

In the Matter of Interim Disaster Recovery Division, Department of Community Affairs

CSC Docket No. 2013-2597

(Civil Service Commission, decided April 17, 2013)

The Division of Classification and Personnel Management (CPM) seeks Civil Service Commission (Commission) approval to make temporary unclassified appointments to various career service titles in order to allow expedited staffing of the interim Disaster Recovery Division, Department of Community Affairs (DCA).

By way of background, the DCA is establishing a new, interim Disaster Recovery Division that will be responsible for the administration of \$1.82 billion in federal funds that have been allocated to New Jersey in order to rebuild homes, business, and infrastructure as a result of Superstorm Sandy. These funds, as well as any funds provided thereafter, must be expended within two years of the obligation date and the DCA plans to phase down the interim Disaster Recovery Division by no later than September 30, 2017. Therefore, in order to ensure that necessary personnel can be appointed to appropriate job classifications to perform professional, administrative, construction code, and managerial tasks aimed at providing assistance in the aftermath of this disaster, CPM requests authorization to allow unclassified appointments to be made to specific, appropriate career service positions in the DCA..

CPM presents that the basis for allowing unclassified appointments to be made to specific, appropriate, career service positions is the immediate need for staff in order to meet strict timelines mandated for the administration of the federal funds it has been granted to assist the citizenry of New Jersey in coping with the disastrous impact of Superstorm Sandy. Further, CPM underscores that the nature of positions involving disaster relief does not lend itself to tenure. Finally, given the nature of disaster recovery positions, there is a need for flexibility in the selection process. In this case, CPM emphasizes that it is imperative that the DCA have the ability to fill positions in the interim Disaster Recovery Division dedicated to the rebuilding of homes, businesses, and infrastructure impacted by Superstorm Sandy in a timely manner. In this regard, it notes that the appropriations received by the State are for recovery efforts through September 30, 2017. Thus, it would be impractical to make permanent appointments to any positions to perform these disaster relief duties since the positions are, at the outset, short-term in nature. Moreover, CPM underscores that the positions that DCA needs to fill will vary and, in some case, require a very specific set of skills. As such, it is imperative that the DCA be given flexibility in the selection process in order to meet its needs. Accordingly, CPM requests that the following career service titles be deemed appropriate to fill through unclassified appointments in the DCA's Division of Disaster Recovery:

Accountant 1	Manager 1, Human Resources	Secretarial Assistant 3, Non-Stenographic
Accountant 2	Network Administrator 1	Senior Clerk Typist
Administrative Analyst 1	Personnel Assistant 3	Senior Fiscal Analyst
Administrative Analyst 1, Fiscal Management	Principal Fiscal Analyst	Subcode Official
Administrative Analyst 1, Management Auditor	Principal Public Information Assistant	Supervising Accountant
Administrative Analyst 1, Procurement	Principal Clerk Typist	Supervising Auditor
Administrative Analyst 2, Data Processing	Program Specialist 2	Technical Assistant, Construction Monitoring
Administrative Analyst 3, Procurement	Program Specialist 3	Technical Assistant 2, Community Affairs
Administrative Assistant 2	Program Specialist 4	Technical Assistant 3, Community Affairs
Auditor 1	Project Manager, Data Processing	Technical Support Specialist 1
Construction Code Inspector 2	Regulatory Officer 1	
Construction Official	Secretarial Assistant 2, Non-Stenographic	
Contract Administrator 2		
Contract Administrator 3		
Engineer, Code Service		
Fiscal Analyst		

In addition to the titles listed above, CPM also requests authority to approve future unclassified appointments to other career service titles as deemed appropriate for the DCA to assist in the staffing efforts for disaster recovery.

CONCLUSION

In State service, *N.J.S.A.* 11A:3-4(l) provides that the unclassified service shall be limited to those titles specifically designated and all other titles as provided by law or as the Commission may determine in accordance with criteria established by rule. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated 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 Commission 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.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See, Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981).

In the instant matter, there is no question that the titles requested by CPM are not specifically designated by *N.J.S.A.* 11A:3-4, nor is there specific statutory authority for unclassified appointments to the positions. Likewise, there is no statutory provision allowing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority. Therefore, it is necessary to evaluate this matter under *N.J.A.C.* 4A:3-1.3(a)5, which specifies that the Commission may allocate a title to the unclassified service if 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.

It has been the established practice of this agency to administer separate examinations for each competitive title within a title series. As such, for each examination, this agency issues either an open competitive or promotional announcement, reviews the resultant applications that are received to determine eligibility to compete in the examination, develops and conducts an examination, issues eligible lists ranking those candidates who passed the examination, and certifies the eligible list so that an appointing authority can consider interested eligibles for appointment. While this methodology is clearly consistent with the

constitutional and statutory mandate to select and advance employees on the basis of merit and fitness, it cannot be ignored that this process can take several months to complete. Additionally, it is anticipated that the interim Disaster Recovery Division will phase down no later than September 30, 2017. Given the immediate need for the DCA to make appointments in order to meet strict timelines mandated for the administration of the federal funds it has been granted and the fact that the Disaster Recovery Division will be phased down by September 30, 2017, the Commission finds that it would not be practicable to determine merit and fitness for appointment nor make permanent appointments to the titles utilized by the interim Disaster Recovery Division.

Additionally, the Commission notes that in accordance with *N.J.S.A. 11A:3-6*, a public hearing is required when moving a title from the career to the unclassified service. However, the titles at issue are *not* to be considered unclassified except for the specific positions utilized in the interim Disaster Recovery Division. In this regard, the positions in the interim Disaster Recovery Division are not yet encumbered. As such, a public hearing is not necessary. Nevertheless, the DCA is directed to ensure that all of the appointees to positions within its interim Disaster Recovery Division are advised that their appointments are in the unclassified service and that they are not entitled to the tenure protections provided under Civil Service law and rules.

ORDER

Therefore, it is ordered that this request be granted and that the titles listed, as well as any other titles needed to staff positions in the Department of Community Affairs interim Division of Disaster Recovery, be designated as unclassified. The Department of Community Affairs is to ensure that all of the appointees to positions within its interim Disaster Recovery Division are advised that their appointments are unclassified and that they will not be entitled to the tenure protections of Civil Service law and rules.

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