



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of John Pienciak,
Deputy Fire Chief

CSC Docket No. 2017-811

Classification Appeal

ISSUED: JAN 19 2017

(RE)

The Township of Hillside appeals the attached August 12, 2016 decision of the Division of Agency Services (DAS) which found that John Pienciak's position is properly classified as Deputy Fire Chief. It seeks a Fire Captain job classification in this proceeding.

John Pienciak was permanently appointed as a Fire Captain with the Township of Hillside on August 1, 2007. He requested a desk audit of his position, alleging that he was performing the duties of a Deputy Fire Chief while classified as a Fire Captain. A classification review was conducted by DAS in response to Mr. Pienciak's submission of a Position Classification Questionnaire (PCQ). It is noted that the Fire Chief and the appointing authority failed to provide comments on the PCQ, and failed to respond to DAS' request for comments and signature as to the duties submitted by Mr. Pienciak. The review involved an analysis of the PCQ, and related documents and telephone interviews with Mr. Pienciak and his supervisor, the Fire Chief. In its August 12, 2016 determination, DAS found that based on the primary duties of Pienciak' position, his title was properly classified as Deputy Fire Chief, effective June 25, 2016.

The appointing authority appealed DAS' determination to the Civil Service Commission (Commission). It explained that it provided Pienciak with an "acting" Deputy Fire Chief position from February 1, 2016 to June 30, 2016, and compensated him at the higher level. It also explains that there is a collective bargaining agreement that does not allow Fire Captains to serve in an acting capacity, and that when a vacancy exists, the Fire Chief is required to recall a

Deputy Fire Chief. In support of this argument, the appointing authority submits Directive 2016.2, effective July 1, 2016, which states in pertinent part, "Per the Deputy Chiefs 2016 contract MOA agreement with the Township, Deputy Chiefs shall be recalled whenever an opening or absences occur in the Deputy Chief's position/rank on-shift. ... When an exception occurs, an eligible Captain may temporarily fill the position of acting Deputy Chief, until a Deputy Chief can be recalled. Every effort shall be made by the Acting Deputy Chief/Captain to recall a Deputy Chief a.s.a.p." The appointing authority requests that Pienciak's position be classified as Fire Captain, since he was performing the duties of a Deputy Fire Chief for a five-month transitional period only, and was returned to his Fire Captain title.

In response, Pienciak, represented by Craig Gumpel, Esq., explains that the Hillside Fire Department Table of Organization includes four Deputy Fire Chiefs, one of whom retired on February 1, 2016. Pienciak was an acting Deputy Fire Chief until June 30, 2016. He was also the only eligible on the list for Deputy Fire Chief (PM1318P) Hillside, which expired on July 31, 2016. Although Pienciak was informed that the list would be extended, it was not. The appointing authority did not fill the vacant Deputy Fire Chief position using the existing promotional list at the time. On July 5, 2016, Fire Captain duties were returned to Pienciak, and the manpower roster for Deputy Fire Chief group 3 was recorded as "recall." That is, with the three Deputy Fire Chiefs filling this position on an overtime recall basis. In October 2016, Pienciak transferred to tour 2 to ameliorate work-related issues, but was subsequently transferred back to tour 3 in November 2016, resulting in a less desirable working situation. Pienciak argues that he should not have been placed in an acting Deputy Fire Chief position since he was on the promotional list and a permanent vacancy existed on February 1, 2016. He requests a permanent appointment effective February 1, 2016.

CONCLUSION

N.J.S.A. 11A:3-1 and *N.J.A.C. 4A:3-3.1(a)* provide that each position in the career and unclassified services shall be assigned by the Civil Service Commission to a job title.

The definition section of the job specification for Deputy Fire Chief states:

Under direction of the Fire Chief, assists in the management and discipline of the fire department designed to provide fire protection for persons and property; does other related duties as required.

The definition section of the job specification for Fire Captain states:

Under direction, has charge of a fire department company intended to assist in the extinguishing of fires; does other related duties.

At the outset, it is noted that the classification of a position is determined based on the duties and responsibilities assigned to a position at the time the request for reclassification is received by DAS as verified by audit or other formal study. The outcome of position classification is not to provide a career path to the incumbents, but rather is to ensure that the position is classified in the most appropriate title available within the State's classification plan. *See In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005). There is no dispute of the appellant's duties from February 1, 2016 to June 30, 2016. In fact, the appointing authority indicates that Pienciak was compensated for the higher-level duties.

At this point, it is noted that Hillside does not utilize the Battalion Fire Chief title, which typically supervises the Fire Captain and reports to the Deputy Fire Chief. Instead, Hillside has Deputy Fire Chiefs supervising Fire Captains and reporting to the Fire Chief. Historically, they have had four Deputy Fire Chiefs, one for each of four groups. Each group consists of a Deputy Fire Chief, two Fire Captains, and eight Fire Fighters. After Pienciak was returned to a Fire Captain position, the manpower roster shows that this Deputy Fire Chief position was filled by "recall." That is, the other three Deputy Fire Chiefs were required to work overtime to fill this position. That indicates the existence of a permanent vacancy, and Pienciak states that this position is currently being filled on an overtime basis by the three remaining Deputy Fire Chiefs.

N.J.A.C. 4A:3-3.5(c)1 states, "within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules." In this case, the appointing authority selected one of the options available to it, *i.e.*, it assigned duties and responsibilities commensurate with the employee's current title of Fire Captain. DAS' determination indicates that Pienciak be considered to be serving provisionally in the title of Deputy Fire Chief effective June 25, 2016, and this is accurate until June 30, 2016, when the higher-level duties were removed.

Additionally, Pienciak should be considered to have served provisionally from February 1, 2016 to June 24, 2016. Pienciak was compensated as a Deputy Fire Chief during this period of time. Further, since the promotional list (PM1318P) was

incomplete at that time, Pienciak's "acting" appointment was actually a provisional appointment. See *N.J.A.C.* 4A:4-1.5. Moreover, as there is no provision contemplating "acting" appointments in Civil Service rules, the appointing authority is cautioned to not utilize such appointments in the future.

Pienciak argues that this is a permanent vacancy and therefore an appointment should be made from the active promotional list. In this respect, first, as stated above, the eligible list, (PM1318P), was incomplete. Next, as *N.J.A.C.* 4A:4-4.2(c) does not require an appointing authority to make permanent appointments to vacancies with an incomplete list, the Commission cannot compel an appointing authority to make an appointment to a vacancy. It must be emphasized that the appointing authority has the right to determine the organizational structure of its operation. The New Jersey Administrative Code does not mandate that local jurisdictions spend funds to make promotional appointments. As long as there are no improper reporting relationships or misclassifications, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Commission or reviewable in the context of a classification appeal. There is no rule prohibiting an appointing authority from filling a vacancy with properly classified Deputy Fire Chiefs working overtime. Moreover, no vested rights are afforded to a provisional appointment.

ORDER

Therefore, the appeal is granted in part, and the official records should be changed to reflect a provisional appointment for John Pienciek to Deputy Fire Chief from February 1, 2016 to June 30, 2016, and a return to Fire Captain on July 1, 2016.

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
ON THE 18th DAY OF JANUARY, 2017


Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

Enclosure

c: John Pienciak
Craig S. Gumpel, Esq.
Angela Garretson
Kelly Glenn
Records Center



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Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF STATE AND LOCAL OPERATIONS
P. O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

August 12, 2016

Mayor Angela Garretson
John F. Kennedy Plaza
Liberty & Hillside Avenues
Hillside, New Jersey 07205

Subject: Classification Appeal – Mr. John Penciak; Township of Hillside Fire Department;
CPM# 06160075.

Dear Mayor Garretson:

A member of my staff has completed a review of the duties assigned to Mr. John E. Pienciak, currently serving in the permanent title of Fire Captain (01836). This review involved a telephone interview with Mr. Pienciak and his immediate Supervisor, Fire Chief Dominick Naples on June 20, 2016 and July 14, 2016 respectively. Included as part of our review was a detailed analysis of the Position Classification Questionnaire; the table of organization; and other supporting documents provided by the employee.

Issue:

In the documentation submitted, Mr. Pienciak states he has been acting and paid as a Deputy Fire Chief (01506) since February 1, 2016. On June 20, 2016, an email was sent by the Civil Service Commission providing ten (10) business days in which the employee's supervisor and the Appointing Authority could provide comment and signature as to the duties submitted by the employee. Having not received comment or signature from either, the Commission has proceeded with a review of the assigned duties based on the materials provided. The conclusions of the Commission's review are as follows.

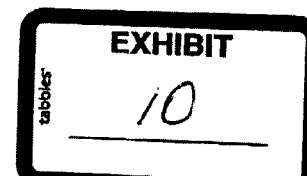
Organization:

Currently, Mr. Pienciak's position is located in the Fire Department of the Township of Hillside. He has supervisory responsibilities over seven Firefighters and two Fire Captains. The position reports to Mr. Dominick Naples (Fire Chief).

Findings of Facts:

The primary duties and responsibilities of the position include, but are not limited to the following:

- Takes the lead over assigned Firefighter and Fire Captain response to fire emergencies and fire hazard investigations within the Township of Hillside.



- Takes charge of the Fire Department in the absence of the Fire Chief.
- On a daily basis, ensures the various equipment used are in good working condition to ensure effective and efficient performance.
- Conducts training classes and maintains order and discipline among subordinates.
- Responds to emergencies, arsons crimes, and any other incidents in the course of duty to ensure the safety of lives and properties in the township.
- Ensures subordinates follow proper procedures and employees are professional in discharging their duties.
- Prepares reports to the immediate supervisor on daily, weekly and monthly basis.

Review and Analysis:

The employee's current permanent title is that of Fire Captain (01836). The classification definition for the title Fire Captain states:

"Under direction, has charge of a fire department company intended to assist in the extinguishing of fires; does other related duties."

An employee serving in the title of Fire Captain takes charge of a fire department company and take the lead on the scene of a fire incident until such time as superior officers can arrive. Fire Captains are assigned the duties of a first-level supervisor, overseeing the work and performance of non-supervisory employees (e.g. Fire Fighters).

The duties of this position are not commensurate with the title of Fire Captain because the incumbent conducts training of officers, supervises Firefighters and Fire Captains and is expected to exercise leadership and independent judgment at the scene.

The requested title was that of Deputy Fire Chief (01506). The classification definition for the title of Deputy Fire Chief states:

"Under direction of the Fire Chief, assists in the management and discipline of the fire department designed to provide fire protection for persons and property; does other related duties as required."

An employee serving in the title of Deputy Fire Chief makes decisions at fire scenes to be carried out by subordinates which includes Fire Fighters and Fire Captains; performs various firefighting duties including the response to emergencies and the performance of rescue operations such as extinguishing fires, searching for victims, guiding or carrying victims to safety; and protecting the lives and properties of township residents from fire hazards. A Deputy Fire Chief has supervisory responsibilities and takes charge over other Firefighters and Fire Captains in the course of performing his/her official duties which includes training and evaluation of staff.

The duties of this position are commensurate with the title of Deputy Fire Chief because the employee supervises Firefighters and Fire Captain and takes charge of the entire fire department in the absence of the Fire Chief.

Determination:

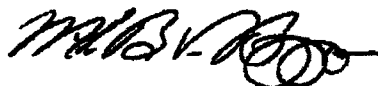
The review revealed the current duties and responsibilities assigned to Mr. Pienciak are commensurate with the attached job specification for the title of Deputy Fire Chief (01506). This specification is descriptive of the general nature and scope of the functions which may be performed by an incumbent in this position. Please note the examples of work are for illustrative purposes and are not intended to restrict or limit the performance of related tasks not specifically listed. The relevance of such specific tasks is determined by an overall evaluation of their relationship to the general classification factors listed in the specification.

As a result, Mr. Pienciak is considered to be serving provisionally pending promotional procedures (PAP) in the title of Deputy Fire Chief (01506). This appointment is effective June 25, 2016 and is to be submitted by the Appointing Authority in the County and Municipal Personnel System (CAMPS) within the next 10 business days.

The New Jersey Administrative Code (N.J.A.C.) 4A:3-3.5(c)1 states, "within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules".

According to the New Jersey Administrative Code (N.J.A.C. 4A:3-3.9), either the Appointing Authority or the affected employee may appeal this determination within 20 days of receipt of this notice. This appeal should be addressed to Written Record Appeals Unit, Division of Merit System Practices and Labor Relations, P.O. Box 312, Trenton, New Jersey 086225-0312. Please note the submission of an appeal must include written documentation and/or argument substantiating the portions of the determination being disputed and the basis for appeal.

Sincerely,



Mark B. Van Bruggen
Supervising HR Consultant

Enclosure

MVB/OO

C: Mr. John E. Pienciak, Township of Hillside Fire Department.
Oluwaseyi Ogunyinka, NJCSC.
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