



<p>In the Matter of Jeffrey Everett, State Agriculture Development Committee</p> <p>CSC Docket No. 2020-273</p>	<p>STATE OF NEW JERSEY</p>
	<p>FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION</p>
	<p>Management Salary Program Appeal</p> <p>ISSUED: May 1, 2020</p>

Jeffrey Everett, a Deputy Executive Director with the State Agriculture Development Committee (SADC),¹ appeals his ineligibility for a salary increase under the Fiscal Year 2019 Management Salary Program.

By way of background, Salary Regulation Fiscal Year 2019, Section 1 (SR19:1 or Management Salary Program) provided for discretionary performance-based salary increases of up to 15% and additional compression awards for employees in titles assigned to Employee Relations Groups (ERGs) MB, MD, M and X and members of the Senior Executive Service. The appellant was ineligible for a salary increase under this program since his Deputy Executive Director position has been assigned to the & ERG since his appointment date of November 25, 2017.²

In his appeal to the Civil Service Commission (Commission), postmarked July 19, 2019, the appellant states that when he did not receive any salary increase under the Management Salary Program, he investigated the matter and learned the details of his appointment to Deputy Executive Director. The appellant contends that when he was appointed, he should have been assigned to the M ERG (Title Code 10077)

¹ The SADC is in but not of the Department of Agriculture, which provides any personnel required as staff for the SADC. *N.J.S.A. 4:1C-4.*
² The & ERG covers management positions that are represented by the International Brotherhood of Electrical Workers (IBEW). Positions assigned to ERGs MB, MD, M and X and the Senior Executive Service are not represented for purposes of collective negotiations.

instead of the & ERG (Title Code 61443).³ He notes that on December 8, 2010, the IBEW was certified as the representative for the & ERG. The appellant points out that the certification indicates that all managers employed by the State in M ERG titles are included in the & ERG, but “managerial executives” within the meaning of the New Jersey Employer-Employee Relations Act (EERA), *N.J.S.A. 34:13A-1, et seq.*, among others, are excluded.⁴ He argues that he falls under this “managerial executive” exclusion and cites the relevant definition of that term found in the EERA:

“Managerial executives” of a public employer, in the case of the State of New Jersey, means persons who formulate management policies and practices, but shall not mean persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that, in the case of the Executive Branch of the State of New Jersey, “managerial executive” shall include only personnel at or above the level of assistant commissioner.

N.J.S.A. 34:13A-3. He maintains that as the primary author of agency regulations and policies and the establishment of new programs, he formulates management policies and practices rather than merely directs the effectuation thereof. The appellant also maintains that as he is at least the third-in-charge of the SADC, his position is “at or above the level of assistant commissioner.” He states that one need not have the title of Assistant Commissioner proper in order to be considered a “managerial executive” by the Public Employment Relations Commission (PERC). He claims that the Department of Agriculture’s Human Resources staff is “intimate” with his level of responsibility and that they had submitted the request to appoint him to Deputy Executive Director using Title Code 10077 (M ERG).

The appellant proffers that one could not have detected the implications of a “seemingly innocuous ampersand.” He maintains that due to the asserted error in his appointment, he missed the 15% salary increase and additional compression awards provided for in the Management Salary Program. To remedy the situation, he proposes that his position be assigned to the M ERG and that he receive, on a retroactive basis, the 15% salary increase with an additional compression award. Specifically, the appellant requests that his salary upon his appointment to Deputy Executive Director be increased by 15% plus the additional compression award to arrive at his new salary.⁵

³ Title Code 61443 was created in 2013 to effectuate the collective negotiations agreement between the State and the IBEW.

⁴ Elected officials, members of boards and commissions, managerial executives and confidential employees do not have the right to be represented for purposes of collective negotiations. *See N.J.S.A. 34:13A-5.3.*

⁵ It is noted that on July 7, 2018, the appellant received an across the board salary increase provided for in the IBEW collective negotiations agreement.

In support, the appellant cites several cases and maintains that they substantiate that he is a “managerial executive” who should not be in a union. Specifically, he cites the New Jersey Supreme Court’s decision in *N.J. Tpk. Auth. v. AFSCME, Council 73*, 150 N.J. 331 (1997); the Appellate Division’s decisions in *Div. of State Police v. N.J. State Trooper Captains Ass’n*, 441 N.J. Super. 55 (App. Div. 2015) (reviewing PERC’s decision) and *State v. Council of N.J. State College Locals, AFT*, Docket No. A-2987-12T2 (App. Div. February 20, 2015) (same); and PERC’s decisions in *In re Division of State Police and New Jersey State Trooper Captains Association*, P.E.R.C. No. 2012-71, 39 N.J.P.E.R. ¶ 24, 2012 N.J. PERC LEXIS 38 (2012) (finding, among other things, that assistant commissioners are at the third level of the hierarchy), *In re City of Camden Housing Authority and AFSCME Council 71, Local 3974*, D.R. No. 2014-7, 2013 N.J. PERC LEXIS 113 (2013), and *In re Montclair State University and Council of N.J. State College Locals, AFT, AFL-CIO*, P.E.R.C. No. 2018-42, 44 N.J.P.E.R. ¶ 111, 2018 N.J. PERC LEXIS 34 (2018).

The appellant also submits a copy of the Management Salary Program, found within this agency’s Compensation Compendium; a copy of the Department of Agriculture’s approved request to appoint him to Deputy Executive Director in Title Code 61443 (& ERG); his Performance Assessment Reviews for the rating cycles ending 2019 and 2020; the SADC By-Laws, last revised December 19, 2002; and other documents. According to the By-Laws, “[t]he property, affairs, and business of the [SADC] shall be managed by the [SADC] to the extent of power and authority allocated to” it by the Right to Farm Act and the Agriculture Retention and Development Act. The By-Laws establish the following Subcommittees: Acquisition, which advises the SADC on fee simple purchases and sales; Finance, which advises the SADC on financial matters; Legislation and Policy, which advises the SADC on legislative, regulatory and policy issues; Personnel, which advises the SADC on issues related to organization structure, memoranda of understanding with other agencies affecting personnel and salaries under direct control of the SADC; Right to Farm, which may advise the SADC on recommended agricultural management practices and other matters dealing with the implementation of the Right to Farm Act; and Ad Hoc Subcommittees. Per the By-Laws, the officers of the SADC are the Chairperson, Vice Chairperson and Executive Director. The Chairperson presides at all meetings of the SADC and has “general control over the business and affairs of the [SADC], subject to the direction of the [SADC].” The Vice Chairperson performs the duties of the Chairperson in the event the Chairperson is unable to perform such duties by reason of illness, disability or absence, or when requested to perform such duties by the Chairperson. The Vice Chairperson also performs such other duties as may from time to time be assigned by the Chairperson. The Executive Director serves as Chief Administrative Officer and Secretary.

CONCLUSION

N.J.A.C. 4A:4-1.10(a) provides that all initial and subsequent appointments, promotions and related personnel actions in the career, unclassified or Senior Executive Service are subject to the review and approval of this agency.

At the outset, it is noted that *N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. The appellant is here challenging the details of his appointment to Deputy Executive Director effective November 25, 2017, yet the instant appeal was not filed until July 19, 2019. Although the appellant claims that it was his non-receipt of a salary increase under the Management Salary Program that caused him to investigate the details of his appointment, it strains credulity to suggest that the appellant had no prior notice that he was serving in a bargaining unit title. For instance, he received a contractual across the board salary increase in 2018 and could very well have received other union-related communication. While he also complains that he could not have detected the implications of a “seemingly innocuous ampersand,” the Compensation Compendium, a publicly available document that the appellant evidently consulted in filing this appeal, includes a listing of ERGs and collective bargaining representatives. The & ERG is very clearly indicated therein as being represented by the IBEW. Thus, the instant appeal, filed nearly *one year and eight months* after the appointment at issue, appears to be untimely as it relates to the appointment. Therefore, his appeal is dismissed solely on the basis that it was not timely filed.

Nevertheless, for informational purposes only, even assuming the appeal were timely filed, it is not apparent that the appellant’s 2017 appointment to Deputy Executive Director in Title Code 61443 (& ERG) was in error. In this regard, all managers employed by the State in M ERG titles are included in the & ERG. Although that is subject to certain exclusions such as the “managerial executive” exclusion, nothing in the Department of Agriculture’s request to appoint the appellant would have definitively alerted this agency that the appellant was deemed a “managerial executive” within the meaning of the EERA at the time of appointment. Moreover, while the appellant claims that the Department of Agriculture’s Human Resources staff is “intimate” with his level of responsibility, there is no indication that staff raised any objections at the time or later.⁶

The appellant also cites a number of PERC and PERC-related decisions and urges the Commission to view the cases as evidence that *he* is a “managerial executive” within the meaning of the EERA. The Commission is not persuaded. None of the cited cases are specific to the appellant and his agency. Moreover, it bears emphasizing that it is PERC that is charged with enforcing and “implement[ing] fully

⁶ There is also no indication whether the Department of Agriculture supports this appeal.

all the provisions of” the EERA. *See N.J.S.A. 34:13A-5.2.* The Commission declines to make a finding that he is a “managerial executive” within the meaning of the EERA and thus should now be excluded from representation in collective negotiations when there is no indication that the agency actually charged with administering the EERA has ever done so.⁷

Accordingly, as his appeal was not timely, and, for the reasons stated above, there is no basis to reassign the appellant to the M ERG, he was properly ineligible for a salary increase under the Management Salary Program.

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 29TH DAY OF APRIL, 2020

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⁷ Even assuming it were somehow appropriate for the Commission to interpret and apply the “managerial executive” exclusion in this case, it is not apparent on the present record that the appellant qualifies. In this regard, the SADC manages its property, affairs and business. There are several Subcommittees. The officers of the SADC include the Chairperson, who has general control over the business and affairs of the SADC subject to the SADC’s direction; Vice Chairperson; and Executive Director. Thus, it is not obvious that the appellant is third in the hierarchy.