

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Classification, Services, and Compensation

Advancement Pay Adjustments: State Service

Proposed Amendment: N.J.A.C. 4A:3-4.9

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-7.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-037.

A **public hearing** concerning the proposed amendments will be held on:

Wednesday, April 23, 2014, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by May 16, 2014, to:

Henry Maurer, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, NJ 08625-0312

Summary

By way of background, the Civil Service Commission granted rule relaxation requests to implement agreements between the State and the New Jersey Internal Investigation Association, Fraternal Order of Police Lodge 174; an interest arbitration award between the State and the New Jersey Law Enforcement Supervisors Association; and memoranda of agreement covering Lieutenant- and Captain-level law enforcement officers. See *In the Matter of Investigator, Secured Facilities Title Series and State First Level Law Enforcement Supervisory Titles*, CSC Docket Nos. 2010-2729 and 2010-2734 (decided March 11, 2010); *IMO New Jersey Superior Officers Law Enforcement Association*, CSC Docket No. 2011-30 (decided July 21, 2010); and *IMO New Jersey Law Enforcement Commanding Officers Association*, CSC Docket No. 2011-3071 (decided February 16, 2011).

The agreements and interest arbitration award provided for salary levels in promotions to certain titles that were different from what N.J.A.C. 4A:3-4.9(a) provided. At the time, N.J.A.C. 4A:3-4.9(a) stated, in pertinent part: “Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range.” However, the agreements and interest arbitration award stipulated that an employee receiving a promotion to an affected title would receive a salary increase

representing the amount necessary to place the employee on the lowest step of the appropriate salary guide that affords the employee an increase in salary from that which the employee was receiving at the time of promotion.

To avoid the need for further rule relaxations in case of agreements similar to those described above, the Civil Service Commission proposed and, after public notice and comment, adopted, an amendment to N.J.A.C. 4A:3-4.9(a), allowing for the calculation of a different salary when “a different promotional procedure is established by a collective negotiations agreement.” See 43 N.J.R. 903(a); 2168(a).

However, although the amendment was intended to apply to any advancement pay adjustment under the section, in implementing the agreements and arbitration award, some individuals promoted into one of the affected units who had been at Step 10 for more than 39 pay periods prior to promotion had been erroneously subject to N.J.A.C. 4A:3-4.9(c), which provided for an extra increment than agreed to in the matters described above. While this mistake has since been corrected, the Commission believes that a further amendment to the rule is necessary to clarify that, if there is a contractual provision that affects promotional salary adjustments in State service, the adjustment, per contract, applies to all subsections of the rule.

Accordingly, new N.J.A.C. 4A:3-4.9(a) is proposed, to state as follows: “Unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment

result in a higher salary than that provided for in this section.” The exception for collective negotiations agreements is deleted from existing subsection (a), recodified as subsection (b), as it is included in new subsection (a).

Additionally, existing subsections (a) through (g) are recodified as subsections (b) through (h). Also, in light of the proposed recodification, cross-references in the rule would be amended, but without substantive change. Therefore, recodified subsection (b) is amended to refer to “(g) below” rather than “(f) below.” Also, recodified paragraph (b)3 is amended to refer to “(b)1 or 2 above” rather than “(a)1 or 2 above.” Recodified subsection (c) is amended to refer to “(b) above” rather than “(a) above.” Recodified subsection (e) is amended to refer to “(b) above” rather than “(a) above.” Recodified paragraph (e)1 is amended to refer to “(c) and (d) above” rather than “(b) and (c) above.” Finally, the example in recodified subsection (g) is amended to update the cross-reference of “(a) above” to “(a) and (b) above” as both subsections apply with the example now.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements.

Social Impact

Where a collective negotiations agreement provides for a salary adjustment formula in the case of State service promotions that is different from those formulas found in N.J.A.C. 4A:3-4.9, this amendment would allow the agreement to be implemented without confusion, so long as the resulting salary would not be greater than that provided for in the rule. The proposed amendment would benefit the

parties impacted by the agreement because it would clarify the legal mechanism by which the agreement could be implemented. The proposed amendment would ensure that the parties, as well as Civil Service Commission staff, understand that the agreement must be honored regardless of the language in any of the provisions of N.J.A.C. 4A:3-4.9.

Economic Impact

The proposed amendment should have a positive economic impact by ensuring the implementation of a promotional salary adjustment formula to which the parties have agreed, so long as the resulting salaries do not exceed those resulting from the formula set forth in the rule. Additionally, economic benefits would be derived from the proposed amendment for both appointing authorities and Civil Service Commission staff because rule relaxations would not need to be requested of the Commission in these instances. Moreover, all affected parties would be subject to the agreement's provisions without any confusion as to State agency responsibilities and the salaries to which certain employees are entitled.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment involves compensation in New Jersey State government in certain promotional situations and is not subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that any jobs would be generated or lost as a result of the proposed amendment. The proposed amendment involves compensation in New Jersey State government in certain promotional situations.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment involves compensation in New Jersey State government in certain promotional situations.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment involves compensation in New Jersey State government in certain promotional situations.

Housing Affordability Impact Analysis

Since the proposed amendment would only amend a rule involving compensation in New Jersey State government in certain promotional situations, it would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed amendment involves compensation in New Jersey State government in certain promotional situations, it would have no impact on smart growth or on new construction within Planning Areas 1 and 2, or within designated

centers, under the State Development and Redevelopment Plan.

Full text of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

4A:3-4.9 Advancement pay adjustments: State service

(a) Unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided for in this section.

[(a)] **(b)** Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range[, unless a different salary adjustment is established in a collective negotiations agreement, except that in no event shall such adjustment result in a higher salary than that provided for in this section]. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See [(f)] **(g)** below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

2. Employees are serving in a title which is reevaluated to a higher class code; or

3. Employees are appointed to a title with a higher class code, when the conditions in [(a)1] **(b)1** or 2 above are not applicable, provided the Civil Service Commission finds the following criteria are met:

i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and

ii. The service in the lower title provided significant preparation and training for service in the higher title.

[(b)] **(c)** When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in [(a)] **(b)** above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

[(c)] **(d)** When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

[(d)] **(e)** Employees who do not meet the criteria set forth in [(a)] **(b)** above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

1. The adjustments described in [(b) and] (c) **and (d)** above shall be applied as appropriate.

Recodify existing (e) – (f) as **(f) – (g)** (no change in text.)

[(g)] **(h)** When an employee’s work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

EXAMPLE: An employee on step four, range A10 in a 10 month title, is promoted to a 12 month title with salary range A15. There is no changes in workweek. The work year adjustment would bring the employee to step four, range A13. Then salary is calculated based on (a) **and (b)** above.