



STATE OF NEW JERSEY

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

In the Matter of Andrew Dondero,
Fair Lawn Borough

CSC Docket No. 2020-1336

Classification Appeal

ISSUED: January 16, 2020 (RE)

Andrew Dondero appeals the decision of the Division of Agency Services (Agency Services) which found that his position with Fair Lawn Borough is properly classified as Tree Maintenance Worker 3. The appellant seeks an Assistant Supervisor, Public Works job classification in this proceeding.

The appellant was regularly appointed to Senior Public Works Repairer on April 17, 2015. In June 2019, the appellant requested a classification review of his position located in Fair Lawn Borough, the Department of Public Works, Shade Tree Division. Agency Services indicated that the appellant reports to the Tree Maintenance Supervisor, and does not have supervisory responsibilities. The audit review found that his assigned duties and responsibilities, as detailed in Agency Services' decision, were commensurate with the title of Tree Maintenance Worker 3.

On appeal, the appellant states that not a Supervisor, Public Works nor an Assistant Supervisor, Public Works in the Fair Lawn Borough perform employee evaluations. The appellant argues that he is doing all of the duties of the last Assistant Supervisor, Public Works, who has retired, and much more than indicated in Agency Service's determination. He states that he works with crews from the Water Department and the leaf collection crew, and does everything in the absence of his immediate supervisor, and half of what is required of his supervisor when he

is in. He states that he passed and ranked third on a Civil Service examination.¹ He suspects that the classification of his position is due to invidious motivation.

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 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.

The definition section of the job specification for Tree Maintenance Worker 3 states:

Under direction, performs skilled tree maintenance work such as pruning, feeding, bracing, repairing, spraying, fertilizing, removing and transplanting trees and shrubs; climbs trees using a ladder, climbing hooks and belts, and other manual or mechanical equipment used to aid in performing tree maintenance tasks; takes the lead over skilled and semi-skilled tree maintenance staff; may function as an assistant supervisor; does related work as required.

The definition section of the job specification for Assistant Supervisor, Public Works states:

Under direction, assists in supervising and works with a group of employees engaged in the construction, operation, maintenance, and repair of multiple public works facilities such as streets, sewers or water service, sanitation, parks, sewage or water treatment plants, or other public works operations; may be required to operate, check, service, and make minor repairs to trucks and other maintenance/construction equipment; does other related duties as required.

Based upon a review of the information presented in the record, the appellant's position is properly classified as Tree Maintenance Worker 3. No organizational chart was submitted; however, the appellant indicated that he supervised a Senior Maintenance Repairer; a Maintenance Repairer; a Public Works Repairer; two Senior Public Works Repairers; a Motor Broom Operator; and an Assistant Supervisor Public Works. On his Position Classification Questionnaire (PCQ), The appellant gives the following duties and percentages of time: supervises

¹ This examination was Assistant Supervisor, Public Works (PM2465V), Fair Lawn, had a closing date of November 21, 2017 and was a multiple-choice examination. The first two candidates on the list were appointed.

the removal and trimming of trees, 25%; assists his supervisor, 25%; supervises leaf collection, 10%; supervises new tree planting, 10%; does his supervisors duties, 10%; emergency/over time actions, 5%; supervises tree stump removals, 5%; repair and maintenance of equipment such as chain saws, wood chippers, stump grinders, blowers and weed whackers, 5%; and plowing and salting roads, 5%.

Typically, classification determinations list only those duties which are considered to be the *primary* focus of the appellant's duties and responsibilities that are performed on a regular, recurring basis. *See In the Matter of David Baldasari* (Commissioner of Personnel, decided August 22, 2006). The appellant's position does not primarily focus on assisting with supervision in multiple public works facilities. Rather, his position focuses on duties related to the Shade Tree Division.

Next, the Assistant Supervisor, Public Works title is a supervisory title, and supervisory experience includes responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work within a unit in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed, and make employee evaluations based on their own judgment. They have the authority to recommend hiring, firing, and disciplining employees. *See In the Matter of Julie Petix* (MSB, decided January 12, 2005). *See also, In the Matter of Susan Simon and William Gardiner* (Commissioner of Personnel, decided September 10, 1997). Moreover, the Civil Service Commission has determined that the *essential component* of supervision is the responsibility for the administration of performance evaluations for subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 16, 2001).

Also, 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); *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided March 28, 1996). *See also, In the Matter of Lorraine Davis, Office of the Public Defender* (Commissioner of Personnel, decided February 20, 1997), *affirmed*, Docket No. A-5011-96T1 (App. Div. October 3, 1998). The remedy for misclassification of another position is not to perpetuate the misuse of the higher title by reclassifying the appellant's position to that title, but rather, to review the position classifications of the positions encumbered by the named employees to ensure that they are properly classified. *See In the Matter of Stephen Berezny* (CSC, decided July 27, 2011). The classification review does not compare the appellant's duties to the duties of retired employees or to other positions. Rather, classification reviews are based on a current review of assigned duties.

Taking the lead is not considered a supervisory responsibility. Incumbents in leadership roles refer to persons whose titles are non-supervisory in nature, but are required to act as leaders of a group of employees in titles at the same or lower level than themselves and perform the same kind of work as that performed by the group being led. *See In the Matter of Catherine Santangelo* (Commissioner of Personnel, decided December 5, 2005). Duties and responsibilities would include training, assigning and reviewing work of other employees on a regular and recurring basis. However, such duties are considered non-supervisory since they do not include the responsibility for the preparation of performance evaluations. A review of the record does not establish that the appellant's position is responsible for formal evaluations of employees, and the majority of the work he performs with a crew is as a lead worker. Performing the work of the Supervisor in his absence is not at the level and scope of responsibility for supervision of all employees of the unit at a level above that of Senior Public Works Repairer and below that of Supervisor, Public Works. The appellant does not have supervisory responsibility for other Senior Public Works Repairers, and it is not definitive that the position assists the Supervisor in the construction, operation, maintenance, and repair of multiple public works facilities.

One final note is warranted. It is concerning that the appellant performs his Supervisor's duties *in his presence*. The appellant can lead and provide guidance to lower level staff, but should not be performing those duties and responsibilities belong to the appellant's supervisor, who also supervises these staff. If the appellant is performing such duties, he has been inappropriately assigned tasks by his supervisor. A higher-level supervisor should assume these duties, such as overseeing the work of an Assistant Supervisor Public Works, if the appellant's supervisor is not performing his duties. The Tree Maintenance Supervisor has not provided an explanation is given as to why this was allowed to continue. It is simply unfair to allow the appellant to bear responsibility for higher level tasks specific to supervision, yet classify the position based on the fact that he does not conduct formal performance evaluations. It is, at the very least, management's duty and responsibility to ensure that supervisory tasks are performed by supervisors.

Accordingly, a thorough review of the entire record fails to establish that the appellant has presented a sufficient basis to warrant an Assistant Supervisor, Public Works classification of his position.

ORDER

Therefore, the position of Andrew Dondero is properly classified as a Tree Maintenance Worker 3.

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 15th DAY OF JANUARY, 2020



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