

B-27



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Jeffrey Kane, Department of Labor and Workforce Development

CSC Docket No. 2016-4267

Classification Appeal

ISSUED: MAR 24 2017 (CSM)

Jeffrey Kane appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of his position with the Department of Labor and Workforce Development is District Supervisor, Wage and Hour Compliance. The appellant seeks a Hearing and Review Officer, Labor, Taxation classification.

The record in the present matter establishes that at the time the appellant filed his request for a classification review, he was serving as a District Supervisor, Wage and Hour Compliance. The appellant's position is located in the Division of Wage and Hour Compliance and he is supervised by Robert Kirkland, Assistant Chief of Wage and Hour Compliance. The appellant has supervisory responsibility for four Senior Field Representatives, Wage and Hour Compliance. The appellant sought a reclassification contending that his position would be more appropriately classified as a Hearing and Review Officer, Labor. In support of his request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties that he performed. Agency Services reviewed all documentation supplied by the appellant including his PCQ. Based on its review of the information provided, Agency Services concluded that the appellant's position is properly classified as District Supervisor, Wage and Hour Compliance.

On appeal, the appellant states that he was told that he would be interviewed as part of his desk audit, but he was never interviewed by Agency Services. He also provides a Superior Court order enforcing a former Commissioner of Personnel's November 24, 2004 classification determination which found that another District Supervisor, Wage and Hour Compliance position should be

reclassified as "Hearing Officer." Additionally, the appellant requests that the Division of Appeals and Regulatory Affairs "interview Hearing and Review Officers, Labor and observe their actual duties" and compare them to those of a District Supervisor, Wage and Hour Compliance. The appellant maintains that when incumbents in his title are not supervising, they essentially perform the same duties of a Hearing and Review Officer, Labor. The appellant notes that incumbents in both titles can draw up complaints for court cases and refer cases to penalty enforcement for judgments. Further, he presents that Agency Services partly made its decision based on the fact that he supervises staff and he questions why the non-supervisory Hearing and Review Officer, Labor has a higher pay range than District Supervisor, Wage and Hour Compliance. The appellant highlights how the duties of his position expanded over time and questions why a vacancy announcement was open to employees in competitive division titles in ranges 26 or above when his title, which is a range 25, had previously been permitted to file for the position.

CONCLUSION

The definition section of the job specification for District Supervisor, Wage and Hour Compliance states:

Under supervision of a Chief or other supervisor, Office of Wage and Hour Compliance, Division of Workplace Standards, Department of Labor, supervises the general enforcement work program of the Office of Wage and Hour Compliance in a given geographical area of the State or supervises the work programs and staff assignment to agricultural, industry enforcement activities, personally makes the more complex investigations, does other related work as required.

The definition section of the job specification for Hearing and Review Officer, Labor states:

Under the direction of an Assistant Commissioner, a Director, or other supervisory official in the Department of Labor, reviews and prepares analyses of legislation affecting the Department's programs, drafts rules, regulations, and procedures in accordance with the Administrative Procedures Act, acts as administrative hearing officer for appeals initiated allegedly aggrieved members of the public or employees, does other related work as required.

In the instant matter, it is clear that the appellant's position is properly classified as District Supervisor, Wage and Hour Compliance. With respect to the

appellant's argument that the former Commissioner of Personnel reclassified another position in 2004 from District Supervisor, Wage and Hour to "Hearing Officer," the foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by this agency through an audit or other formal study. Thus, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. Thus, the fact that an employee's position was reclassified to "Hearing Officer" 12 years prior to the review of the appellant's position does not establish that his position is misclassified.

Regardless, 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. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job specification purposes, the definition portion of the job specification is appropriately utilized. Additionally, a classification appeal cannot be based solely on a comparison to the duties of another position, *especially if that position is misclassified*. See *In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995).

With respect to the appellant's request interview each incumbent in the Hearing and Review Officer, Labor title series and observe their duties, a classification appeal is strictly limited to an independent review of the assigned duties and responsibilities of the position in question. Issues such as the historical organization of the work unit and functional or working titles are not to be considered. Moreover, it is longstanding policy that only those duties and responsibilities assigned at the time of the request for a reclassification are to be considered. Accordingly, there is no basis to conduct classification reviews of all Hearing and Review Officer, Labor positions to determine if the appellant's position is misclassified. In this case, the duties of the appellant's position were evaluated, and given the duties he listed on his PCQ, it was correctly determined that it should be classified as District Supervisor, Wage and Hour Compliance. Similarly, the compensation levels of a title series as well as the eligibility requirements contained in vacancy announcements not governed by this agency are issues that are not cognizable in this proceeding as classification appeals are strictly limited to an independent review of the assigned duties and responsibility of the position in question.

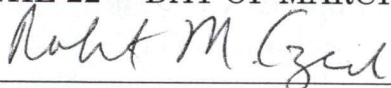
Regarding his argument that Agency Services did not interview him, classification reviews are typically conducted either by a paper review, based on the duties questionnaire completed by the employee and supervisor; an on-site audit with the employee and supervisor; or a formal telephone audit to obtain clarifying information. *See In the Matter of Richard Cook* (Commissioner of Personnel, decided August 22, 2006) (Desk audit that was scheduled to be conducted in appellant's office that was changed at the last minute to another building was a proper audit and did not warrant reclassification of his position). As such, the fact that he was not interviewed does not establish that his position is misclassified.

ORDER

Therefore, it is ordered that this appeal be denied.

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
THE 22ND DAY OF MARCH, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Jeffrey Kane
Mary Fitzgerald
Kelly Glenn
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF AGENCY SERVICES
P. O. Box 313
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Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

April 27, 2016

Jeffrey Kane

New Jersey Department of Labor and Workforce Development
Division of Wage and Hour Compliance
John Fitch Plaza, 3rd Fl.
Trenton, NJ 08625

**Re: Classification Appeal – District Supervisor, Wage and Hour Compliance (R25),
Position [REDACTED] Log [REDACTED], EID [REDACTED]**

Dear Mr. Kane:

This is to inform you of our determination concerning the classification appeal referenced above. The determination is based upon a thorough review and analysis of the Position Classification Questionnaire submitted and the information and documentation submitted by you, your immediate supervisor, Robert Kirkland, and your Appointing Authority during the review process.

Issue:

You are serving permanently in the title, District Supervisor, Wage and Hour Compliance (25, R25, 55984) and contend you are performing duties and responsibilities commensurate with the title, Hearing and Review Officer, Labor (29, P29, 31446).

Organization:

Your position is assigned to the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development. You report directly to Robert Kirkland, Assistant Chief Wage and Hour Compliance (28, S28, 55985). Your position is responsible for the supervision of John Cataldo, Senior Field Representative Wage and Hour Compliance (22, P22, 55983), Veronica Crawford-Williams, Senior Field Representative Wage and Hour Compliance (22, P22, 55983), Maria Mateus, Senior Field Representative Wage and Hour Compliance (22, P22, 55983) and Jorge Ortega, Senior Field Representative Wage and Hour Compliance (22, P22, 55983).

Findings of Fact:

The primary functions of your position are to review investigative reports, conduct informal violation appeal conferences and to supervise staff.

You perform the following assigned duties and responsibilities:

- Review field staff reports pertaining to employers' compliance with wage and hour regulations for accuracy, completeness and timeliness. Evaluate evidence and record actions taken in cases where a violation occurred.
- Schedule and conduct informal appeal phone conferences. Confer with associates, claimants, employers, and attorneys to negotiate and/or settle penalties. Draw up formal complaints for court cases.
- Supervise four direct reports involved in the enforcement of wage and hour compliance. Assign work, provide instruction and evaluate employee performance.
- Inform staff of changes in state and federal statutes and the enforcement of the regulations and procedures.

Review and Analysis:

Currently your position is classified in the title, District Supervisor, Wage and Hour Compliance (25, R25, 55984). The definition section of the job specification for the title, District Supervisor, Wage and Hour Compliance, states:

"Under the supervision of a Chief or other supervisor, Office of Wage and Hour Compliance, Division of Workplace Standards, Department of Labor, supervises the general enforcement work program of the Office of Wage and Hour Compliance in a given geographical area of the State or supervises the work program and staff assigned to agricultural industry enforcement activities; personally makes the more complex investigations; does related work as required."

An incumbent properly classified in this title performs duties and responsibilities primarily focused on supervising field staff in the enforcement of wage and hour compliance. A District Supervisor, Wage and Hour Compliance is responsible for supervising a group of subordinates serving in the titles, Assistant Field Representative Wage and Hour Compliance, Field Representative Wage and Hour Compliance and Senior Field Representative Wage and Hour Compliance. Additionally, the title, District Supervisor, Wage and Hour Compliance, is assigned to the "R" bargaining unit and is considered a first level supervisor. A first level supervisor is required to supervise lower level employees and/or an organizational unit.

The definition section of the job specification for the title, Hearing and Review Officer, Labor (29, P29, 31446), states:

"Under direction of an Assistant Commissioner, a Director, or other supervisory official in the Department of Labor, reviews and prepares analyses of legislation affecting the Department's programs; drafts rules, regulations, and procedures in accordance with the Administrative Procedure Act, P.L. 1968; acts as administrative hearing officer for appeals initiated by allegedly aggrieved members of the public or employees; does related work as required."

An incumbent properly classified in this title performs duties and responsibilities primarily focused on drafting proposed rules, regulations, and procedures involving the Administrative Procedure Act. A Hearing and Review Officer presides at hearings, grants adjournments and makes determinations on cases at the last level of administrative appeal prior to review by the state courts.

Additionally, the title, Hearing and Review Officer, Labor, is not assigned to the "R" bargaining unit and is not considered a first level supervisor. Your position is required to supervise field staff and work operations; therefore, your position must be assigned to the appropriate supervisory bargaining unit. The review of the information obtained during the classification process does not support the classification of your position to the title, Hearing and Review Officer, Labor.

A review of the job duties and responsibilities assigned to your position revealed your position reviews field staff reports for accuracy, completeness and timeliness. Your position is tasked with evaluating evidence and recording actions taken in cases where a violation occurred. Your position is also tasked with scheduling and conducting informal appeal phone conferences to negotiate and/or settle penalties. In addition, your position supervises four direct reports, assigns work, provides instruction and evaluates employee performance. The duties and responsibilities assigned to your position are consistent with those assigned to the title, District Supervisor, Wage and Hour Compliance.

Determination:

Based upon the findings of fact cited above, it is my determination that the assigned duties and responsibilities performed by you are consistent with the title, **District Supervisor, Wage and Hour Compliance (25, R25, 55984)**; therefore, your position is appropriately classified.

Please be advised that in accordance with *N.J.A.C. 4A:3-3.9*, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to: Written Record Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Cheryl Legg, Human Resource Consultant
Division of Agency Services

CL/slr

Cc: Mary Fitzgerald

