



B-73

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joseph Ochal,
Department of Health

CSC Docket No. 2015-1606

Administrative Appeal

ISSUED: **DEC 18 2016** (EG)

Joseph Ochal, represented by Daniel A. Smith, Staff Representative, CWA Local 1036, appeals the determination of the Department of Health (Health) regarding his years of service for the purpose of determining his vacation increment date.

Personnel records indicate that the appellant was appointed to the title of Senior Technician, Management Information Systems with the Department of State (DOS) effective August 27, 2011. On August 24, 2013, the appellant was provisionally appointed to the title of Technical Support Specialist 2 with Health, and was permanently appointed to this title effective February 21, 2015.

On appeal to the Civil Service Commission (Commission), the appellant states that he was hired as an unclassified employee on September 17, 2007 by the New Jersey Commerce Commission (NJCC). The appellant explains that in 2008 he was moved to the New Jersey Economic Development Authority (EDA), and continued to work there until his appointment with DOS. Additionally, the appellant asserts that in 2012 and 2013, he received 105 hours of vacation, *i.e.* 15 days, per year, but without notice, in 2014 he only received 84 hours (12 days). The appellant contends that due to his continuous service since 2007, he is entitled to 15 vacation days per year. In support of his contentions, the appellant submits copies of P.L.2008, c.27 concerning the abolishment of the NJCC; a drafted Legislative Document on the creation of the New Jersey Business Action Center under DOS; Reorganization Plan No. 003-201 transferring some of the duties of the EDA to DOS; copies of his pay check indicating deductions of union dues, and Article 23 of

his collective negotiations agreement. The appellant claims that these documents indicate that the transfer did not alter his representation status, bargaining rights or the bargained for terms and conditions of employment. Further, the appellant submits an email from a Human Resources employee with DOS indicating that there was an agreement between DOS and the EDA that transferred employees would have their years of service accepted and he had been able to continue to accrue his benefit time as if there was no break in service. The appellant notes that in *In the Matter of Commerce Commission Reorganization* (CSC, decided December 17, 2008) (*Commerce Commission*), the Commission acknowledged and approved agreements between the EDA and the Department of the Treasury, the Department of Community Affairs, and the Department Labor and Workforce Development to permit affected employees to retain and transfer current vacation and sick leave balances.

The appointing authority argues that the appellant's official hire date in the Personnel Management Information System (PMIS) is August 27, 2011. Additionally, it contends that it contacted this agency and was advised that the EDA is not an entity governed by Title 11A and that the appellant's years of service with the EDA do not factor into the calculation of his vacation increment date. In this regard, the appointing authority states that pursuant to *N.J.A.C. 4A:6-1.2(a)2ii*, the appellant is not entitled to receive 15 vacation days until 2016.

CONCLUSION

N.J.A.C. 4A:6-1.2(a) provides full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. Additionally, *N.J.A.C. 4A:6-1.2(a)2ii* states that after five years of continuous service and up to 12 years of continuous service, employees are entitled to 15 working days of vacation time.

Initially, the appellant has raised issues regarding his contract. In this regard, the Commission notes that it does not have jurisdiction to enforce or interpret terms or procedures which are contained in a collective bargaining agreement negotiated between the employer and a majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div. May 8, 2001). The proper forum to bring such concerns is the grievance process as set forth in the agreement. *See N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-5.4(c)*.

It has been established that the EDA is not an entity that is governed by the provisions of Title 4A of the New Jersey Administrative Code or Title 11A of the New Jersey Statutes. *See e.g., In the Matter of Helen Burton* (Commissioner of

Personnel, June 6, 2001) (Employee, who resigned from the Department of Environmental Protection (DEP) and took a position with the EDA and then returned to the DEP via regular reemployment, was denied additional vacation leave credit since the period of time with the EDA constituted a break in service for purposes of calculating leave entitlements, as the EDA is not an entity covered under the provisions of Title 11A). *See also, In The Matter of Connie F. Meyers, Department of Health* (CSC, decided October 22, 2014). Because the EDA is not subject to Title 4A, the provisions of *N.J.A.C. 4A:6-1.2(a)* do not apply to the appellant's employment with the EDA. Thus, his service time with the EDA prior to joining DOS cannot be used to calculate his vacation increment.

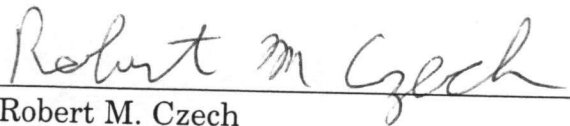
It is noted that, although the appellant apparently received credit for his prior service with EDA while working at DOS, such actions appear to have been made in error. In this regard, it is emphasized that no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998). Further, any such alleged agreement between the EDA and DOS regarding vacation time would have required Commission approval. In *Commerce Commission, supra*, the Commission acknowledged and approved the agreements between EDA and the Departments of the Treasury, Community Affairs, and Labor and Workforce Development to permit specific employees impacted by the transfers to retain and transfer current vacation and sick leave balances). There was no agreement between EDA and DOS included in that action. Additionally, although the former Merit System Board (Board) in *In the Matter of Commerce Commission Reorganization* (MSB, decided July 25, 2007) did acknowledge an agreement regarding the movement of EDA employees to DOS, that agreement only applied to specific employees whose titles were reallocated to the non-competitive division on an interim basis. The appellant's name was not listed on that document and the remedy was not applicable to employees not named in the decision. Further, none of the legislative materials or the Reorganization Plan submitted by the appellant indicated that an affected employee's service time is to be adjusted in the manner in which the appellant suggests. Accordingly, the determination regarding the appellant's vacation leave by the appointing authority was proper and correct.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF DECEMBER, 2015



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