

STATE OF NEW JERSEY

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	:	FINAL ADMINISTRATIVE ACTION
	:	OF THE CHAIR/
	:	CHIEF EXECUTIVE OFFICER
In the Matter of Cynthia Tischio,	:	CIVIL SERVICE COMMISSION
State Parole Board	:	
	:	
CSC Docket No. 2023-1267	:	Request for Waiver of Repayment of
	:	Salary Overpayment
	:	
	:	

ISSUED: March 20, 2024 (EG)

Cynthia Tischio, a District Parole Supervisor with the State Parole Board (SPB), requests a waiver of repayment of a salary overpayment pursuant to *N.J.S.A. 11A:3-7*, which provides that when an employee has erroneously received a salary overpayment, repayment may be waived based on a review of the case.

By way of background, the petitioner, a then-Assistant District Parole Supervisor, was at Step 10 on the salary schedule covering employee relations group K with a salary of \$121,819.30. On March 12, 2022, the petitioner was promoted to District Parole Supervisor which placed her under the salary schedule for group J. In an April 17, 2022, decision, an Arbitrator appointed by the Public Employment Relations Commission (PERC) as an interest arbitrator to issue an award concerning the successor collective negotiation agreement which covered the petitioner's title, indicated in his decision that he was denying the New Jersey Superior Officers Association (NJSOA) proposal that required promotional salary calculations be done in accordance with Civil Service rules. However, in the award section, he indicated that he was granting the NJSOA's proposal regarding promotional salary calculations. In a subsequent clarification of the Interest Arbitration Award, the Arbitrator specifically indicated that he did not find that the required promotional salary calculations be done in accordance with Civil Service rules. Rather, the Arbitrator determined that promotional salary calculations were to be done in accordance with the agreed upon contract provisions and that his statement to the contrary in the award section was an error. *See N.J.A.C. 4A:3-4.9(a)*. The contract provision specified that a salary increase upon promotion is considered the lowest step of the new salary guide with an increase in salary from the salary that the employee was receiving at the time of promotion. PERC affirmed this Interest Arbitration Award on June 30, 2022. Nevertheless, the petitioner began receiving an adjusted group J, Step 9 salary of \$136,316.92, on July 2, 2022, in error which

included retroactive pay to March 12, 2022. In accordance with the contract provisions, the petitioner was thereafter correctly placed at Step 7, with a salary of \$122,890.52 in November 2022. As such, it was ultimately determined that her salary overpayment was \$4,625.57.

In her request, the petitioner asserts that the three criteria for a waiver of salary overpayment under *N.J.A.C. 4A:3-4.21* have been met. She presents that she incurred expenses with the understanding she would be receiving the higher salary. The expenses included making renovations to her home, increasing contributions to her deferred compensation plan, increasing contributions into her children's 529 Education Plan, and the purchasing of certain holiday gifts, which she would not have committed to had she been aware that her compensation should have fallen under Step 7 rather than Step 9. Additionally, the petitioner claims high energy costs and rising inflation contribute to her claim of financial hardship.

CONCLUSION

N.J.A.C. 4A:3-4.9 states the following:

- (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. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determinations. (See (g) below). 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; or
 - 3. Employees are appointed to a title with a higher class code, when the conditions in (b)1, 2, or 3 above are not applicable,

provided the Chairperson or designee finds the following criteria are met:

- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
 - ii. The service in the lower title provided significant preparation and training for service in the higher title.
- (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.

The petitioner anticipated that her salary would be calculated utilizing *N.J.A.C.* 4A:3-4.9(b) and (c) as indicated above. However, as the Arbitrator clarified, any employee who is promoted to any job title represented by the NJSOA shall receive a salary increase in accordance with the negotiated contract terms. *N.J.A.C.* 4A:3-4.9(a) permits collective negotiation agreements to supersede the salary adjustments proved for in this code section. In this regard, the petitioner's position of District Parole Supervisor with the SPB is represented by NJSOA. The contract stipulates that a salary increase upon promotion is to the lowest step of the new salary guide with an increase in salary from the salary that the employee was receiving at the time of promotion. It is noted that the use of this methodology in determining the proper salary for an advancement to group J for positions represented by the NJSOA was also indicated in the salary regulations outlined in the Fiscal Year 2022 Compensation Compendium. Thus, the correction of the error in the petitioner's salary step placement and salary in November 2022 was proper and correct as it is clear that the initial application of *N.J.A.C.* 4A:3-4.9(b) and (c) was in error.

With regard to the salary overpayment, *N.J.A.C.* 4A:3-4.21 provides as follows:

- (a) The Civil Service Commission may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
 - 1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;

2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, she failed to show that enforcement of the repayment would create economic hardship.

In this matter, the petitioner argues she should be held harmless from a salary overpayment action under these circumstances. However, other than her mere statements, she has not provided any evidence to support a claim of actual economic hardship. In this regard, the petitioner's current salary is \$131,447.08, and although she may have relied on the erroneous salary calculation to increase her expenses, she has not established that the third prong of the above rule is satisfied. Moreover, the appointing authority and the petitioner are not precluded from setting a reasonable repayment schedule over an extended period of time. Accordingly, as the third criterion has not been met under *N.J.A.C. 4A:3-4.21(a)*, the request is denied. However, the SPB is encouraged to set a reasonable repayment schedule to allow for the least economic impact on the petitioner.

ORDER

Therefore, it is ordered that this request be denied.

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

DECISION RENDERED ON
THE 18TH DAY OF MARCH, 2024



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