

In the Matter of Elvis Jimenez, et al.

CSC Docket Nos. 2012-50, 2012-51, and 2012-150

(Civil Service Commission, decided August 17, 2011)

Elvis Jimenez, represented by Catherine M. Elston, Esq., Priscilla Leon, represented by Patrick P. Toscano, Jr., Esq., and Jason Tangorra, represented by Danielle G. Miele Tangorra, Esq., appeal the attached decisions of the Division of State and Local Operations (SLO), which found that their names should not be placed on the Statewide Eligible List for reemployment of displaced law enforcement officers (Rice Bill list). Because these appeals involve similar issues, they have been consolidated.

By way of background, when *N.J.S.A.* 40A:14-180 (Rice Bill) was first adopted on October 23, 1991, it permitted “law enforcement officers” who were terminated for reasons of economy and efficiency to be placed on the Rice Bill list for potential appointment consideration to county or municipal police departments. At that time, the Rice Bill did not expressly define what constituted a “law enforcement officer.” Rather, this agency determined that the Legislature used the term in a broad sense. This agency’s reasoning behind an expansive definition for “law enforcement officer” was based in large part on its evaluation of the Police Training Act, *N.J.S.A.* 52:17B-66 *et seq.* Specifically, in enacting the Police Training Act, the Legislature noted the need for training for those who seek to become “law enforcement officers” in “the field of law enforcement...” The Police Training Act requires training for all “police officer[s],” which is defined as “any employee of a law enforcement unit, including [S]heriff’s [O]fficers and [C]ounty [I]nvestigators in the office of the county prosecutor.” *See N.J.S.A.* 52:17B-67. Title 4A of the New Jersey Administrative Code echoes this description, stating that “a law enforcement title is one that encompasses use of full police powers.” *See N.J.A.C.* 4A:4-5.2(d). Accordingly, the Rice Bill has been applied to career service titles that are subject to training required by the Police Training Act.

Although the initial enactment of the Rice Bill did not expressly state that unclassified titles, such as Sheriff’s Investigator, are covered, since appointees to that title are subject to the training required by the Police Training Act, this agency considered Sheriff’s Investigators law enforcement officers. Therefore, given that the legislative purpose underlying the enactment of the Rice Bill was to provide laid-off law enforcement employees with job opportunities and to enable counties and municipalities to hire fully trained and experienced law enforcement officers, *regardless* of whether the law enforcement officer was in the career or unclassified service, this agency concluded in July 1992 that incumbents in the title of Sheriff’s Investigator were entitled to placement on the Rice Bill list. Indeed, for purposes of placement on the Rice Bill list, the type of Civil Service status, be it career service or unclassified, was not a critical factor, so long as the law enforcement officer completed a working test period or a comparable probationary period in a county or

municipality that has adopted Title 11A. Moreover, the Rice Bill applies to law enforcement officers who were employed in non-Civil Service counties and municipalities. As such, this agency has considered a law enforcement officer who serves in an unclassified title, such as Sheriff's Investigator, as essentially equivalent to one who serves in a non-Civil Service jurisdiction in the sense that in both cases, the employee is not subject to the appointment and tenure provisions of the Civil Service Act. Therefore, since July 1992, this agency has placed individuals serving as unclassified Sheriff's Investigators who completed the required Police Training Commission (PTC) training and completed a comparable working test period on the Rice Bill list. *See In the Matter of Sheriff's Investigators to Sheriff's Officers, Hunterdon County Sheriff's Office* (CSC, decided November 6, 2008).

Subsequently, on December 9, 2010, the Legislature amended the Rice Bill. *See* P.L. 2010, c. 103. *N.J.S.A. 40A:14-180*, which had only addressed appointments of county or municipal law enforcement officers, was revised to also include Sheriff's Officers. Germane to the matter at hand, the amended legislation also specified:

The provisions of this *section* shall not apply to a [S]heriff's [I]nvestigator appointed pursuant to section 2 of P.L. 1987, c. 113 [*N.J.S.A. 40A:9-117a*]. (Emphasis added).

The Legislature also included in its amendments three new sections providing for the placement on the Rice Bill list and the appointment of County Correction Officers, State law enforcement department officers, and municipal police officers who were laid off prior to completing the working test period in the jurisdiction from which the individual was laid off. The Legislature specified that the amendments would take effect on the *first day of the third month* following the December 9, 2010 enactment, except for the provision permitting placement on the Rice Bill list for the specific municipality for those officers who were laid off prior to completing their working test period, which took effect immediately. In other words, the amended provisions concerning the appointments of county, municipal or sheriff's law enforcement officers (which includes the prohibition of placing Sheriff's Investigators on the Rice Bill list), county correctional officers, and State law enforcement department officers became effective on March 1, 2011.

In the present matter, a review of agency records indicates that Mr. Jimenez was appointed as a Sheriff's Investigator on September 8, 2005 with the Passaic County Sheriff's Office (Passaic) and due to a reduction in force for economic reasons, his appointment was discontinued on December 31, 2010. Mr. Jimenez requested that Passaic certify that he met the requirements for appointment in accordance with the provisions of the Rice Bill list by submitting an Application for Placement on the Statewide Eligible List. A representative of Passaic indicated that Mr. Jimenez satisfied the requirements for placement on the Rice Bill list, which was submitted to this agency for processing. Ms. Leon was appointed as a

Sheriff's Investigator with the Morris County Sheriff's Office (Morris) on July 7, 2003 and due to a reduction in force for economic reasons, her appointment was discontinued on August 5, 2010. Ms. Leon requested that Morris certify that she met the requirements for appointment and placement on the Rice Bill list by submitting an Application for Placement on the Statewide Eligible List. A representative of Morris indicated that Ms. Leon satisfied the requirements for placement on the Rice Bill list, which was submitted to this agency for processing. Mr. Tangorra was appointed as a Sheriff's Investigator on January 1, 2011 with Passaic and due to a reduction in force for economic reasons, his appointment was discontinued on March 20, 2011.¹ A representative of Passaic indicated that Mr. Tangorra satisfied the requirements for placement on the Rice Bill list, which was submitted to this agency for processing. However, given the recent amendments to the Rice Bill, SLO advised the appellants that their names could not be placed on the Rice Bill list.

On appeal to the Civil Service Commission (Commission), Mr. Jimenez states that good cause exists to permit his name to be placed on the Rice Bill list. Specifically, he asserts that at the time of his layoff, December 31, 2010, as well as at the time he filed his application for placement on the Rice Bill list, *N.J.S.A. 40A:14-180* provided for placement on the list of Sheriff's Investigators. In fact, Mr. Jimenez contends that another Sheriff's Investigator, Matthew Kloo, who was laid off at the same time, was placed on the Rice Bill list. He also asserts that this agency delayed processing his application for placement of the Rice Bill list. Specifically, he notes that he filed his application in January 2011, but this agency did not advise him that he could not be placed on the list until June 2011. Mr. Jimenez argues that had this agency timely processed his application upon receipt in January 2011, he would have been on the list prior to the March 1, 2011 effective date of the statute's amendment.

Mr. Jimenez also asserts that he is entitled to placement on the Rice Bill list as a matter of law and as a matter of fundamental fairness. In this regard, he emphasizes that the statute amending *N.J.S.A. 40A:14-180* does not provide for any retroactivity with respect to Sheriff's Investigators nor does it state that the provision would take effect immediately. In fact, he notes that another amendment

¹ Agency records reflect that Passaic requested that SLO record Mr. Tangorra's unclassified appointment as a Sheriff's Investigator effective June 15, 2009. At that time, since Passaic employed more than 15% of the total number of Sheriff's Officers as Sheriff's Investigators, SLO advised that it could not record his appointment. Passaic appealed this determination and the Civil Service Commission (Commission) found that SLO should record appointments to Sheriff's Investigators based on 15% of the total number of Sheriff's Officers, *including* those Sheriff's Officers serving in superior ranks, for all Sheriff's Offices. *See In the Matter of Sheriff's Investigator* (CSC, decided March 16, 2011). Thereafter, SLO recorded Mr. Tangorra's appointment effective January 1, 2011, but noted that he had been working in the title since June 15, 2009. It is noted that SLO is taking corrective action concerning Mr. Tangorra's initial appointment date.

to the statute that applies to municipal Police Officers clearly indicated that that provision would take effect immediately. Therefore, Mr. Jimenez argues that to interpret the statute as being retroactive or immediately effective as to the provision pertaining to Sheriff's Investigators would offend the standard precepts of statutory construction as well as violate every principle of fundamental fairness. Additionally, Mr. Jimenez states that he relied on the representations of Passaic and this agency as to his eligibility for placement on the Rice Bill list, which makes his situation one of equitable estoppel and detrimental reliance. He maintains that this agency's neglect in timely filing his application has resulted in his loss of employment opportunities. In fact, Mr. Jimenez maintains that representations were made to him by both Passaic and representatives of this agency during layoff interviews that he would be eligible for placement on the list and he was instructed on how to proceed with the application process. Under these circumstances, Mr. Jimenez contends that his name should be placed on the Rice Bill list.

Ms. Leon states that the Morris County Sheriff's Office advised this agency that it believes that she is eligible for placement on the Rice Bill list, based upon the effective date of her appointment, her title, as well as the statute's effective date. In this regard, she states that the amendment took place approximately six months *after* the discontinuation of her service and notes that Morris has no objection to and joins in her request. Under these circumstances, Ms. Leon requests that her name be placed on the Rice Bill list.

Mr. Tangorra states that SLO's letter advising him he was not eligible for placement on the Rice Bill list indicates that he was terminated on December 30, 2010,² which predates the effective date of the amendment to the Rice Bill. He states that it is unfair for this agency to unilaterally decide to apply the amendment to Sheriff's Investigators who were terminated prior to the effective date of the amendment and that this is contrary to the Legislature's intent behind the amendment. Mr. Tangorra also states that when he accepted an offer for employment with Passaic, he did so in reliance upon several representations about the job, including the assurance that he would be entitled to the same protections as a Civil Service employee if another layoff occurred. Thus, to reject his application for placement on the Rice Bill list even after he completed all other eligibility requirements is a complete hindrance and interference with his fundamental right to work in law enforcement in the State of New Jersey. Further, Mr. Tangorra states that he recently interviewed for a position and was considered for employment with the Borough of Pompton Lakes (Pompton Lakes) as a Police Officer. However, since Pompton Lakes is required to use the Rice Bill list for appointments, it would be required to petition for an exception to hire him. As a result, he states that he was forced to forego an opportunity for employment despite

² It is noted that Mr. Tangorra's County and Municipal Personnel System (CAMPS) record indicates that his appointment was discontinued on March 20, 2011.

being unemployed for several months and equally qualified as another applicant who was hired. Finally, Mr. Tangorra presents that his situation is similar to that of the appellant in *In the Matter of Matthew Kloo* (CSC, decided July 13, 2011), where the Commission permitted the intergovernmental transfer of a laid off Sheriff's Investigator to Police Office in West Milford. Therefore, Mr. Tangorra requests that his name be placed on the Rice Bill list.

CONCLUSION

N.J.S.A. 40A:14-180, Appointment of certain county, municipal, sheriff's law enforcement officers, as amended effective on March 1, 2011, provides that:

a. The provisions of any other law to the contrary notwithstanding, the appointing authority of a county or municipality which, pursuant to *N.J.S.A.* 40A:14-106, in the case of a county, or *N.J.S.A.* 40A:14-118, in the case of a municipality, has established and maintains a police force or the sheriff of any county may appoint as a member or officer of the county or municipal police department or as a member or officer of the county sheriff's office any person who:

- (1) was serving as a law enforcement officer in good standing in any State, county or municipal law enforcement department or agency, or county sheriff's office; and
- (2) satisfactorily completed a working test period in a State law enforcement title or in a law enforcement title in a county or municipality which has adopted Title 11A, Civil Service, of the New Jersey Statutes or satisfactorily completed a comparable, documented probationary period in a law enforcement title in a county or municipality which has not adopted Title 11A, Civil Service; and
- (3) was, for reasons of economy, terminated as a law enforcement officer within 60 months prior to the appointment.

b. A county, municipality, or sheriff may employ such a person notwithstanding that:

- (1) Title 11A, Civil Service, of the New Jersey Statutes is operative in that county or municipality;
- (2) the county, municipality, or sheriff's office has available to it an eligible or regular reemployment list of law enforcement officers eligible for such appointments; and

(3) the appointed person is not on any eligible list. A county or municipality which has adopted Title 11A, Civil Service, may not employ such a person if a special reemployment list is in existence for the law enforcement title to be filled.

c. If a county or a sheriff determines to appoint a person pursuant to the provisions of this act, first priority in making such appointments shall be given to residents of the county. A municipality making such an appointment shall give first priority to residents of the municipality and second priority to residents of the county not residing in the municipality.

d. The seniority, seniority-related privileges and rank a law enforcement officer possessed with the employer who terminated the officer's employment for reasons of economy shall not be transferable to a new position when the officer is appointed to a law enforcement position pursuant to the provisions of this section.

The provisions of this section shall not apply to a sheriff's investigator appointed pursuant to section 2 of P.L. 1987, c. 113 (*N.J.S.A. 40A:9-117a*).

In the matter at hand, none of the appellants are eligible for placement on the Rice Bill list. Although this agency has placed individuals who served as unclassified Sheriff's Investigators and who completed a comparable working test period on the Rice Bill list since July 1992, the recent amendments to the Rice Bill evidence that the Legislature specifically intended that Sheriff's Investigators should not be on the list. The appellants in this matter claim that this agency is retroactively applying the amendment concerning the exclusion of Sheriff's Investigators even though they would have established eligibility prior to the effective date of the amendment. The Commission disagrees. While it is true that the amendment took effect on March 1, 2011 and did not specify a retroactive application regarding Sheriff's Investigators, the Legislature also did not address what to do with the Sheriff's Investigators who had established eligibility and were on the Rice Bill list at the time of the amendment. Indeed, the Legislature did not indicate that those Sheriff's Investigators whose names appeared on the Rice Bill list should be retained or removed. Rather, in Statements to Assembly Bill No. 207, which was ultimately adopted as P.L. 2010, c. 103, both the Assembly and Senate Law and Public Safety Committees explained that the intent of the amendment was to *clarify* that Sheriff's Investigators are excluded from the bill's provisions. Both Statements explained that Sheriff's Investigators serve at the pleasure of the appointing Sheriff and are specifically included in the unclassified service of Civil Service. *See Assembly Law and Public Safety Committee Statement to Assembly,*

No. 207, February 8, 2010 and *Senate Law and Public Safety Committee Statement to Assembly, No. 207*, September 13, 2010. Absent any direction from the Legislature on this point, regardless of when it became effective, the plain reading of the amendment clearly indicates that the Rice Bill does not apply to Sheriff's Investigators. As such, even if the appellants' names were placed on the list in January 2011, it would have been proper for SLO to remove them from the Rice Bill list as the amended law specifies that it does not apply to Sheriff's Investigators. Therefore, since the appellants have not demonstrated that they were provided with valid offers of employment prior to March 1, 2011, the delay in processing their applications had no adverse impact on their potential to be employed as law enforcement officers.

With respect to the rationale behind the clarification, an unclassified title is a position and job title not subject to the tenure provisions of Title 11A. Therefore, an appointment to the unclassified title of Sheriff's Investigator does not require the appointee to compete for the position through Civil Service examination procedures, be appointed from a resultant list, or undergo a working test period. This agency will only record an unclassified appointment to Sheriff's Investigator so long as it complies with the statutory requirements afforded to appointing authorities listed in *N.J.S.A. 11A:3-5t*. Conversely, the other law enforcement officer titles, in Civil Service jurisdictions, impacted by the Rice Bill are *career service, competitive* titles. Competitive titles require applicants to compete for the position through Civil Service examination procedures, be reachable on a resultant list, and if appointed, complete a 12-month working test period.

The theory behind the Rice Bill, as it pertains to laid off Civil Service employees, was that individuals who had perfected a permanent appointment to a competitive law enforcement title not be required to undergo, in essence, a second competitive examination process to determine relative merit and fitness for the title. Stated differently, what entitled a laid off employee in a career service law enforcement title to placement on the Rice Bill list was the fact that he or she achieved permanent status through competitive testing, certification from a list, and completion of a working test period. Thus, the Legislature clarified the Rice Bill to specifically exclude unclassified Sheriff's Investigators from its provisions because individuals in this title, unlike those in career service, competitive law enforcement titles who achieved permanency, are not appointed based on a competitive examination based on merit and fitness and never achieve permanent status as their appointments were always at the pleasure of the Sheriff. The fact that this agency placed names of Sheriff's Investigators on the Rice Bill list for a number of years prior to the Legislature's clarification of this point does not entitle the appellants to an equitable remedy. Rather, the Commission views the amendment as the Legislature addressing the past practice of this agency and providing further guidance as to how it intended the Rice Bill to be administered. Indeed, the Legislature emphasized in its statements that Sheriff's Investigators

serve at the pleasure of the Sheriff and are included in the unclassified service. This can only be construed as the Legislature not intending unclassified appointees to potentially gain permanency in career service law enforcement titles without going through the competitive testing and appointment process. Therefore, since the recent amendments to the Rice Bill clearly indicate that unclassified Sheriff's Investigators are not to be included on the Rice Bill list, there is no basis on which to place the appellants' names on that list.

Mr. Jimenez argues that this agency permitted the name of Matthew Kloo, another displaced Sheriff's Investigator, to be placed on the Rice Bill list, and Mr. Tangorra contends that his situation is similar to Mr. Kloo's, where the Commission permitted an intergovernmental transfer. Therefore, they maintain that this warrants an equitable remedy. However, the situation in *Kloo, supra*, is clearly distinguishable. First, in no uncertain terms, the Commission emphasized that Mr. Kloo was not eligible for placement on the Rice Bill list due to the recent amendments excluding Sheriff's Investigators. However, the Commission provided a remedy in that matter because West Milford had erroneously employed him believing he was on the Rice Bill list. After Mr. Kloo had been employed with West Milford for approximately two months, the error came to light and the appointing authority immediately petitioned the Commission for a remedy. Although the Commission found that it was barred from placing Mr. Kloo on the Rice Bill list, West Milford indicated that it would suffer a significant financial loss since it expended funds for his medical and psychological evaluations and to equip him with uniforms, a bullet resistant vest, footwear, etc., if it were required to separate him after two months of employment. Therefore, given the financial and public safety concerns presented by West Milford, the Commission permitted Mr. Kloo to participate in the intergovernmental transfer program so West Milford could retain Mr. Kloo. In this case, although Mr. Tangorra states that he had to turn down employment from Pompton Lakes, the situation involving Mr. Kloo is clearly distinguishable since Mr. Kloo was actively employed and his departure would cause a significant hardship to the appointing authority. None of the appellants' situations are similar and do not warrant a similar equitable remedy.

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.