



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Bradley Gilbert and
Donald Huber, Jr.,
Department of the Treasury

CSC Docket Nos. 2018-1594
2018-1593

Classification Appeals

ISSUED: October 31, 2018 (RE)

Bradley Gilbert and Donald Huber, Jr. appeal the decisions of the Division of Agency Services (Agency Services) which found that their positions with the Department of the Treasury are properly classified as Taxpayer Services Representative 1. They seek Supervisor Technical Services, Taxation job classifications in this proceeding. These appeals have been consolidated due to common issues.

By way of background, Gilbert received a regular appointment to the title Taxpayer Services Representative 1 on December 26, 2015. This position is located in the Division of Taxation, Taxpayer Services, Technical Services Taxation, reports to an Assistant Chief, Technical Services Taxation, and has supervisory responsibilities over a Taxpayer Services Representative 1, and a Taxpayer Services Representative Trainee. Also, the position oversees two Taxpayer Services Representatives 2, and four Taxpayer Services Representatives 3, one Technical Assistant 2, Treasury, three Technical Assistants 3, and one Senior Clerk. It is noted that Gilbert supervised one Taxpayer Services Representative 2 although her ePAR had not technically been started as of the classification review. Agency Services conducted telephone interviews, performed a detailed analysis of Gilbert's Position Classification Questionnaire (PCQ) and other materials submitted, and determined that his position was properly classified as Taxpayer Services Representative 1.

Huber received a regular appointment to the title Taxpayer Services Representative 1 on May 3, 2014 in accordance with *In the Matter of Donald Huber*,

Jr. (CSC, decided December 17, 2014). This position is located in the Division of Taxation, Taxpayer Services, reports to an Assistant Chief Technical Services Taxation, and has supervisory responsibilities over a Taxpayer Services Representative 1, four Taxpayer Services Representatives 2, and two Taxpayer Services Representatives 3. Agency Services conducted telephone interviews, performed a detailed analysis of Huber's PCQ and other materials submitted, and determined that his position was properly classified as Taxpayer Services Representative 1.

On appeal to the Civil Service Commission (Commission), Gilbert argues that, as recently as December 2016, incumbents in the title Supervisor Technical Services have only been required to supervise one first-level supervisor. He states that he provides guidance to a Taxpayer Services Representative 1, relays information from and acts as liaison to upper-level management, distributes work, and sets priorities and deadlines. Further, Gilbert argues that his duties can be found on the job specification for the higher title. Specifically, he states that he maintains workflow, compiles monthly statistical and narrative reports, interprets laws and regulations, ensures accurate correspondence, and ensures taxpayer and business compliance with tax laws. Huber provides the same arguments, and adds that he establishes or supervises the creation or establishment of files by compiling and providing statistical monthly and narrative reports to evaluate the unit's productivity; reviews drafts of legislation, regulations and aids with the implementation in division policies and procedures; and ensures that protests and requests for hearings directed to the Conference and Appeal Branch are in conformity with governing statutes, regulations, and policies. Thus, both appellants maintain that their duties are more suited to a classification to Supervisor Technical Services, Taxation.

It is noted that the organizational chart submitted at the time of the classification reviews indicate that the Taxpayer Services, Taxpayer Accounting Branch has two other positions classified by the Supervisor, Technical Services, Taxation title that supervise less than three primary level supervisors.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which if portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

N.J.A.C. 4A:3-3.1(b)1 and 3 provides that positions shall be assigned by the Commission and be assigned the title which describes the duties and responsibilities to be performed and the level of supervision exercised and received and, in State service, the level of compensation.

N.J.A.C. 4A:2-1.4(c) provides that the appellants have the burden of proof on appeal.

The definition section of the job specification for Taxpayer Services Representative 1 states:

Under supervision in the Department of the Treasury, supervises the work of subordinate representatives in encouraging voluntary compliance with New Jersey tax laws by providing education, information, and assistance to taxpayers, their representatives, and/or division staff relative to the taxes administered by the division; and/or working alone, researches, investigates, and responds to the more complex tax administration cases; does related work as required.

The definition section of the job specification for Supervisor Technical Services, Taxation states:

Under direction of a supervisory official in the Technical Services Activity, Division of Taxation, Department of the Treasury supervises the development and implementation of Statewide information, assistance, and educational programs; reviews drafts of regulations and legislation; acts as liaison with the branch or activity responsible for issuing determinations of findings eligible for protest or appeal; deals with taxpayers and tax practitioners regarding tax issues including technical matters, protests, and requests for conferences; does other related duties.

In the instant matter, Agency Services found that the appellants' positions were properly classified as an Taxpayer Services Representative 1 on the basis that they are not supervising more than one first-level supervisor. In 2015, the Commission determined that classifying employees in titles assigned to first-level and second-level supervisory employee relations groups who do not have formal performance evaluations responsibility for subordinate staff members could create a conflict of interest between incumbents who are required to supervise staff serving in the same title. *See West Orange Board of Education v. Wilton* 57 N.J. 417 (1971). In addition, it was found that a major factor in this agency's setting of the compensation levels (*i.e.*, class codes) for titles assigned to second-level supervisory employee relations group is that incumbents in these bargaining units all have the authority to recommend the hiring, firing, and disciplining of employees who supervise subordinate employees. Therefore, since October 2015, the Commission has upheld the classification standard that in order for a position to be classified in a title assigned the first-level or second-level employee relations group, incumbents are required to be the rater of employee, or subordinate-level supervisory employee,

performance using a formal performance evaluation system. See *In the Matter of Alan Handler, et al.*, (CSC, decided October 7, 2015); *In the Matter of Marc Barkowski, et al.*, (CSC, decided October 19, 2016); and *In the Matter of David Bobal, et al.*, (CSC, decided November 23, 2016).

However, in these cases, Agency Services' determinations allow a first-level supervisor to supervise another first-level supervisor. The Commission has already determined that employees who do not sign subordinate ePARs, which are performance evaluations, for at least one first-level supervisor cannot be considered second-level supervisors. See *Bobal, supra*. Thus, the initial question in this matter is if the appellants each supervised a position that was assigned supervisory duties consistent with *In the Matter of Rosemary Lynn Gash, Office of Information Technology* (CSC, decided April 19, 2017) at the time of the classification appeal. According to ePAR records, at the time of Huber's review, Michael Pizza, a Taxpayer Services Representative 1, supervised one professional. Additionally, at the time of Gilbert's review, the record does not support that Amy Stubbs, a Taxpayer Services Representative 1 supervised any subordinate staff members.

Initially, the purpose of a supervisory classification structure is to ensure the consistent application of the State classification plan utilized by the various State appointing authorities and organizational units. While the Commission does not dispute an appointing authority's managerial discretion in organizing the structure of its agency, the determination of the proper classification of the positions within that structure is statutorily vested with the Commission. Thus, an inconsistent supervisory and classification structure can create improper reporting relationships or misclassifications. Nevertheless, a requirement that a second-level supervisor must supervise more than one first-level supervisor may not be appropriate in all cases. For example, in this case, as a result of Agency Services' decisions, the appellants, whose permanent titles are classified as first-level supervisors, will be permitted to continue to supervise other positions classified by a first-level supervisory title. This would be a conflict and contrary to *Wilton, supra*, since both the supervisor and a subordinate are in titles that had the same collective negotiations unit. Clearly, the purpose of the State's classification system is not to perpetuate misclassifications. It would also be a gross misapplication of the State classification plan to endorse the classifications of positions in an organizational structure that consists of a one-to-one reporting relationship between a second-level supervisor and a first-level supervisor, and one subordinate staff member. However, depending on the organization's overall structure, in limited circumstances, it may not be appropriate to set a threshold level above one first-level supervisor to be supervised by a second-level supervisor. Therefore, other considerations, such as the number of positions within the unit and the number of positions in the overall organizational structure of a branch or division, or titles available within the classification plan, should also be evaluated.

In these specific cases, the Commission cannot agree that the appellants' positions should remain classified as Taxpayer Services Representative 1 if each position supervise a Taxpayer Services Representative 1 that is also responsible for supervising three or more subordinate staff members. Gilbert's unit consists of nine positions and Hubert's unit consists of 13 positions. Further, a holistic view of the entire division structure indicates that requiring the appellants to supervise at least three lower level supervisors that also supervise staff would suggest that two other Supervisor Technical Services, Taxation positions in the Taxpayer Accounting Branch are misclassified. In this regard, those incumbents each only supervise two positions classified as first level supervisors. While the Commission generally does not compare the duties of one position to another that may be misclassified, it is evident that the appointing authority's organizational structure for the Taxpayer Accounting Branch is to have a second-level supervisor responsible for each of the six units. These units contain multiple employees that are supervised by one or two first level supervisors. Thus, as well as the conflict caused by a supervisor in subordinate being in the same ERG, in this specific case, the Commission finds that the overall organizational structure of this division warrants one second level supervisory classification for each of its units.

However, it is unclear if the Taxpayer Services Representative 1 position that Gilbert supervised was responsible for conducting subordinate performance evaluations at the time Gilbert filed his classification appeal. Gilbert indicated on his PCQ that he directly supervised eight subordinate staff members, including Amy Stubbs, who is in the Taxpayer Services Representative 1 title. The organizational chart submitted by the appointing authority with Gilbert's PCQ indicates that his unit consists of nine employees. Moreover, Stubbs was appointed as a Taxpayer Services Representative 1 on May 27, 2017, five days prior to when Gilbert filled out his PCQ on June 1, 2017. If Gilbert was responsible for directly supervising eight of the nine employees in the unit, it would not have been possible for Stubbs to supervise and be responsible for conducting performance evaluations for three lower level subordinates, which is required for first level supervisory classification. In other words, at the time of the review it appears Stubbs' position may have been misclassified as Taxpayer Services Representative 1.

Additionally, Huber indicated on his PCQ that he directly supervised thirteen subordinate staff members, including Michael Pizza, who is in the Taxpayer Services Representative 1 title. The organizational chart submitted by the appointing authority with Huber's PCQ indicates that his unit consists of thirteen employees. Moreover, Pizza was appointed as a Taxpayer Services Representative 1 on May 27, 2017, six days prior to when Huber filled out his PCQ on June 2, 2017. If Huber was responsible for directly supervising all thirteen employees in the unit, it would not have been possible for Pizza to supervise and be responsible for conducting performance evaluations for three lower level subordinates, which is required for first level supervisory classification. In other words, at the time of the

review it appears Pizza' position also may have been misclassified as Taxpayer Services Representative 1. As such, at the time of the appellants' classification reviews, it is unclear if they supervised positions that were required to supervise the required number of subordinate staff members. Accordingly, both appellants' positions could not be reclassified to Supervisor Technical Services, Taxation at the time of the classification reviews.

Therefore, if it has not already done so, the appointing authority should assign Stubbs and Pizza supervisory responsibilities for at least three professional level subordinates so that these positions will be properly classified as Taxpayer Services Representative 1. If or when this has been completed and if Stubbs and Pizza are still supervised by Gilbert and Huber, the appellants' positions should be reclassified as Supervisor Technical Services, Taxation, effective 14 days after Stubbs' and Pizza's positions are properly assigned supervisory duties. In order to effect these changes, the appointing authority must provide Agency Services with a revised organizational chart and documentation indicating that the subordinate Taxpayer Service Representative 1s are responsible for conducting performance evaluations for at least three subordinate staff members and the date when those duties were assigned. Finally, should the appellants' positions be reclassified to Supervisor Technical Services, Taxation, these determinations are limited to the specific facts of this situation and shall not be used as precedent in any other proceeding.

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.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 31st DAY OF OCTOBER, 2018



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