

Case Notes

Business justifications for requirement that nonuniformed municipal employees be residents did not justify racially discriminatory effect of requirement. *NAACP, Newark Branch v. Town of Harrison, N.J.*, D.N.J.1990, 749 F.Supp. 1327, affirmed 940 F.2d 792.

Request by the Department of Children and Families for reallocation of titles currently designated as Management Assistant and Senior Management Assistant to interim noncompetitive status for one pay period under N.J.A.C. 4A:3-1-2(c) to allow the employees with the affected titles to be properly assigned in the career service was appropriately granted. The employees had been serving provisionally in the Department for an extended period of time, many after a major restructuring in 2006, and the interim period of reallocation was needed in order for the Division of Classification and Personnel Management to properly reassign the employees to competitive positions. The extraordinary relief was limited to the positions listed and based solely on the facts of the case. In re Matter of Mgmt. Assistant and Senior Mgmt. Assistant, Dep't of Children and Families, CSC Dkt. No. 2014-1242, 2013 N.J. CSC LEXIS 1182, Final Decision (December 4, 2013).

Ample reason existed for the reallocation of the Staff Clinical Psychologist 1 and Staff Clinical Psychologist 1, Mental Health Services titles to the non-competitive division of the career service consistent with the other titles in the series pursuant to N.J.A.C. 4A:3-1.2. It was clearly not practicable to continue to examine for such positions when each title required possession of a State-issued license, certification or specialization or for those titles where testing was impractical or for which it was difficult to recruit. In re Staff Clinical, Psychologist 1 and Staff Clinical, Psychologist 1, Mental Health Serv., CSC Dkt. No. 2014-642, 2013 N.J. CSC LEXIS 688, Final Decision (September 20, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that an employee who was permanent in the non-competitive title of Truck Driver Heavy and worked in the Department of Public Works (DPW) was ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0090R), Teaneck Township because he was not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because the employee had achieved permanent status in the title before it was allocated to the noncompetitive division, he was within the class of employees who, per N.J.A.C. 4A:3-1.2(f), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. However, he still had to demonstrate that he met the experience requirements for the subject title. Though out-of-title work was normally disregarded in determining whether an employee met the experience requirements for any particular examination, this employee's submission showed that he had been performing relevant duties since May 1999, and his claim was substantiated by the acting township manager. That meant that there was good cause pursuant to N.J.A.C. 4A:4-2.6(c) to accept the employee's out-of-title work experience and admit him to the examination. In re Merz, Assistant Supervisor of Pub. Works, (PM0090R), Teaneck Twp., CSC Docket No. 2014-0094, 2013 N.J. CSC LEXIS 933, Final Administrative Determination (September 4, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that four employees who were permanent in the non-competitive title of Truck Driver and worked in the Department of Public Works (DPW) were ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0089R), Marlboro Township because they were not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because all of the employees had achieved permanent status in the title before it was allocated to the noncompetitive division, they were within the class of employees who, per N.J.A.C. 4A:3-1.2(f), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. Moreover, because there was a logical nexus between the duties performed by each employee and those required to establish eligibility for the title under test, each met the experience requirements for the title under test as required by N.J.A.C. 4A:4-2.6(a).

Though under normal circumstances, the DSSR would have been correct to determine that the employees were ineligible for the subject exam as applicable experience gained in the Truck Driver title would be considered out-of-title work, their experience should have been evaluated in the context of the environment in which the employees were working. That is, it would have been appropriate to consider the potential pool of candidates who could compete for the examination. Admission of these employees to the examination also served the valid public interest of filling positions through promotional examinations per N.J.A.C. 4A:4-2.3(a). In re Gann, et al., Ass't Supervisor of Pub. Works, (PM0089R), Marlboro Township, CSC Docket Nos. 2013-3175, 2013-3200, 2013-3254, 2013-3262 (Consolidated), 2013 N.J. CSC LEXIS 829, Final Administrative Determination (August 15, 2013).

Titles of Insurance Analyst Trainee, Insurance Examiner Trainee, and Financial Examiner Trainee were properly reallocated to the non-competitive division of the career service as permitted by N.J.A.C. 4A:3-1.2 because the Department of Banking and Insurance (DOBI) had demonstrated that it required more flexibility to efficiently and quickly meet its hiring responsibilities and to address its ongoing recruitment and retention problems, which included the fact that DOBI was expending significant resources on provisional employees in the subject title through training and mentoring, the value of which was lost if such provisional appointees were not reachable on an eligible list from an open competitive examination. In re Insurance Analyst Trainee, Insurance Examiner Trainee, and Financial Examiner Trainee, CSC Dkt. No. 2014-169, 2013 N.J. CSC LEXIS 409, Final Decision (August 1, 2013).

Titles of Probation Officer and Probation Officer, Bilingual in Spanish and English were reallocated to the non-competitive division under N.J.A.C. 4A:3-1.2. It was clear that reallocation would provide the Administrative Office of the Courts (AOC) with the flexibility needed to more efficiently and quickly meet hiring responsibilities. Certification procedures based on ranked eligible lists would not meet the AOC's needs for immediate recruitment. In re Reallocation of the Probation Officer and Probation Officer, Bilingual in Spanish and English, Titles from the Competitive to the Noncompetitive Division of the Career Serv., CSC Dkt. No. 2013-3251, 2013 N.J. CSC LEXIS 679, Final Decision (July 18, 2013).

Civil Service Commission reallocated the Human Resource Consultant Trainee and Personnel and Labor Analyst Trainee titles to the non-competitive division of the career service in accordance with N.J.A.C. 4A:3-1.2. The delay occasioned by the requirement to issue an open competitive announcement, review candidates' eligibility, schedule an examination, score an examination, issue an eligibility list, and proceed with the appointment process through certification procedures impacted the appointing authority's ability to recruit for these titles. Therefore, certification procedures based on ranked eligible lists did not meet the needs of the appointing authority. In re Human Resource Consultant Trainee and Personnel and Labor Analyst Trainee, CSC Dkt. No. 2013-2956, 2013 N.J. CSC LEXIS 599, Final Decision (June 6, 2013).

Ample reason existed for the reallocation of Data Entry Machine Operator title to the noncompetitive division of the career service under N.J.A.C. 4A:3-1.2. The primary function of the title was to perform data entry and verification work. Given that most individuals typically acquired a basic knowledge of, and skill in the areas of keyboarding and computers prior to entering the workforce, it was clearly not practicable to continue to examine for the position. In re Data Entry Machine Operator Title Series, CSC Dkt. No. 503, 2013 N.J. CSC LEXIS 503, Final Decision (May 16, 2013).

Reallocation of 11 job titles to the noncompetitive division of the career service to support the expeditious staffing of non-law enforcement personnel for the newly created Camden County Police Department was appropriate under N.J.A.C. 4A:3-1.2(c). The establishment of the Camden County Police Department was analogous to a new legislative program or major agency reorganization, and it was necessary for the newly established Police Department to have non-law enforcement administrative personnel to support the operations of the department during the critical initial formation process. In re Camden Cnty. Police Dep't. Non-Law Enforcement, CSC Dkt. No. 2013-1972, 2013 N.J. CSC LEXIS 192, Final Decision (March 6, 2013).

4A:3-1.3 Unclassified service

(a) A job title shall be allocated by the Board to the unclassified service when:

1. In State service, the title is so designated under N.J.S.A. 11A:3-4;
2. In local service, the title is so designated under N.J.S.A. 11A:3-5;
3. The title is designated unclassified by another specific statute;
4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates subject only to the legislative power of the governing body and applicable statutes.

(c) In local service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the Merit System Board.

(d) In State service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-4(h), is one who is appointed by the Governor with the advice and consent of the Senate.

Case Notes

The Division of Classification and Personnel Management (CPM) won approval from the Civil Service Commission (CSC) to make temporary unclassified appointments to various career service titles in order to allow for expedited staffing of the interim Office of Recovery, Department of Human Services (DHS). CPM asserted that such an order was necessary because there was an immediate need for staff in order to meet strict timelines mandated for the administration of federal funds earmarked to assist state residents in the aftermath of Superstorm Sandy and that by their very nature, positions involving disaster relief did not lend themselves to tenure and were short-term in nature. Applying the criteria in N.J.A.C. 4A:3-1.3(a)5, the CSC concluded that because the DHS had an immediate need to make appointments and because the interim Office of Recovery would be phased down by September 30, 2015, it would not be practicable to determine merit and fitness for appointment nor make permanent appointments to the titles. That being so, relief was proper. In re Office of Recovery, Dep't of Human Servs., CSC Docket No. 2014-342, 2013 N.J. CSC LEXIS 733, Final Administrative Decision (August 16, 2013).

Expedited staffing of various career service titles in the Department of Health (DOH), Public Health Recovery Division, was authorized on findings that the same was necessary if the Division of Classification and Personnel Management was to meet the strict timelines mandated for the administration of federal funds granted to the state in the aftermath of Superstorm Sandy. Other factors that were relevant to a determination under N.J.A.C. 4A:3-1.3 that it was not practicable to utilize the normal staffing processes included that it was impractical to make permanent appointments to positions to perform disaster relief duties since such positions were, at the outset, short-term in nature and that the qualifications for such positions varied and sometimes required a very specific set of skills, by reason of which the DOH was in need of flexibility in the selection process. In re Interim Public Health Recovery Div., Dep't of Health, CSC Dkt. No. 2014-170, 2013 N.J. CSC LEXIS 410, Final Decision (August 1, 2013).

Division of Classification and Personnel Management established adequate grounds for a finding under N.J.A.C. 4A:3-1.3(a)5 permitting it to make temporary unclassified appointments to career service titles in order to allow expedited staffing of the interim Disaster Recovery Division, Department of Community Affairs (DCA), because there was an immediate need for staff in order to meet strict timelines mandated for the administration of federal funds granted in connection with Superstorm Sandy. Given the DCA's immediate need to make such appointments to meet strict timelines and the fact that the Disaster Recovery Division will be phased down by September 30, 2017, it would not be practicable to determine merit and fitness for appointment nor to make permanent appointments to the proposed titles. Given those findings, temporary unclassified appointments were properly utilized. In re Interim Disaster Recovery Div., CSC Docket No. 2013-2597, 2013 N.J. CSC LEXIS 168, Final Agency Action (April 18, 2013).

4A:3-1.4 Unclassified secretaries and confidential assistants: State service

(a) In State service, each department head, principal executive officer, board and commission may appoint one unclassified secretary and one unclassified confidential assistant.

(b) Requests for such unclassified appointments shall be made to the Commissioner, accompanied by documentation showing that no more than one person is serving in each such unclassified title in the requesting authority. In the case of boards and commissions, the following criteria must be satisfied:

1. The board or commission must have the actual power to administer a statutorily designated function; and
2. The board or commission must have the full power of an appointing authority with regard to its personnel.

(c) Upon recommendation by the Commissioner, such appointments may thereafter be approved by the Merit System Board and recorded in the Board minutes.

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE**4A:3-2.1 General provisions: State service**

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the Merit System Board to the SES in accordance with N.J.S.A. 11A:3-3 and this subchapter.

ASSEMBLY CONCURRENT RESOLUTION No. 215
STATE OF NEW JERSEY
215th LEGISLATURE
INTRODUCED DECEMBER 12, 2013

Sponsored by:

Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)
Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)
Assemblyman THOMAS P. GIBLIN
District 34 (Essex and Passaic)
Assemblywoman SHAVONDA E. SUMTER
District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman Watson Coleman, Senators Gordon, Greenstein and Turner

SYNOPSIS

Invalidate or prohibits adoption of rule proposed by Civil Service Commission to establish job banding program.

CURRENT VERSION OF TEXT

As introduced.

A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and invalidating or prohibiting the adoption of a rule proposed by the Civil Service Commission to establish a job banding program.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; and

WHEREAS, The Civil Service Commission proposed a new rule, N.J.A.C.4A:3-3.2A, entitled "Job Banding Program," which was filed with the Office of Administrative Law on February 28, 2013 and published in the New Jersey Register on March 18, 2013; and

WHEREAS, The proposed new rule is contrary to the spirit, intent, and plain meaning of the provision in the New Jersey Constitution that requires that promotions be based on merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive. The fact that the proposed new rule would eliminate competitive promotional examinations for tens of thousands of positions for which such exams have been administered

for decades is compelling evidence that it is practicable to continue to determine the merit and fitness of candidates for such promotional positions by competitive examination in accordance with the New Jersey Constitution. The proposed new rule is not consistent with the legislative intent that the public policy of this State is to select and advance employees on the basis of their relative knowledge, skills and abilities, ensure equal employment opportunity at all levels of public service, and protect career public employees from political coercion. The proposed new rule is not consistent with the legislative intent that a competitive promotional examination process be established, maintained, and administered by the Civil Service Commission to ensure that promotions are based on merit and fitness and are not based on patronage or discriminatory reason. The proposed new rule is not consistent with the legislative intent that whenever a veteran ranks highest on a promotional certification, a nonveteran shall not be appointed unless the appointing authority shall show cause before the commission why a veteran should not receive such promotion. The proposed new rule is not consistent with the intent of the Legislature as expressed in the language of the Civil Service Act, including the spirit, intent, or plain meaning of N.J.S.A.11A:3-1, N.J.S.A.11A:4-1, N.J.S.A.11A:4-8 or N.J.S.A.11A:5-7;

WHEREAS, Assembly Concurrent Resolution No. 199 of 2013, passed by the General Assembly on June 24, 2013 and by the Senate on June 27, 2013, set forth the finding of the Legislature that the proposed rule, filed on February 28, 2013 and published on March 18, 2013, is not consistent with the Legislature's intent, and that concurrent resolution was filed with the Secretary of State and transmitted to the Governor and the Chair of the Civil Service Commission. The Civil Service Commission has 30 days from the date of transmittal to amend or withdraw the proposed rule; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a rule or regulation, a public hearing must be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing must be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey (the Senate concurring):

1. The Legislature prohibits, in whole, N.J.A.C.4A:3-3.2A, the rule proposed by the Civil Service Commission and entitled "Job Banding Program," from being adopted and from taking effect pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
2. If the Civil Service Commission has adopted N.J.A.C.4A:3-3.2A, the Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule entitled "Job Banding Program," pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
3. The Secretary of the Senate or the Clerk of the General Assembly shall transmit a copy of this concurrent resolution to the Governor, the Chair of the Civil Service Commission, and the Office of Administrative Law.
4. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution prohibits, in whole, the rule proposed by the Civil Service Commission to establish a job banding program, specifically N.J.A.C. 4A:3-3.2A filed on February 28, 2013 and published on March 18, 2013, from being adopted and taking effect. If, at the time of passage of this concurrent resolution, the Civil Service Commission has adopted N.J.A.C.4A:3-3.2A, the Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule proposed by the Civil Service Commission and entitled "Job Banding Program," pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey. Previously, the Legislature passed Assembly Concurrent Resolution No. 199 of 2013 stating the finding of the Legislature that the proposed rule is not consistent with legislative intent.

Amended by R.2014 d.173, effective November 17, 2014.

See: 46 N.J.R. 1765(a), 46 N.J.R. 2277(b).

In (d)3, inserted "approved by the Chairperson or designee" and the last sentence.

4A:3-3.3 Administration of classification plans

(a) The Chairperson of the Civil Service Commission or designee shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;
2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority, and responsibility;
3. Modify specifications for existing titles, series, or job bands, as the case may be, to ensure their accuracy; and
4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the Chairperson or designee of new positions to be established, the authority and reasons for their establishment, and of all organizational changes or changes in the duties and responsibilities of individual positions, and such additional information as may be required.

(c) Appointing authorities shall provide the Chairperson or designee with updated organization charts on an annual basis.

(d) Positions in the career, unclassified, and senior executive services shall be subject to job audit by the Chairperson or designee to ensure accurate classification and compliance with Title 11A, New Jersey statutes, and Title 4A, N.J.A.C.

(e) In State service, each department and autonomous agency shall designate an individual as the agency representative, to serve as its liaison with the appropriate Commission representative on all classification and compensation matters.

(f) In State service, the agency representative shall provide notice to affected and potentially affected negotiations representatives upon submission of the following to the appropriate Commission representative. The Commission representative shall verify that proper notice has been given of each of the following:

1. Reorganizations;
2. Job content reevaluation requests;
3. Requests for new titles or title series;
4. Job specification modification requests;
5. Employee relations group changes; and

6. Establishment, modification, or termination of flexi-time programs, alternate workweek programs, and adjusted hours of operation.

Amended by R.1993 d.424, effective September 7, 1993.

See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a), substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; in (a)2, inserted a comma following "authority"; in (a)3, substituted "series, or job bands, as the case may be," for "or series"; in (b), (c), and (d), substituted "Chairperson or designee" for "Department of Personnel"; in (b), inserted a comma following "establishment"; in (d), inserted a comma following "unclassified", and substituted "statutes," for "Statutes"; in (e), substituted "appropriate Commission representative" for "Department of Personnel"; rewrote the introductory paragraph of (f); and in (f)6, inserted a comma following "modification" and following the second occurrence of "programs".

4A:3-3.4 Title appropriate to duties performed

No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules.

Case Notes

Assigning employee to more manual labor and less managerial and administrative work employee did not violate due process. Ferraro v. City of Long Branch, C.A.3 (N.J.)1994, 23 F.3d 803.

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

The Division of Selection Services and Recruitment (DSSR) correctly determined that none of the eight applicants who were seeking admission to the promotional examination for Supervisor 1 MVC (PS3710T), Motor Vehicle Commission met the minimum experience requirements for the position per N.J.A.C. 4A:4-2.6(a). One of the requirements was at least one year of lead worker experience. Noting that lead worker duties were akin to those of a supervisor in many respects, absent the responsibility for formal performance evaluations that can lead to the effective hiring, firing, or demotion of a subordinate and the rule in N.J.A.C. 4A:3-3.4 that presumes that employees are appointed to a title appropriate to the duties to be performed and are not assigned duties other than those properly pertaining to the assigned title which the employee holds, the Civil Service Commission concluded that the decision of DSSR that the applicants did not meet the announced requirements was supported by the record and that none of the applicants was entitled to relief. In re Dioses, et al., Supervisor 1 MVC (PS3710T), Motor Vehicle Comm'n, CSC Docket No. 2013-2791, 2013 N.J. CSC LEXIS 952, Final Administrative Determination (August 19, 2013).

Where issues relative to the proper classification of certain positions persisted over a period of time, with three employees who presumably would fill those positions remaining in an unclassified title pending their obtaining required professional certifications, a request by the appointing agency to extend the deadline for the completion of such certification processes was properly granted because, once such certifications were finalized, N.J.A.C. 4A:3-3.4 would not permit the employees to remain in the unclassified title in which they were currently placed. It was also appropriate to determine that at such time as the affected employees met the requirements of the title and were appointed thereto, and assuming that the current working test periods were successfully

warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, and appellant are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, and appellant are not in agreement with the proposed title, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

- (1) The position is properly classified;
- (2) The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or
- (3) The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

(d) In local service, an appeal from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate representative of the Civil Service Commission. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by a representative of the Commission, the appeal shall also include a completed position classification questionnaire and an organizational chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt of the questionnaire from the appellant, the appellant may forward the questionnaire to the appropriate representative of the Commission without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

- i. The position is properly classified;

ii. The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties; or

iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

(e) Appeals from the decision of the Commission representative to the Civil Service Commission pursuant to (c)7 and 8 or (d) above may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The Civil Service Commission may render a decision based on the written record or appoint an independent classification reviewer. If the Commission appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commission within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and the recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

3. If an appeal is granted by the Civil Service Commission, the effective date of implementation shall be:

i. In State service, the pay period immediately after 14 days from the date an appropriate Civil Service Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission; or

ii. In local service, the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

4. The decision by the Commission is the final administrative determination.

(f) See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commission.

Amended by R.1993 d.424, effective September 7, 1993.

See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

Amended by R.2012 d.009, effective January 3, 2012.

See: 43 N.J.R. 2404(a), 44 N.J.R. 70(a).

Rewrote (c) through (f); and in (g) and (h), substituted "Commission" for "Commissioner".

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 260(a), 46 N.J.R. 1331(c).

Rewrote the section.

Case Notes

Thirty day rule regarding departmental decision promulgated after departmental hearing and, therefore, not applicable (citing former N.J.A.C. 4:5-1.5). Appeal of Darcy, 114 N.J.Super. 454, 277 A.2d 226 (App.Div.1971).

In an appeal by a municipality of a ruling that granted an employee's reclassification request, the Civil Service Commission determined that the employee's primary duties were not consistent with the job specifications of a Principal Account Clerk and that N.J.A.C. 4A:3-3.9 thus required the municipality either to reclassify the employee's position to Assistant Municipal Tax Collector or to remove the out-of-title duties from the employee's current position of Principal Account Clerk. The record showed that the employee's duties included verifying and confirming tax lien redemptions; processing municipal service charges; placing liens on properties; assisting the tax collector with tax sales and tax billing; and assisting with applications for property tax deductions. If the municipality could not create the position of Assistant Municipal Tax Collector because of budgetary constraints, the municipality was required to remove the out-of-title duties from the employee's current job specifications. In re Callery, Town of Phillipsburg, CSC Dkt. No. 2013-1657, 2013 N.J. CSC LEXIS 1206, Final Admin. Action (November 20, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown in connection with a request by the Director, Division of Classification and Personnel Management (CPM), seeking the relaxation of provisions of N.J.A.C. 4A:4-1.1(c) to permit an employee to be provisionally appointed, pending promotional examination procedures, to the competitive title of Customer Service Representative 2, which appointment was in accordance with N.J.A.C. 4A:3-3.9(f). Relevant factors included that the employee's credentials were reviewed by the Division of Selection Services and Recruitment (DSSR) resulting in a finding that if the employee's out-of-title work was accepted, she would meet the requirements for the Customer Service Representative 2 title. In re Messiha, Dep't of Law & Pub. Safety, CSC Docket No. 2014-203, 2013 N.J. CSC LEXIS 936, Final Administrative Determination (September 4, 2013).

An employee of the Department of Children and Families who had been overpaid \$11,891.87 due to a position misclassification and the ensuing failure of the Department to promptly implement a decision of the Division of State and Local Operations (SLO) reclassifying the employee was entitled to partial relief from the statutory mandate that she repay such amounts to the State. The employee's request for a waiver of the overpayment did not satisfy the criteria in N.J.A.C. 4A:3-4.21 for complete relief from the repayment obligation. However, given the equities of the situation, the effective date of the reclassification was subject to further adjustment under N.J.A.C. 4A:3-3.9(f)1. Inasmuch as the overpayment was caused, at least in part, by the Department's failure to implement the reclassification decision, the date of reclassification – and hence the date on which the period of overpayment would begin – was properly determined to be April 4, 2012, and the period of overpayment for which the employee was properly held liable would be that period from April 4, 2012 through June 29, 2012. The Department was also properly warned that further disregard of such orders could result in the imposition of a fine on the agency as permitted by N.J.A.C. 4A:10-2.1(a)2. In re Susan Santiago, Dep't of Children & Families, CSC

Dkt. No. 2013-341, 2013 N.J. CSC LEXIS 480, Final Decision (August 1, 2013).

When an employee was reclassified from a Superintendent Parks and Forestry 3 to a Superintendent Parks and Forestry 2, a review of N.J.A.C. 4A:3-3.9(f) indicated to the Civil Service Commission that his appointment date was correctly set to the first date of the pay period after 14 days from when the agency received the reclassification request with the proper documentation. There was nothing in the record to suggest that the appointing authority acted in bad faith or was seriously negligent in its internal department processing delays. In re Vincent Bonica, Jr., Dep't. of Envtl. Prot., CSC Dkt. No. 2013-1613, 2013 N.J. CSC LEXIS 683, Final Decision (July 17, 2013).

An employee's challenge to the propriety of the unclassified title of Instructor 1 Education (12 Months) for her position and seeking classification as an Education Program Development Specialist 1 lacked merit to the extent that it relied on her claim that she should have been contacted during the review. That was because, per N.J.A.C. 4A:3-3.9(c)5, such classification reviews could either be conducted by a paper review based on the Position Classification Questionnaire completed by the employee and supervisor, by use of an on-site audit with the employee and supervisor, or by use of a formal telephone audit seeking clarifying information. That being so, an interview with the employee was not mandatory for a proper classification review, and the review at issue could not be invalidated on that basis. In re Wendy Eufemia, Dep't of Educ., CSC Docket No. 2012-2895, 2013 N.J. CSC LEXIS 494, Final Decision (May 15, 2013).

Though the former Division of State and Local Operations was correct in classifying positions held by three employees of the Department of Environmental Protection as Program Technician positions, an effective date that was 30 days after the date of the reclassification determination was properly assigned per N.J.A.C. 4A:3-3.9(f), thereby lessening the monetary impact of reclassification on two of the employees, who in effect had been overpaid for the duties that they had performed in the period between the effective date of reclassification and the determination of their appeal by the Civil Service Commission. Under these facts, moreover, a waiver of repayment of the overage might be available upon a showing that all of the factors in N.J.A.C. 4A:3-4.21 had been met. In re Guerieri et al., Department of Environmental Protection, CSC Dkt. Nos. 2012-3528, 2012-3529, and 2012-3541, 2013 N.J. CSC LEXIS 218, Final Agency Action (April 5, 2013).

Although a desk audit conducted by the former Division of State and Local Operations (SLO) concerning the proper classification of an employee's position was rendered late under N.J.A.C. 4A:3-3.9(c)5, that procedural violation did not entitle the employee to a reclassification of his position. His position was found to be properly classified as an Employment and Training Specialist 2 by both SLO and the Civil Service Commission. Any procedural violation was not prejudicial to the employee, and he was not harmed. In re Angel Lierena, Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2011-4279, 2013 N.J. CSC LEXIS 217, Final Decision (April 4, 2013).

Employees were granted an earlier effective date of reclassification pursuant to N.J.A.C. 4A:3-3.9(f)1. Although the assigned effective dates were technically correct, an incorrect organizational table was submitted by the appointing authority as part of the salary reevaluation request, resulting in the erroneous conclusion that the employees did not perform the required duties of Storekeeper. In re Norman Ehrke et al, Dep't of Transp., CSC Dkt. Nos. 2012-1430, 2012-3167, 2012-3284, 2013 N.J. CSC LEXIS 215, Final Decision (April 4, 2013).

Employee who was permanently appointed to the career service title of Program Development Specialist 1 (PDS), Corrections effective May 7, 1998; who then was appointed to the unclassified title of Administrator Prison Complex (APC), effective August 2, 2008, at a salary of \$99,501; and who then was returned to the Program Development Specialist 1, Corrections title with a salary of \$83,580, which was the highest salary in that range, was not entitled to have the \$99,501 salary "red-circled" per N.J.A.C. 4A:3-4.12(c) because the APC title and the PDS title were assigned to different occupational groups and, based on these differences, it was determined that the employee's experience as an