



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Jeffrey Kowalski, *et al.*, Department of Transportation

Administrative Appeals

CSC Docket Nos. 2016-3929, *et al.*

ISSUED: FEBRUARY 14, 2020 (SLK)

Jeffrey Kowalski, Michael Saulnier, Shawn Smith, Kevin Tynan, and Addam Wenstrom, represented by Arnold Shep Cohen, Esq., request that the Civil Service Commission review the denial of their requests to adjust their salaries to the Step 4 or Step 5 of their respective salary ranges. These appeals have been consolidated due to common issues presented.

By way of background, appellants Kowalski, Saulnier, Smith and Tynan were appointed to the title of Automotive Mechanic in November 2013 and were placed on the first step of salary range C17. On appeal, the appellants maintain that when the appointing authority interviewed them for the position of Automotive Mechanic in August 2013, it advised them that they would be compensated at Step 4. However, after they had already given notice to their previous employers, they were advised that their actual starting salary would be at Step 1. In May 2015, they present that another individual was hired as an Automotive Mechanic and this individual's compensation started at Step 4. Therefore, the appellants believe that they are entitled to have their salaries automatically raised to Step 4 in accordance with *N.J.A.C. 4A:3-4.4(c)*.<sup>1</sup>

The appellants also assert in their own submission (not through counsel) that subsequently, they filed a grievance in May 2015, but they contend that their union

<sup>1</sup> Personnel records indicate that Kowalski's, Saulnier's, Smith's and Tynan's current salary is at the Step 7 of the salary range.

and the appointing authority did not follow the negotiated grievance procedures. They also state that they filed a second grievance in September 2015 and a third grievance on April 7, 2016, but neither the appointing authority nor their union followed through with the grievance process. As such, they argue that the appointing authority violated *N.J.A.C.* 4A:10-1.1(d) by making a false statement concerning their starting salary and that they are being subjected to discrimination by receiving less compensation than the more recently hired co-worker. Further, they state that the appointing authority did not appoint them at the authorized hiring rate (AHR).

Similarly, Addam Wenstrom was hired in November 2014 as a Construction and Maintenance Technician 5 at Step 1 of salary range I11. He presents that more recently the appointing authority hired individuals as Construction and Maintenance Technician 5s with salaries starting at Step 5.<sup>2</sup> Therefore, he believes that he is entitled to have his salary brought up to Step 5. Mr. Wenstrom filed a grievance in May 2016, but the appointing authority advised him that the appropriate forum for his grievance was with the Commission.

In response, the appointing authority presents that Mr. Saulnier, Mr. Tynan, Mr. Smith, and Mr. Kowalski were hired as Automotive Mechanics in November 2013 starting at Step 1 of the salary range and Mr. Wenstrom was hired as a Construction and Maintenance Technician 5 in November 2014 starting at Step 1 of the salary range. It states that the Automotive Mechanic and Construction and Maintenance Technician 5 titles have no established authorized hiring rate, and as such, initial appointments into these titles are subject to the provisions of *N.J.A.C.* 4A:3-4.4(a) which allows for discretionary placement up to and including Step 4 of the hiring range. It asserts that its determination to hire these individuals at Step 1 is consistent with initial appointment salary parameters authorized under the Administrative Code.

## CONCLUSION

*N.J.A.C.* 4A:3-4.4(a) provides that an appointing authority *may* place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title.

*N.J.A.C.* 4A:3-4.4(c) provides that an AHR is the set salary for initial appointments to particular job titles as established by the Commission. When an AHR is established or changed, current employees in such titles whose salaries are below the AHR shall be advanced to the AHR.

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<sup>2</sup> Personnel records that Wenstrom is currently a Construction and Maintenance Technician 2, which is at the R19 salary range.

*N.J.A.C.* 4A:2-1.4(c) provides that the appellant has the burden of proof on appeal.

Initially, it is noted that Mr. Kowalski's, Mr. Saulnier's, Mr. Smith's, and Mr. Tynan's appeals appear to be untimely. They claim that the appointing authority advised them in August 2013 that their initial starting salary was going to be at Step 4, but instead placed them at Step 1 when appointed in November 2013. Under *N.J.A.C.* 4A:2-1.1(b), an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed. Therefore, this matter should have been appealed in 2013. However, they state that they did not file a grievance until May 2015, more than one year and a half after they had notice of the action. Nonetheless, it appears that the union entertained the matter and was advised by the appointing authority that their initial salaries were set in accordance with *N.J.A.C.* 4A:3-4.4(a). Moreover, the correspondence they submitted in this appeal from their union dated March 23, 2016, specifically advised the appellants that it needed any documentation they were provided at their initial interview demonstrating that they would be hired at Step 4. The appellants did not provide any documentation in support of this contention to their union or with this appeal. Therefore, this matter can be dismissed on this basis alone as the appellants have not sustained their burden of proof.

Regardless, with respect to the merits of the appellants' claim under *N.J.A.C.* 4A:3-4.4(c), the Automotive Mechanic title salary range is C17. A review of the Compensation Compendium<sup>3</sup> indicates that the AHR for the "C" Employee Relations Group at the time they were hired in 2013 was a Step 1 salary of \$41,471.90 and the increment was \$1,885.01 for each Step advancement. A review of their personnel records indicates that their starting salaries in 2013 were \$41,471.90 which was correct for Step 1 based on the AHR at the time. Effective July 12, 2014, the AHR changed for the "C" Employee Relations Group making the Step 1 salary \$42,619.64 and the increment became \$1,937.17. A review of their personnel records indicates that, effective July 12, 2014, their salaries at Step 1 were adjusted to \$42,619.64 to be in-line with the new AHR. Thereafter, in November 2014, their salaries were increased to \$44,556.81 which was in-line with the then current AHR at Step 2. The fact that the appointing authority used its discretion, as authorized under *N.J.A.C.* 4A:3-4.4(a), to compensate them at Step 1, when it hired them in 2013, and used its discretion to compensate a new employee at Step 4, which it hired in 2015, does not mean that their salaries were set in violation of the governing rules. Therefore, they have not met their burden of proof in this matter.

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<sup>3</sup> The Compensation Compendium contains the Salary Regulations adopted under the authority of the Annual Appropriations Act.

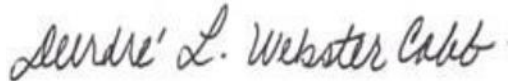
Similarly, in reference to Mr. Wenstrom, the Construction and Maintenance Technician 5 title salary range is I11. A review of the Compensation Compendium indicates that the AHR for the "I" Employee Relations Group at the time he was hired in 2014 was a Step 1 salary of \$32,806.32. A review of his personnel records indicates that his starting salary in 2014 was \$32,806.32 which was correct for Step 1 based on the AHR at the time. The AHR for the "I" Employee Relations Group had not changed from the time Mr. Wenstrom was hired to the time of his appeal. Therefore, as stated above, the fact that the appointing authority used its discretion to compensate him at Step 1, when it hired him in 2014, and used its discretion to compensate newer employees at Step 4, does not mean that his salary was in violation of the governing rules. Therefore, he has not met his burden of proof in this matter.

### ORDER

Therefore, it is ordered that these appeals 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 12<sup>th</sup> DAY OF FEBRUARY, 2020



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