified workforce. If the Commission really wanted to adopt the Judiciary's classification system, it would propose a system for unclassified workers, not for the classified service. Instead it is seeking to apply a system geared specifically for unclassified workers to all classified workers, which is really just a backdoor way to make all workers unclassified.

The Commission job banding rule is also notably different from the Judiciary's system in the lack of its management of the new proposed system. In the Judiciary, the broad banded system is managed by a Classification Review Panel upon which union representatives and outside neutrals sit. It is a panel with management, labor and outside experts reviewing classification disputes – not a politically appointed board. The Commission proposal does not create such a classification review panel. It does not create union participation or a place for an outside neutral on a governing or review body. Instead the Commission proposes to locate all appeal/grievance decisions within a chair or a commission of wholly political appointees who may deny an appeal and are the final level of authority.

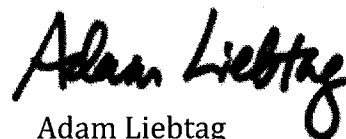
Ironically, CWA and other unions are currently in negotiations with the Judiciary for our successor contracts. The Judiciary has proposed to expand the bands and create new additional titles which would show differentiation among certain job functions, making them more like classified civil service title series. In other words, it sees the limits of broad banding and finds that title variation is advantageous to management.

- V. **The proposed NJAC 4A:3-3.2A.(b). Job Banding states “the Civil Service Commission shall review titles and title series to determine whether they are appropriate for job banding” but there is no criteria to guide such a determination.**

Although the remainder of section 3-3.2A goes on to propose how advancement within a job band will occur, there is a blatant absence of criteria or definitions by which the Commission would legitimately determine which titles will be banded. Without these criteria, there is no specific regulatory definition upon which the Commission could rely to band a title series. Any argument that the Commission has the authority to determine whether a title series should be banded or remain under current rules, without any stated criteria upon which to rely, must fall back on the Constitutional and statutory requirements. Therefore, appointments must be based on merit and fitness as paramount considerations and the only reason to waive the current examination and ranking procedures is "impracticality." However, as argued above, it is improper to allow a broad and general waiver, such as banding would establish, over entire titles or title series held by dozens or hundreds of employees across multiple levels of government.

There is no dispute that the current system of title series, examinations and rankings meets the statutory and Constitutional requirements. The Commission devotes several paragraphs in its prefatory statements clearly stating that the current civil service procedures meet those requirements. Therefore, based on the long-standing satisfaction of those requirements through the current civil service procedures, there should be a presumptive burden placed on the Commission of specific criteria that would support banding instead of a non-banded title or title series. The absence of specific criteria in the proposed 3-3.2A.(b).1. is notable, and fatal for this proposal.

Sincerely,

A handwritten signature in black ink that reads "Adam Liebttag". The signature is written in a cursive, slightly slanted style.

Adam Liebttag
President



**THE NEW JERSEY STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE**

Labor and Industry Committee

PO Box 7568

Atlantic City, New Jersey 08404

Telephone (973) 746-0085

www.njnaacp.org

June 19, 2013

Subject: Proposed New Rule: N.J.A.C. 4A:3-3.2A Job Banding

Thanks to the Senate Legislative Oversight Committee for calling this special meeting in regards to Governor Chris Christie and the Civil Service Commission's attempt to turn back the hands of time by proposing this new initiative called "Job Banding". My name is Darnell Hardwick, I am the Vice-Chair of the New Jersey State Conference of NAACP Branches (NJSCNAACP) Labor and Industry Committee. I am also a 32 year employee at the NJ Department of Transportation and a shop steward for CWA Local 1032. I have personally experienced and witnessed this Administration's attack on basic worker's rights, civil rights and fundamental due process.

The NAACP rejects all attacks on the Civil Service System. It is a terrible idea to create generic titles and it opens up the system to enormous abuse in a number of ways. I am going to discuss some of the ways the system could be subject to abuse, but first I want to relate some facts and some statistics that I found in the state's own 2011 Workforce profile and give an analysis of how I think those facts relate to the proposed rules.

We know that in 2010, before the Christie Administration started their Title Consolidation project, during which they have consolidated hundreds of titles and placed dozens of titles more into the non-competitive division, that is the non exam part of civil service, out of a total of 67,352 people in the executive branch of state gov't, only 48, 633 were in competitive titles. (Page 9 2011 State Government Workforce Profile)

So already - about 19000 positions out of 67,000 are potentially fully subject to political patronage.

We also know that under Christie, the Governor's office expanded it's own positions by 18% (page 4) over what was in that office under Jon Corzine at the same time that the over workforce has decreased by 5% and that new hiring in state Gov't decreased by 13% (Page 24).

And so the State Governor Workforce Profile shows us, even before the Governor began his wholesale attack on the civil service system and it's competitive titles, that there is

preference by this administration for patronage positions and they will use them whenever possible.

This is what politicians do, we know that. That was the reason for the Civil Service system in the first place. Moreover, we know that this Governor, from his history, will choose individuals with suspect qualifications for the purpose of exerting influence, rather than selecting individuals based upon merit - and we have seen that in his nominations to the Supreme Court, to the Public Employment Relations Commission, the Civil Service Commission, and elsewhere.

We also know that this type of abuse of power exists elsewhere in the state, at the local gov't and at the county level and hardly a week goes by where we don't hear a story about people in power selecting members of their good old boys club for positions and by passing the regular citizenry. This is also seen in the Governor's Cabinet where many of the members were associated with the US Attorney Office of New Jersey, the Governor's former employer.

The NJSCNAACP got a firsthand look at numerous abuses in the recent "Union busting" "Job banding" and waiving of Civil Service rights of the Camden City Police Department. In our effort to evaluate, investigate, and inform the public of this important public safety issue we discovered great difficulty and roadblocks. The City of Camden and the County of Camden would not divulge information and there were no transparencies in our estimation to thwart any legal challenges. The County asserted that the one year Civil Service waiver was to expedite hiring and promotions.

In approving the waivers, the Civil Service Commission decision cited "Job Banding" as a legitimate selection process. There was great concern from the unions that potential candidates could be influenced by "machine" politics. The CSC shrugged those concerns off and asserted that the steps included "...in the Pilot Program are essentially no different than what would have occurred if open competitive lists were issued to fill these positions." Regrettably, the Civil Service Commission approved a Pilot program to waive the rules that they are vested to protect and which we believe were unconstitutional.

This proposed new rule appears to be a change for the convenience of the appointing authority and the CSC and not a change for efficiencies. Problems with civil service will not be solved by merely freeing management from rules and limits. Appointing Authorities, given flexibility, will not automatically do what is right. It is important to keep in the forefront the principles of Civil Service that provide crucial protections for employees from arbitrary and discriminatory treatment. This rule will not protect the public from patronage, cronyism, racism, sexism, retaliation, discrimination and promoting fairness or create a professional and stable workforce.

The proposed rule summary states the background of New Jersey Constitution, Article VII, sec. 1, par. 2, provides that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained as far as **practicable by examination**, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch

of the military or naval forces of the United States in time of war may be provided by law. How will this new rule give veterans preference in appointments? This has not been explained by this administration.

The civil service system has been the gateway to the middle class for women and minorities and the employment statistics show that women and minorities have great representation in the public sector.

Any attacks on the employment rights of public workers therefore disproportionately impact women and minorities. The NJSCNAACP is also deeply concerned with the lack of Affirmative Action/Workforce Development Plans at state agencies per N.J.S.A. 11A:7-8 under this administration. State agencies have not been submitted a plan since 2008 which were filed in 2009. We learned through Open Public Records request that State agencies were advised by the Division of EEO/AA in October 2010 to stop all work on the plan until further notice and that they have not received any further instructions. Those Plans document yearly hiring and promotion data for state agencies.

In closing, we also allege that the mechanisms in place to protect employees from abuse of "job advancements" are not adequate. Currently we allege that filing complaints with the internal Civil Rights units, grievance procedures, merit system board, and PERC are fruitless due to the same "Political" influence. This new proposal of Job-banding needs to be halted for the protection of the public and the Civil Service Act. Thank you.

Sincerely,



Darnell Hardwick

Vice-Chair NJSCNAACP Labor and Industry Committee

CC: J. Harris, President NJSCNAACP, J. Mollineaux, Secretary NJSCNAACP

Promotions, raises mark launch of new Camden police force



Deputy Police Chief Joseph L. Williams , joined by Chief Scott Thomson, was promoted from sergeant. He called it "an exciting, historic day." TOM GRALISH / Staff Photographer

By Claudia Vargas and Darran Simon, Inquirer Staff Writers

Posted: April 22, 2013

The dignitaries had said their pieces by the time Joseph L. Williams, a new deputy chief in the Camden County Police Department, stepped to the lectern this month during a news conference showcasing hires on the new force.

Williams, who was a sergeant with the city police, joined the county department that is to replace the city force by April 30.

"This is an exciting, historic day for me, being one of the first employees starting up this new county metro division," the 20-year veteran said.

As the county force takes shape and its officers begin to hit the streets of Camden, there are new faces in uniform from suburban towns - and old ones like Williams, and current city Police Chief Scott Thomson, who will remain in charge.

Personnel details obtained by The Inquirer from the county indicate that a substantial portion of the new force will be familiar to Camden residents: Nearly 100 of the first 260 hires of the new county force are former veterans of the city Police Department.

The records also provide the first glimpse of what a one-year state civil-service waiver has enabled the county to do:

Several supervisory personnel have been quickly bumped up in rank, along with their salaries. Williams, hired as a lieutenant, skipped over the rank of captain to become deputy chief - a move questioned by the city superior officers' union but defended by the consultant who has helped organize the new force.

Williams is among former city officers who were demoted and whose incomes were cut two years ago by the violence-torn but cash-strapped city as it tried to trim costs.

He is among nearly a dozen who will see increases from their most recent salaries - as much as \$20,000 for some, and more than \$40,000 in Williams' case, to \$145,000.

Thomson will get a nearly \$7,000 raise, to \$160,000.

"Salaries needed to be competitive and commensurate with other like departments in order to attract talented law enforcement officers to this department," county spokesman Dan Keashen said.

The new force will also have some familiar faces behind the scenes.

Camden school board member Felicia Reyes-Morton has been hired as a personnel assistant at a salary of \$53,129. James F. Bruno, a retired investigator with the Camden County Prosecutor's Office, will assume a prominent civilian managerial role at nearly \$75,000.

The county is to swear in another batch of officers Monday.

What remains to be seen is the force's impact on crime.

While it's early to gauge the effects of about two dozen new hires who hit the streets in Whitman Park this month, residents say they see a stronger police presence, though some have reservations.

"I'm glad they're here. We used to have dope boys that were right there," Alicia Mitchell said, pointing beyond an ice cream truck near her home on Princess Avenue. "Before, we were afraid to even let our kids outside."

On nearby Haddon Avenue, three officers walked the beat on Friday. At Princess and Wildwood Avenues, a drug hot spot, a mobile command unit sat.

Dean Roberts, 52, also a Whitman Park resident who was a research technician at Campbell Soup, said he welcomed the increased police presence. But it will take some getting used to, he added.

"Sometimes you look and it's so many of them at one time, it's overwhelming," he said. "Sometimes it seems like martial law."

The county Police Department became official Jan. 17, when the Camden County Board of Freeholders voted to establish it. Officials have set an April 30 deadline for dismantling the present city force.

As yet undetermined is how much the city will have to pay for the services of the county force's so-called metro division, as well as what kind of long-term commitment the state will make so that Camden can afford to pay.

Shared services and financial agreements among the city, county, and state are still being negotiated, Keashen said late last week.

For this fiscal year, ending in June, the state provided \$102 million in aid to Camden, nearly 70 percent of its budget.

County and city leaders argued for the new force in part because it would enable them to shed generous police contracts and eliminate extras, such as shift differentials, saving about \$20 million. The savings, they have said, will let them raise the larger 400-member county force.

Several supervising officers have received promotions as the new force begins operation.

For example, Gabriel Camacho, who was demoted from sergeant to detective during the 2011 layoffs, has been promoted to lieutenant. His base salary jumps from \$84,201 to \$104,070, records show.

David Suarez and Deiter Tunstall, who were sergeants, skipped over lieutenant and became captain, the rank below deputy chief. The salary for each is listed as \$118,232, at least a \$15,000 raise for each.

Under the waiver from a variety of civil-service guidelines, the county is exempt from the requirement that officers pass promotional tests.

But candidates still must satisfy the minimum job requirements for promotions. Thus, a candidate for lieutenant must have two years of supervisory experience as a sergeant.

Joe Cordero, the consultant who designed the new force, said all those who have been promoted have more than satisfied the minimum requirements.

"The people whom we put into supervisory roles and leadership positions are the ones that we believe, based upon the evidence before us, are the most suited to lead this organization," he said.

Christopher Gray, labor lawyer for the city superior officers' union, said that under civil-service rules, officers may be promoted only in order of rank and must serve at least a year in that rank to be able to take a promotional test.

He questioned whether the county could promote Williams to deputy chief, skipping several ranks, even under the waiver.

Williams could not be reached, and Keashen declined to comment on specific promotions.

A spokesman for the Civil Service Commission declined to clarify the promotions process under the exemption.

John Williamson, president of Camden's Fraternal Order of Police, which represents the current rank-and-file officers, said the waiver paves the way for abuse.

"On the surface, it appears that a lot of people have been rewarded for their loyalty and support of the plan," he said. "That's why civil service is important, because it mitigates political favors and cronyism."

Williamson also questioned how the county can afford raises when officials have said the city Police Department's costs were unsustainable.

Cordero said the new salaries don't have any hidden extras.

"What you see is what you get," he said.

The current salaries, including overtime, and new vehicles and other equipment are temporarily being paid for from more than \$7 million the state has provided in start-up funding.

Contact Claudia Vargas

at 856-779-3917, cvargas@phillynews.com, or follow on Twitter @InqCVargas. Read her blog, "Camden Flow," at www.philly.com/camden_flow.

Ads by Google

From: Randazzo, Christopher <Christopher.Randazzo@csc.state.nj.us>
To: 'Camdennaacp2080@aol.com' <Camdennaacp2080@aol.com>
Cc: OPRArequest <OPRArequest@csc.state.nj.us>
Subject: OPRA Request #W76436
Date: Fri, May 17, 2013 3:27 pm
Attachments: 1-GRC_Denial_of_Access_Procedures.pdf (22K)

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Office of the Chair/Chief Executive Officer
PO Box 317
Trenton, NJ 08625-0317

May 17, 2013

Darnell Hardwick
Camden County NAACP

[REDACTED]
[REDACTED]

OPRA Request #W76436

Dear Mr. Hardwick:

You have made a request to the New Jersey Civil Service Commission under the provisions of the Open Public Records Act ("OPRA") for the following:

1. To the Custodian of Records: Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law Right of access. I am requesting the following: NJ Dept. of Transportation, NJ Department of Environmental Protection NJ State Police, NJ Department of Human Services and NJ Department of Labor Workforce Development Plan/ AA Plans for the years 2011, 2012 and 2013 that were approved by the Division of Equal Employment Opportunity and Affirmative Action per N.J.S.A 11A:7-8.

We have found no records responsive to your request. You should be advised that OPRA applies to existing

records, and as such government records custodians are not obligated to create records. See Librizzi v. Township of Verona Police Department, GRC Complaint No. 2009-213 (August 2010) in which the Government Records Council "held that the Custodian was under no obligation to create a record in response to the Complainant's OPRA request."

The Open Public Records Act permits a person who believes he or she has been improperly denied access to a government record to file a complaint with the Government Records Council or to file an action in Superior Court to challenge the decision and compel disclosure. See N.J.S.A. 47:1A-6. You will find attached to this letter the document that describes the procedures for taking these actions.

If you have any questions, please contact me via e-mail at Christopher.Randazzo@csc.state.nj.us.

Sincerely,

Chris Randazzo

Government Records Custodian

New Jersey Civil Service Commission

Phone: (609) 292-7045

Fax: (609) 984-3631

Christopher.randazzo@csc.state.nj.us

Negative Impact of Job Banding Proposal on Promotion of Asian-Americans
Testimony of Anil Desai before the Senate Legislative Oversight Committee on
June 19, 2013

My name is Anil Desai, Civil Engineer by profession. I work for the New Jersey Department of Transportation (NJDOT) as a Project Engineer. Today I'm testifying as the President of Branch 5 of Communications Workers of America Local 1032 representing NJDOT employees.

I am honored and thankful for the opportunity to testify in front of this committee regarding the proposed job banding program by the Civil Service Commission and the adverse effect it will have, if implemented, on the finest employees of the NJDOT and other agencies.

Let me tell you about myself a little bit. In 1981 I migrated to this great country of ours from India. I joined NJDOT in 1983. Throughout my employment, I have served the people of New Jersey with the utmost professionalism. In my humble opinion, my excellent work ethic and engineering skill has helped me to contribute to make our highways and bridges safe and efficient. I have received numerous letters from the people of New Jersey thanking me for my work.

I was able to be rewarded with job promotions because of the current Civil Service examination system in place.

Back when I started it was rare for the Asian American to get a provisional promotional appointment. These provisional appointments were completely at the discretion of local management. So we took advantage of Civil Service examination system in order to move up on the professional ladder through Civil Service lists and permanent promotions.

The proposed Job Banding program with its elimination of Civil Service exams for most promotions will make it tough to advance for the employee like me and will demoralize the finest employees. We should continue to utilize the talent of our employees and reward them and in turn make our state system more efficient to serve our citizens.

I strongly urge you to preserve and embrace the current fair system of job promotion. The present Civil Service regulations should not be replaced with the Job Banding program as it will cause a devastating impact on the government workforce and the efficiency with which they serve New Jersey.

This proposal will result into cronyism, nepotism and favoritism. Also it will result in under utilization of the talent. Civil Service Commission was set up in 1908 to curtail cronyism. They should not depart from their core principles and do exactly opposite.

There may be some obvious problem with the current system which need to be tweaked or improved upon that does not mean, we should eliminate the system completely. You do not kill someone who has bad knees, or send a nice car to the junkyard for wiper problems.

I call upon you to do the right thing by exerting pressure on the Civil Service Commission not to implement this ill-advised reform. And by the way these are not reforms; it is a giant leap backward.

Let us use the best pool of people we have, no matter where they come from or who they look like. That is the American tradition and that must be New Jersey's tradition to keep this one a great state.

Thanks again for listening.

Testimony of Alan Hardy before the Senate Legislative Oversight
Committee on

June 19, 2013 - Job Banding Proposal to Lead to Misclassification and
Lower Productivity

My name is Alan Hardy; today I'm testifying as an Executive Board Member and Shop Steward of Communications Workers of America Local 1032. I have been a state employee for thirty-two years; currently I'm a supervising Software Development Specialist 3 at the New Jersey Office of Information Technology (OIT.)

For a number of years, the primary route to promotion at Office of Information Technology (OIT) has been the classification appeal. In the last year alone, there were over one hundred classification appeals in an agency of just over seven hundred employees. Over half of these appeals were successful.

Under the current classification appeal system when the classification appeal is filed by the union or an individual, the determination of the appropriate classification is made by a classification reviewer at the Civil Service Commission. This review by a classification expert not employed by the agency employing the appellant ensures that the appeal process is both fair and accurate.

The reason that so many classification appeals have been initiated by the union or individuals recently at OIT is that OIT has been unable to obtain permission from the Treasurer to promote significant numbers of people. Many managers at OIT have advised their direct reports that a Classification Appeal is the only way in which they will be able to gain a promotion.

The Job Banding proposal before the Civil Service Commission would end these appeals for most titles. On page 15 of the proposal, it is explicitly stated that "recodified paragraph c(7) would be amended to provide that Commission-level classification appeals in State service shall not apply to an employee's title level within a job band". On page 15, it also states that appeals shall be under the Civil Service grievance regulations, rather than under the contractually required classification appeal procedure.

The proposed rule also makes clear that the decision of the agency will, in almost all cases, be the final resolution. On Page 14 of the proposal, it states that "appeals pertaining to an employee's title level within a job band are governed by N.J.A.C.4A:3-3.9(c)4,5. On page 9 of the proposal in explaining the new grievance/appeal procedure, it states that the Civil Service Commission "may dismiss the matter without further review of the merits of the appeal where issues of general applicability are not fully presented."

In short for most current promotional opportunities, classification appeals will no longer exist. Instead there will be a so-called grievance procedure without an adequate and fair means of resolution that has not been negotiated with the union. No independent classification expert will be involved.

Since over the years there has been constant pressure from the Treasury NOT to promote employees when the promotion is at the discretion of department management, the classification appeal has been the only method by which deserving employees can be promoted to the title appropriate to their duties.

We believe that the elimination of classification appeals will greatly increase the number of people who are misclassified. The unfairness of this situation in which employees will not be properly compensated for the level of work performed is obviously.

However, misclassification also has serious negative consequences for productivity. If for instance, a person's classification requires them to only perform the simplest tasks when they are capable of much more, there will be an understandable reluctance by many supervisors and managers to assign the more advanced tasks that the person is capable of performing if the person is not being properly compensated.

Testimony Submitted to the Senate Legislative Oversight Committee

Beth Schroeder Buonsante

June 19, 2013

Job Banding Proposal

Proposed New Rule: N.J.A.C 4A:3-3.2A

NJEA is very concerned about proposed regulations to create a job banding program within the civil service system. There are nine school districts in New Jersey who have employees under the civil service requirements. Those school districts are in Berkeley Township, Brick Township, Jersey City, Lodi, Maurice River Township, Middle Township, Millville, Newark, Vineland, and Weehawken.

Under the proposed regulations, employees of various, similar job titles would be placed into a category or job band. In order to move up or receive a promotion, employees would have to demonstrate competency, as determined by management, rather than the traditional test taking procedures.

The Civil Service system was established to protect public employees from arbitrary and capricious decisions in the hiring, promoting, demoting, and firing of public employees. One of the ways the system works is by allowing objective measures, like promotional exams, to determine an employee's qualifications for advancement. In doing so, it removes personal bias from the decision making process. Examinations also encourage healthy competition among employees in fully comprehending the procedures and issues related to the job.

The proposed changes fly in the face of these very principles and will give sole discretion to managers to make unilateral decisions on who is qualified for advanced responsibilities and who is not. While management should have some discretion in delegating employee responsibilities, the job banding program will create a system in which managers can easily maneuver to advance the careers of their friends and stifle, for any reason at all, the careers of others.

The proposed changes will also limit veteran preference and layoff rights, which are longstanding policies that have protected employees through many administrations, regardless of who has been in power.

In testimony submitted to the Civil Service Commission, we have urged the Civil Service Commission to conduct additional public hearings to collect the input of employees impacted by changes to the civil service system. If the Commission's goal is to provide efficiencies in employment decisions, why not ask the employees for ideas on improving the system? Perhaps other solutions can be determined that are short of a "job banding" program that completely eliminates the proven and objective examination process.

NJEA opposes proposed new rule N.J.A.C. 4A:3-3.2A.

ADDITIONAL APPENDIX MATERIALS
SUBMITTED TO THE
JOINT COMMITTEE ON THE PUBLIC SCHOOLS
for the
June 19, 2013 Meeting

Submitted by Senator Raymond J. Lesniak, New Jersey Legislative District 20:
Sen. Raymond J. Lesniak, "Gov. Christie's stealth attack on Civil Service: Opinion," *The Star-Ledger*, June 13, 2013.