



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Communications
Workers of America Grievance
Settlement, Various State Agencies

Administrative Appeal

CSC Docket No. 2019-3440

ISSUED: JUNE 13, 2019

(ABR)

The Communications Workers of America, AFL-CIO, (CWA), represented by Steven P. Weissman, Esq., requests that, pursuant to *N.J.S.A. 11A:3-7*, the Civil Service Commission (Commission) approve a waiver of repayment of salary overpayments for employees covered under the attached Grievance Settlement between the State and the CWA and that it relax *N.J.A.C. 4A:3-4.9* in order to permit these employees to receive a step advancement retroactive to May 1, 2019 while retaining their anniversary dates in accordance with the terms of that Grievance Settlement.

By way of background, the CWA represents State employees in the Administrative/Clerical, Professional, Primary Supervisors and Higher Level Supervisors Units. Between July 1, 2011 and June 30, 2015, employees in these bargaining units were covered under a collective bargaining negotiations agreement (2011 Agreement) which stated, in relevant part, that employees eligible for normal increments under the State Compensation Plan would receive them during the term of the contract. The State and the CWA were unable to reach a new agreement prior to the 2011 Agreement's June 30, 2015 expiration date. After June 30, 2015, the State ceased providing annual incremental pay increases to employees in covered titles. On April 16, 2018, the State and the CWA executed a Memorandum of Agreement (MOA) in order to settle certain issues concerning the CWA's collective bargaining negotiations agreement, including increments. The parties agreed that the MOA would have an effective date of April 4, 2018.

After ratification of the MOA, multiple issues arose which led the CWA to file a series of grievances challenging its implementation, including an issue involving the salary step placement for the below-noted employees, who received promotional appointments with effective dates between August 19, 2017 and April 14, 2018. Specifically, because the retroactive implementation of the MOA's 2017 across-the-board raises increased the steps of the applicable salary ranges, it was determined that, pursuant to *N.J.A.C. 4A:3-4.9*, these employees would have been placed one step lower within the salary range for their new titles if the first salary increase under the MOA had actually been implemented on August 15, 2017. As a result, the salary step placement for these employees was reduced by one step on July 7, 2018. This effective date of this action was made retroactive to the applicable promotion date for each employee. Based upon this action, it was determined that the employees listed below received the following overpayments between the date of their promotion and July 7, 2018:

<u>NAME</u>	<u>DEPARTMENT</u>	<u>TITLE</u>	<u>OVERPAYMENT AMOUNT</u>
William Congleton	Department of Transportation	Construction and Maintenance Technician 2	\$588.00
Paul Denigris	Department of Transportation	Construction and Maintenance Technician 2	\$792.68
Joseph Polizzi	Department of Transportation	Construction and Maintenance Technician 2	\$721.26
Eric Vanduyne	Department of Transportation	Construction and Maintenance Technician 2	\$956.02
Joseph Mullholland	Department of Transportation	Chief Bridge Operator	\$519.65
Craig Villa	Department of Transportation	Chief Bridge Operator	\$105.28
Keith Voit ¹	Department of Transportation	Chief Bridge Operator	\$0.00
Peter Demarco	Department of Transportation	Crew Supervisor Electrical Operations	\$355.84
Jackie Nickles	Department of Transportation	Crew Supervisor Electrical Operations	\$691.38
Albert Stell	Department of Transportation	Safety Service Patrol Supervisor	\$776.40
Bruce Cavanagh	Department of Transportation	Crew Supervisor, Buildings and Grounds	\$849.33

¹ Because Voit received an increment between the February 17, 2018 effective date of his appointment to the title of Chief Bridge Operator and July 7, 2018, it was determined that he did not receive an overpayment of salary.

Elliott Groom	Department of Transportation	Assistant Crew Foreman Highway Operations	\$289.36
Daniel Prospero	Department of Transportation	Assistant Crew Foreman Highway Operations	\$293.89
Zachary Rebelo	Department of Transportation	Assistant Crew Foreman Highway Operations	\$361.70
Jeffrey Roberts	Department of Transportation	Assistant Crew Foreman Highway Operations	\$265.20
William Ramos	Department of Transportation	Inventory Control Specialist 1	\$614.89
Fredrick Tenuto	Department of Transportation	Engineering Technician 3	\$693.20
James Jones	Montclair State University	Crew Supervisor, Locksmiths	\$515.00
Margarita Acevedo	Montclair State University	Crew Supervisor Building Maintenance Workers	\$96.00
Carl Brandimarte	Division of State Police	Supervisor of Building Repairs 2	\$659.95
Angela Lovero	Department of Agriculture	Entomologist 2	\$1,074.10
Richard Baldwin	Ann Klein Forensic Center	Crew Supervisor Building Maintenance Programs	\$357.74
Katelyn Baker	Department of Environmental Protection	Building Services Coordinator 1	\$369.54
Michael Gratton	Motor Vehicle Commission	Supervisor 1 MVC	\$1,077.21
Aretus Cosby	Motor Vehicle Commission	Supervisor 1 MVC	\$1,032.92
Daniel Willis	Mountainview Correctional Center	Crew Supervisor Building Maintenance Programs	\$701.37
Alex Baquero-Espin	Hunterdon Developmental Center	Crew Supervisor Building Maintenance Workers	\$516.27
Harold Ogden, Jr.	Hunterdon Developmental Center	Crew Supervisor Building Maintenance Workers	\$174.00
Laura Flowers	Hunterdon Developmental Center	Safety Officer, Developmental Disabilities	\$709.93

On February 27, 2019, the State and the CWA entered into the Grievance Settlement. Specifically, it was agreed that:

Employees whose salaries were reduced following the implementation of the MOA will remain on their assigned step. The State will affirmatively support a waiver application of the affected employees through the Civil Service Commission regarding claims to recoupment and a May 1, 2019 step advancement but retaining their anniversary date.

The CWA maintains that in order to effectuate the Grievance Settlement, it is necessary for the Commission to approve a waiver of repayment of the above-noted salary overpayments pursuant to *N.J.S.A.* 11A:3-7 and for it to relax *N.J.A.C.* 4A:3-4.9 in order to permit these employees to receive a step advancement retroactive to May 1, 2019 while retaining their anniversary dates.

The Governor's Office of Employee Relations indicates that it supports the CWA's requests in the instant matter.

CONCLUSION

N.J.S.A. 11A:3-7(c) provides that when an employee has erroneously received a salary overpayment, the Commission may waive repayment based on a review of the case. *N.J.A.C.* 4A:3-4.1 *et seq.* specifies the procedures used to implement and administer the State Compensation Plan. *N.J.A.C.* 4A:3-4.9 provides, in pertinent part, that:

- (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.
- (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 . . . 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;

3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or

* * *

- (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 (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.

N.J.A.C. 4A:3-4.5(a) provides, in pertinent part, that an anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range for a salary increase. *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, the above-noted employees received promotions which took effect between August 19, 2017 and April 14, 2018. On the effective date of their respective promotions, these employees were placed in the appropriate step within the salary range for their new titles. However, based upon the retroactive changes to the salary ranges for these titles following the application of the retroactive raises provided under the MOA, the salaries of these employees were negatively impacted due to a readjustment of their placement on the applicable salary step and range. This action caused each employee to be liable for a salary overpayment between the effective date of their applicable promotion and July 7, 2018. Thereafter, the CWA filed a grievance on behalf of these individuals which the CWA and the State later sought to resolve through the Grievance Settlement. The Commission notes that subject promotions for the above-noted employees took effect prior to the execution of the MOA and that the salary overpayments at issue resulted from the subsequent execution and implementation of the MOA. The Commission further observes that the Grievance Settlement is intended to resolve these unforeseen issues by waiving the subject salary overpayments and placing the affected employees in the salary range steps they would have held as of May 1, 2019 if not for the issues surrounding implementation of the MOA. Although the terms of the collective negotiations agreement were agreed upon by the State and the CWA, the Grievance Settlement cannot be implemented absent the Commission's waiver of repayment by these individuals and the relaxation of the controlling State Compensation Plan regulations. It is emphasized that the policy of the judicial system strongly favors settlement. See *Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubb*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only

where there is fraud or other compelling circumstances. *See Nolan, supra*. Such circumstances are not present in this matter. Moreover, a settlement agreement should be enforced where a party has competent representation of his or her choosing and entered into the agreement knowingly and voluntarily. *See e.g., In the Matter of Barbara Knier* (MSB, decided January 12, 1999) and *In the Matter of William Munoz* (MSB, decided June 16, 1998). Accordingly, a sufficient basis exists to grant a waiver of the repayments at issue pursuant to *N.J.S.A. 11A:3-7(c)* and to relax the controlling regulatory provisions of *N.J.A.C. 4A:3-4.1 et seq.* in order to implement the terms of the Grievance Settlement.

ORDER

Therefore, it is ordered that the request for a waiver of repayment of the salary overpayments for William Congleton, Paul Denigris, Joseph Polizzi, Eric Vanduyne, Joseph Mulholland, Craig Villa, Peter Demarco, Jackie Nickles, Albert Stell, Bruce Cavanagh, Elliott Groom, Daniel Prospero, Zachary Rebelo, Jeffrey Roberts, William Ramos, Fredrick Tenuto, James Jones, Margarita Acevedo, Carl Brandimarte, Angela Lovero, Richard Baldwin, Katelyn Baker, Michael Gratton, Aretus Cosby, Daniel Willis, Alex Baquero-Espin, Harold Ogden, Jr. and Laura Flowers be granted.

It is further ordered that the salary step placement of these employees and Keith Voit be adjusted in accordance with the terms of the attached Grievance Settlement between the State and the CWA, but that their current anniversary dates be retained.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF JUNE, 2019



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and
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Grievance Settlement

This Settlement Agreement and Release (the "Agreement") is entered into by and between the Governor's Office of Employee Relations on behalf of the State of New Jersey (the "State") and the Communication Workers of America (the "Parties").

Whereas, the implementation of the MOA involved several years' restorative payments dependent upon complex calculation, and at the time, manual adjustments to employees' payroll statuses;


Whereas, the CWA grieved the implementation of the MOA salary adjustment and movement of employees between steps;

Whereas, the parties now deem in it their respective best interests to resolve their disputes without additional litigation and enter into this Agreement for the purpose of avoiding the burden, expense, delay and uncertainty of additional litigation;

Now therefore, in consideration of the promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the Parties agree as follows:

1. Employees whose salaries were reduced following the implementation of the MOA will remain on their assigned step. The State will affirmatively support a waiver application of the affected employees through the Civil Service Commission regarding claims to recoupment and a May 1, 2019 step advancement but retaining their anniversary date.
2. The CWA agrees to withdraw, with prejudice all grievances relating to salary reductions following implementation of the April 4, 2018 memorandum of agreement relating to recoupment issues.


For the CWA


For the State 2/27/2019