

*In the Matter of the Judiciary Support Staff Band Specification*  
CSC Docket No. 2011-4668  
**(Civil Service Commission, decided April 18, 2012)**

The Judiciary Council of Affiliated Unions (JCAU), represented by Richard A. Dann, Chair of the JCAU Executive Board, requests that the job specification for the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track) not be amended to reflect additional duties and requirements.

By way of background, employees in the Judiciary Support Staff Band perform a variety of clerical, administrative, and other supportive tasks in connection with the court system. The band has four levels: Level 1, basic non-keyboarding (Judiciary Clerk 1 and Court Services Representative); Level 2, basic keyboarding (Judiciary Clerk 2 and Judiciary Account Clerk 1); Level 3, journey (Judiciary Clerk 3 and Judiciary Account Clerk 2); and Level 4, mastery/paraprofessional (Judiciary Clerk 4, Clerk to Grand Jury, and Administrative Specialist 1). In January 2011, the Judiciary requested an amendment to the band's job specification to accommodate a new duty, namely, the delivery of time sensitive computer generated reports. However, the Judiciary maintained that the proposed duty and requirements would not apply to all positions. The Division of State and Local Operations (SLO) reviewed the request and approved the modifications. The new job specification was effective March 12, 2011. The following tasks were added to the examples of work for Level 1: to operate automobiles, light duty trucks, vans or other motor vehicles; transport supplies, correspondence, equipment and staff to designated destinations; collect (pick-up) correspondence, packages, reports, other materials and equipment; stoop, bend and stretch to reach job-related materials; and lift and move heavy objects.<sup>1</sup> Additionally, the competency<sup>2</sup> of "Physical Strength and Agility" was added to Level 1 and specifies that an employee must be able to bend, lift, climb, stand and walk for extended periods of time, perform moderately heavy laboring work, and use proper body mechanics. Further, two additional minimum requirements were added, namely, "License" and "Physical Ability" as follows:

**LICENSE:**

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<sup>1</sup> As indicated in the job specification, tasks are cumulative. Higher levels include the tasks associated with the lower levels.

<sup>2</sup> Each broad band is composed of a number of levels determined by competencies and task statements. The number of levels in a given band varies based on the competencies identified in the analyses. Competencies define the distinction in levels of a job and are cumulative, *i.e.*, lower competencies are prerequisites to higher levels.

Appointees will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle, rather than employee mobility, is necessary to perform essential duties of the position.

**PHYSICAL ABILITY:**

For some positions, applicants must have the ability to perform work which requires climbing and prolonged standing, stretching, bending and reaching to perform the essential duties of the position. For some positions, the selected candidate must be able to frequently lift and carry supplies weighing from 30 to 50 pounds and, occasionally, materials weighing up to 75 pounds in order to perform the duties of the position.

In the instant matter, the JCAU argues that the new job requirements alter the nature of the work of the employees in the band. The duties of these employees involve paperwork, electronic data, and customer service. The modifications would inappropriately authorize the Judiciary to use these employees as delivery truck drivers, chauffeurs or porters. Moreover, the JCAU surmises that most of the current employees would not meet the new physical requirements. The JCAU also emphasizes that the title of Judiciary Clerk Driver already exists and those job duties include the ability to perform moderately heavy laboring work. It is noted that the Judiciary Clerk Driver is categorized in the Judiciary Support Staff Band (Transporting Services Track) and classified as a non-keyboarding title. Furthermore, it contends that SLO did not "independently" contact the affected labor representatives nor provide sufficient time for input prior to the amended specification going into effect. In addition, the JCAU maintains that the Civil Service Commission (Commission) did not adopt the amended job specification "as required" by *N.J.S.A. 11A:3-1*. Rather, the changes were implemented by this agency without Commission knowledge or approval. Therefore, it asks that the Commission restore the prior job specification and deny the Judiciary's request to amend it.

In response, the Judiciary explains that the amendment request was initiated when a specific need arose in the Supreme Court to allow an employee with keyboarding skills to have the ability to operate a motor vehicle, lift up to 75 pounds, and deliver, transport, and collect correspondence, packages, and equipment. It states that the lowest title with keyboarding skills and the title most compatible to accomplish these duties is Judiciary Clerk 2, which is in the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track). The Judiciary does not anticipate that there will be a frequent need to hire employees with these requirements. Moreover, the Judiciary argues that these requirements are no different than other Judiciary band specifications where an employee may be required to possess a driver's license to perform the essential functions of the position. The Judiciary stresses that the new requirements will not apply to every

position in the band. It would only apply to employees who are needed to perform such duties as part of their essential job duties. It is noted that in addition to the Supreme Court position, there are an additional five positions in the Appellate Division. The Judiciary states that modifications will provide it with flexibility to assist units when similar needs arise. Additionally, the Judiciary states that the positions needing these requirements would only be located in the central office. The Judiciary notes that, in the event that an employee is no longer able to perform the essential functions of the position, it would make every effort to reassign the employee to another position. Nonetheless, it indicates that if an employee is unable to perform the required duties and cannot be reassigned, the employee, as with any other Judiciary employee, will be subject to disciplinary action up to and including removal. Lastly, the Judiciary maintains that it satisfied the notice requirement when it advised the JCAU of the pending amendment request by e-mail on March 7, 2011 and provided it with the proposed changes.

The JCAU replies that the approximately 2,000 employees in the band did not accept their present jobs with the expectation that the subject duties would be required of them. Moreover, it contends that most of these employees would be classified as Court Clerks or Legal Secretaries in the U.S. Department of Labor's Dictionary of Occupational Titles (DOT). According to the DOT, the JCAU states that these positions are described as sedentary in nature and only require physical exertion of up to 10 pounds of force. Additionally a File Clerk under the DOT would only be required to perform "light work," which is defined as exerting up to 20 pounds of force. Thus, JCAU maintains that the new requirement of 75 pounds would be considered as "heavy work" by the DOT and the position would not be classified by the foregoing titles. Similarly, the JCAU presents that the O\*Net classification system, which replaced the DOT, makes it clear that heavy lifting is not characteristic of clerical and secretarial occupations. Additionally, it submits that transporting personnel and materials by automobile or truck is deemed under the O\*Net importance scale as "O" ("not important") for Court Clerks to "19" (between "not important" to "somewhat important") for File Clerks. Moreover, the JCAU emphasizes that although the job specifications for Clerk and Clerk Typist include the driver's license statement, the definition and examples of work do not include transporting personnel or materials. This is because there are other titles for this purpose, such as Clerk Driver, Delivery Worker, and Chauffeur. Furthermore, the JCAU raises concerns as to whether the Judiciary Clerks would be tested for their ability to lift heavy items during the recruitment process and whether current employees would be subject to discipline for refusing to perform the duties. It also takes issue with the possible impact of the new duties on discrimination and reasonable accommodation claims. In addition, the JCAU questions why the requirements are incorporated into the job specification that broadly covers 2,000 Judiciary Clerks if only a small percentage of employees are affected. In doing so, the JCAU maintains that an employee may be assigned to perform the duties in question at any time. It emphasizes that the duties in

question “are so dissimilar to [the employees’] customary responsibilities.” Thus, the JCAU maintains that the Commission cannot legitimately group positions that perform heavy lifting and transporting duties under the same title as those that do not. The JCAU adds that the Judiciary Clerk Driver in the Judiciary Support Staff Band (Transporting Services Track) performs transporting and lifting duties. It contends that the Judiciary dismissed the use of this title because the job duties of a Judiciary Clerk Driver do not include keyboarding. The JCAU submits that “[t]his objection is not convincing.” Further, the JCAU states that the Judiciary did not present actual examples of the work to be done or explain why keyboarding, lifting, and transporting must be performed by the same person. It argues that if the Judiciary’s request was initiated as result of only one position, then the combination of the functions do not have any substantial impact on the Judiciary’s operations. Thus, there is insufficient justification to amend the job specification. However, the JCAU contends that if the Commission finds a legitimate need for a position that combines keyboarding with heavy lifting and transporting duties, then the proper course of action would be to adopt a new title and job specification. It maintains that a logical title would be “Judiciary Clerk Driver 2.”

In support of the approval of the amended job specification, SLO indicates that the modifications were intended to address an occasional need and not to alter the nature of the job. The Judiciary advised that semi-monthly reports, which are time sensitive, are generated and required to be delivered to the various courts. Moreover, SLO confirms that virtually all job specifications contain the statement that a driver’s license may be required. This is similar to the instant case as the changes are not intended to apply to all employees. Additionally, SLO states that it is not uncommon for other State agencies to require some employees serving in clerical and non-clerical titles to perform occasional driving or delivery duties to address unforeseen circumstances. Moreover, it maintains that there was no need for it to contact the JCAU regarding the pending amendment request as the Judiciary notified the JCAU and thus complied with *N.J.A.C. 4A:3-3.3(f)4*. Further, SLO points out that the rule does not afford negotiations representatives with a minimum time period to respond nor is it necessary to obtain union approval prior to implementing changes to a job specification.

It is noted that the Division of Merit System Practices and Labor Relations sought clarification from the Judiciary as to the specific duties of the six positions. The Judiciary advises that one position is located in the Supreme Court, Case Management unit, and is part of the “Vault” team. The other five positions are located in the Appellate Division, Records Management unit. The Judiciary states that the Judiciary Clerk 2 position in the Supreme Court spends 50% of the time performing clerical duties. The position’s remaining time has been spent as a messenger, delivering materials related to current cases to various courts throughout the State two days per week (40% of the time). On the other three days, the position requires that an employee lift and carry case files that are being

prepared for microfilming for approximately 10% of the time. Moreover, the Appellate Division positions spend 30% of their time performing clerical duties and 70% of their time as messengers, delivering materials related to current cases to and from Appellate Division judges throughout the State. They also lift and transport mail, “transfile” boxes, and box case files. The Judiciary maintains that there is not enough transporting and lifting work to have another employee perform the duties of the Judiciary Clerk 2 position in the Supreme Court. As for the five Appellate Division positions, the Judiciary submits that because of the vast area for deliveries and the fact that the clerical duties intertwine with the lifting and carrying, it is difficult to assign the transporting and physical duties separately to a few employees. It notes that when the three Judiciary Clerks 2 are not available, either a Judiciary Clerk 3 or 4 performs the work of the unit. Furthermore, the Judiciary explains that if a vacancy occurs for these or similar positions, the job announcement will include the driving and physical requirements. However, there will not be an evaluation of the physical ability of the applicant. Rather, the applicant will be questioned during the interview as to his or her ability to frequently lift and carry supplies weighing from 30 to 50 pounds, and occasionally 75 pounds, in order to perform the essential duties of the position. The applicant will also be advised that if an accommodation is requested regarding the physical requirements and the request cannot be granted as it would cause undue hardship to the Judiciary, the applicant may not be eligible for the position.

In response, the JCAU contends that the lifting and transporting duties are not related to the clerical duties, except for the fact that all of the duties are performed by a single employee. For instance, he states that the calendar duties of the Appellate Division positions are completely unrelated to transport or material handling. Additionally, the employee in the Supreme Court position sends notices, answers questions from the public, processes requests for documents, and prepares the conference room for use, which are unrelated to the transport functions. The JCAU maintains that the remedy for the job classification issue for only six positions out of 2,000 is not to amend the job specification to include unrelated duties. Additionally, it notes that five of the six positions are encumbered by male employees, despite the fact that most of the Judiciary Clerks are female. The JCAU contends that the obvious implication is that female employees are less likely to qualify for the more strenuous duties or are less likely to be interested. Moreover, it maintains that qualifications for a given title are supposed to apply uniformly. In other words, the JCAU contends that if two positions have different qualifications, the regulatory scheme requires that the positions be classified under different titles. It reiterates that if driving and lifting are part of the job specification, then any employee in the job band can be ordered to perform heavy lifting duties, despite the fact that the employee’s position is not one of the identified positions. The JCAU asserts that the foregoing situation has already happened to one employee. It is noted that the JCAU does not identify this employee or provide more specifics. Therefore, the JCAU urges the Commission to adopt separate titles for the

employees. For instance, a dual title such as “Judiciary Clerk Driver/Judiciary Clerk” can be created and added to the Judiciary Support Staff Band (Transporting Services Track). Accordingly, the JCAU requests that the new duties be removed from the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track).

## CONCLUSION

*N.J.S.A.* 11A:3-1 provides that the Commission shall assign and reassign titles among the career service, senior executive service and unclassified service. The Commission shall:

- a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions;
- b. Establish, consolidate and abolish titles;
- c. Ensure the grouping in a single title of positions with similar qualifications, authority and responsibility;
- d. Assign and reassign titles to appropriate positions; and
- e. Provide a specification for each title.

Initially, the JCAU submits that the Commission did not adopt the amended job specification “as required” by *N.J.S.A.* 11A:3-1 and the changes were implemented without the Commission’s knowledge or approval. It must first be understood that *N.J.S.A.* 11A:3-1 was amended in response to Public Law 2008, Chapter 29, which was signed into law and took effect on June 30, 2008, changing the Merit System Board (Board) to the Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Commission. *N.J.S.A.* 11A:3-1 formerly provided that the Board shall assign and reassign titles among the career service, senior executive service and unclassified service and that the Commissioner of Personnel would conduct the various classification duties as outlined by the statute. However, although it is clear that the Department of Personnel was abolished, it could not have been the intention of the Legislature to take away the agency’s responsibility to perform administrative day-to-day tasks, such as rendering determinations on matters concerning examinations, eligible lists, layoffs, approvals of alternate workweek program modifications, classification, and in this case, amendment of a job specification. *See e.g., In the Matter of the Alternative Workweek Program, Department of Environmental Protection* (CSC, decided April 6, 2011). These decisions are appropriately made by agency staff, and the head of this agency is the Chair/Chief Executive Officer (CEO), who is also the Chairperson of the Commission. *See N.J.A.C.* 4A:1-3.1(a) (The Commission shall consist of the Chairperson, the Commission, and such subdivisions as the Chairperson deems necessary). Moreover, *N.J.A.C.* 4A:1-3.2(b) states that the Chairperson, on behalf of the

Commission, shall maintain a management information system to implement Title 11A of the New Jersey Statutes. It must be emphasized that the Commission meets only once or twice a month and retains its adjudicative and rulemaking authority while agency staff and the Chair/CEO perform the administrative duties associated with the day-to-day operation of the agency. If the ability of the agency and Chair/CEO to perform administrative tasks were to be eliminated, the operation of the agency to implement the Civil Service Act would come to a halt. In other words, the statutory amendment does not change the meaning of every rule delineated in Title 4A of the Administrative Code or function which must be performed by the agency or the Chair/CEO. As indicated above, administrative day-to-day tasks are performed by this agency. For example, *N.J.A.C. 4A:3-3.1(a)* provides that “**Each** position in the career and unclassified services shall be assigned by the [Civil Service Commission] to a job title.” (emphasis added) There are nearly 200,000 positions in State and local service. The Legislature could not have intended that the part-time Commission members would take on this responsibility. Therefore, SLO has the authority to modify a title’s job specification and it is not necessary to obtain formal Commission approval to effect the changes. Accordingly, the JCAU’s argument in that regard is without merit.

Furthermore, *N.J.A.C. 4A:3-3.3(f)4* provides that, in State service, the agency representative shall provide notice to affected and potentially affected negotiations representatives upon submission of job specification modification requests. This agency shall verify that proper notice has been given. The Judiciary provided the JCAU with notice of its request, as well as the proposed changes, by e-mail on March 7, 2011. SLO verified that the notice was given. Thus, the JCAU complied with *N.J.A.C. 4A:3-3.3(f)4* and SLO met its obligation under the rule. There is no specific timeframe within which notice must be given, and as SLO highlights, it is not necessary to obtain the approval of the negotiations representatives prior to implementing changes to a job specification. Additionally, the JCAU has been given a full opportunity to submit its arguments against the amendment in the instant appeal.

Turning to the merits of the case, the JCAU’s main argument is that the additional duties and requirements set forth in the amended job specification for the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track) have altered the nature of the work of the employees, as it contends that lifting and transporting are too dissimilar to the established clerical functions of the employees in the band. The Commission disagrees and finds that the Judiciary has presented related duties. In that regard, it is reasonable to require a Judiciary Clerk in this track to deliver materials related to current cases and transport mail and boxes originating from his or her unit. Moreover, in various office settings, it is not uncommon for a file to be retrieved by clerical support staff that encompasses heavy lifting. This is especially true when the positions are located in the Case Management and Records Management units in the Supreme Court and Appellate

Division, respectively, which generate a significant amount of boxed material. Thus, the intertwining of the new duties does not alter the clerical nature of the title. Rather, these responsibilities could be considered as “other related duties.”

Furthermore, the JCAU cites classification systems that do not apply to the instant matter. In this regard, effective July 1, 1998, The Judiciary Classification and Compensation Plan (Plan) was implemented. The Plan consolidated more than 600 job titles into 10 broad bands with broad compensation levels. It is noted that title consolidation provides the flexibility needed to address the operational needs of an agency efficiently and affords employees with enhanced career opportunities. For instance, variant titles are eliminated in a title consolidation effort. The elimination widens an employee’s promotional eligibility. In light of the foregoing, it was most appropriate to add new duties to the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track) specification as the existing duties were applicable to the position. The JCAU presents that other titles, such as Judiciary Clerk Driver in the Judiciary Support Staff Band (Transporting Services Track), are more fitting. However, a review of the job specification for Judiciary Clerk Driver includes tasks involving the repair, cleaning, and servicing of motor vehicles, which are clearly not the duties of the positions in question. Furthermore, the JCAU contends that if keyboarding is necessary, then a new title be created, *i.e.*, “Judiciary Clerk Driver 2.” Alternatively, it proposes that a dual title be created. However, as indicated above, the Plan consolidated titles into 10 broad bands. It would be contrary to the intention of the Plan to create a new title or level since the positions in question may be classified in the existing Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track) with the amendments. It is emphasized that the fact that some of an employee’s assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Should a position evolve into a different classification outside of the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track), the employee has an opportunity to file an appeal pursuant to *N.J.A.C. 4A:3-3.4* and *N.J.A.C. 4A:3-3.9*.

Additionally, the JCAU contends that every employee in the band could be subject to lifting and transporting at any time. It also claims that most of the employees would not be able to meet the physical requirements. On the contrary, the new requirements will only apply to certain positions. The job specification outlines that a driver’s license will be required “only if the operation of a vehicle . . . is necessary to perform the essential duties of the position.” It is emphasized that virtually all job specifications contain the driver’s license statement, but it does not mean that all employees serving in the title will be required to drive. Moreover, as to physical ability, the job specification states that “For some positions” an applicant must have the ability to meet certain physical requirements “to perform the essential duties of the position.” The job specification limits these additional requirements to certain positions. Nonetheless, the tasks and competencies



sections of the job specification do not limit the transporting and physical tasks, such as lifting and moving heavy objects, to only certain positions. Therefore, so that it is clear that only certain positions will be subject to these requirements, the job specification shall be further amended to indicate that the new duties, which include operation of a motor vehicle and physical ability, and the accompanying tasks and competencies will be required only for **designated positions** whose essential job duties require transporting and lifting. The Commission emphasizes that replacement of the phrase “some positions” in the physical ability section with the phrase “designated positions” will ensure that every employee in the band will not be subject to heavy lifting at any time. The latter phrase will also apply to the other new duties as specified above. Indeed, the Judiciary maintains that the new requirements will not apply to all positions and does not anticipate that there will be a frequent need to fill such positions.

Moreover, the Judiciary states that if an employee is no longer able to perform the essential function of the position, it would make every effort to reassign the employee to another position. Nevertheless, it is within the Judiciary’s discretion to remove an individual from employment if there is cause to do so, while the employee retains the right to file the appropriate disciplinary appeal. Additionally, if an accommodation request causes undue hardship, then it is not unlawful to reject the applicant for the position. Lastly, notwithstanding the fact that five of the six positions are encumbered by male employees, there is no evidence that females would be precluded from obtaining similar positions. Moreover, analogous to a case of removal, the applicant may file an appeal regarding the denial of the accommodation request or file a discrimination complaint in the proper forums.

Therefore, under these circumstances, there is an insufficient basis to disapprove the amendments to the Judiciary Support Staff Band (Clerical, Administrative and Courtroom Support Track) job specification. However, the matter is remanded to SLO for further amendments.

### **ORDER**

Therefore, it is ordered that this request be denied, but the matter be remanded to SLO for further amendments consistent with this decision.

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