



**STATE OF NEW JERSEY**

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

In the Matter of Enrique Cortes,  
*et al.*, Assistant Food Service  
Supervisor 1 (PS9207I), South Woods  
State Prison

Examination Appeal

CSC Docket Nos. 2020-990  
2020-1123  
2020-1168

**ISSUED:** May 1, 2020 (RE)

Enrique Cortes, Erma Sturdivant, and Clara Vinson appeal the determinations of the Division of Agency Services (Agency Services) which found that they did not meet the minimum experience requirements, per the substitution clause for education, for the promotional examination for Assistant Food Service Supervisor 1 (PS9207I), South Woods State Prison. These appeals have been consolidated due to common issues presented by the appellants.

The subject promotional examination had a closing date of February 21, 2019, and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title and met the announced requirements. These requirements included graduation from an accredited college or university with a Bachelor's degree and five years of experience as a supervisor of the planning, preparation, or delivery system of a food service operation. Applicants who possessed the required education could substitute additional experience as indicated on a year for year basis with thirty semester hour credits being equal to one year of experience. As there were no admitted candidates, the examination was cancelled on October 12, 2019.

On his application, Cortes indicated he possessed an Associate's degree and 64 college credits. This prorated to two years, one month of experience, and therefore he was required to possess six years, eleven months of announced experience. He listed four positions on his application and resume; provisional Assistant Food Service Supervisor 1; Institutional Trade Instructor 1, Cooking;

Supervisor Food Service Area Operations; and Sous Chef/Chef /Head Cook with Borgata Resort, Casino & Spa. He was credited with three months of applicable experience in the first position, two years in the third position, and two years, four months in the fourth position. In the second position, Institutional Trade Instructor 1, Cooking, Cortes indicated that he supervised only inmates, and did not receive credit for that experience. He had a total of five years, two months of experience, and lacked one year, nine months of required supervisory experience.

Sturdivant indicated on her application that she possessed no college credits, and she listed one position, Institutional Trade Instructor 1, Cooking from November 1997 to the February 2019 closing date. She indicated that she supervised 10 support staff in this position. Official records indicate that Sturdivant was an Institutional Trade Instructor, Cooking from December 2012 to the closing date, February 2019, an Institutional Trade Instructor 2, Cooking from July 2000 to December 2012, and a Supervisor Food Service Area Operations from November 1997 to July 2000. None of this experience was accepted and she was found to be lacking nine years of experience.

Vinson indicated on her application that she possessed an Associate's degree and had 76 college credits. This prorated to two years, six months of experience, and therefore she was required to possess six years, six months of announced experience. Vinson listed one position on her application, Institutional Trade Instructor 1, Cooking from September 2000 to the February 2019 closing date. She indicated supervision of two professional staff and 30 support staff members in this position. Official records indicate that Vinson was an Institutional Trade Instructor 1, Cooking from December 2012 to the February 2019 closing date, an Institutional Trade Instructor 2, Cooking from June 2002 to December 2012, and a Supervisor Food Service Area Operations from September 2000 to June 2002. As none of this experience was accepted, she was found to be lacking six years, six months of experience.

On appeal, the appellants rely on *In the Matter of Herman Holden and Ernest Nosedo Jr., Assistant Food Service Supervisor 1 (PS5038I), South Woods State Prison* (CSC, decided August 1, 2018). In that decision, the Civil Service Commission (Commission) directed Agency Services to accept the supervision of inmates as meeting the requirements for future examinations for positions in the subject title. The appellants all maintain that they have supervised inmates in handling, storing, preparing and serving food. Additionally, Vinson cites three other Commission determinations which she states, "should be helpful in my case," but she does not elucidate. These cases included *In the Matter of Gloria Burnett-Harrison, et al.* (MSB, decided February 22, 2006), *In the Matter of Alvin Dyott* (MSB, decided September 21, 2005), and *In the Matter of Christopher Staffieri* (MSB, decided September 21, 2005).

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date. *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause in a particular circumstance in order to effectuate the purpose of Title 11A, New Jersey Statutes.

An Assistant Food Service Supervisor 1 assists in the general supervision of a food service unit, and is assigned to the “S” ERG, which is designated as the “Secondary Level Supervisors Unit.” As such, the Assistant Food Service Supervisor 1 must supervise first-level supervisory positions. Moreover, when a title is supervisory in nature, the Commission has found that, along with the myriad of other supervisory duties that must be performed, the essential component of supervision is the responsibility for formal performance evaluation of subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 8, 2001). As such, in order to be accepted, experience must be accrued in a position that supervises subordinate staff, including having the responsibility for performing formal performance evaluations. Merely making recommendations regarding a subordinate’s performance, or even assisting in the preparation of a performance evaluation is not sufficient. Rather, to be considered a supervisor, the individual must be the person actually administering and signing off on the evaluation as the subordinate’s supervisor.

Initially, Vinson maintains that three prior cases of the former Merit System Board (Board) provide support for her appeal. In *Burnett-Harrison, et al. supra*, the Board found that supervision of clients is not the same as supervision of staff. In *Dyott, supra.*, the Board evaluated supervisory-level experience based on the level and scope of class codes and found that out-of-title supervision of one para-professional and/or clerical employee would not be considered at a level and scope sufficient to establish eligibility for the second level supervisory title under test. In *Staffieri, supra*, the Board found that although incumbents in the non-professional Supervisor, Aids to Navigation and professional level Supervisor of Operations title supervised subordinate staff, based on class code designations and the intent and thrust of the job specifications, experience gained in a non-professional supervisory title was not at the level and scope required to establish eligibility for the professional supervisory title. Therefore, these cases do not establish that the appellants should be admitted to the subject examination.

The issue in the instant matter does not only turn on whether an applicant supervises professional level staff or inmates. It also turns on the proper utilization of titles in the State Classification Plan. Thus, while *Holden supra*, directed Agency Services to accept supervision of inmates as meeting the open competitive requirements, it also cautioned that, as a second level supervisory title, incumbents

in the Assistant Food Service Supervisor 1 title are required to supervise other lower-level professional-level supervisory staff, and, if no such staff is present to supervise, usage of the title would not be appropriate. The job specifications for Institutional Trade Instructor, Cooking 1 and 2 are not first level supervisory titles as incumbents are not required to conduct performance evaluations for subordinate staff. Although the Supervisor Food Service Area Operations title would be considered a first level supervisory title since incumbents are required to conduct formal performance evaluations for subordinate staff, its use is limited to the Department of Human Services and is *not* utilized by the Department of Corrections. As such, it is unclear if any position classified by the second level supervisory Assistant Food Service Supervisor 1 title in the Department of Corrections could supervise a first level supervisory position.

Based on the above, *Holden, supra* must be interpreted as being unique in accepting experience in supervision of inmates as qualifying supervisory experience. In this regard, while Institutional Trade Instructor has only two levels, 1 and 2, it has multiple variants, and this title series follows the Food Service Supervisor title series. As noted earlier, *Holden, supra* does not address the scope of this issue. For example, the job specifications for the Assistant Food Service Supervisor and Food Service Supervisor title series contain major inconsistencies. Some levels of the Food Service Supervisor require a specific degree, while others only a general. The Food Service Supervisor lists experience “as a manager or supervisor of a food service operation,” while the Assistant Food Service Supervisor requires “experience as a supervisor of the planning preparation, or delivery system of a food service operation.” Additionally, *Holden, supra* partly relied on the fact that no candidates met the experience requirements to find that supervision of inmates was acceptable. This situation may not be apparent for all examinations.

Therefore, upon further review, mandating the continued acceptance of experience supervising inmates as qualifying for this second-level supervisory title could undermine the classification standard that requires incumbents to supervise first-level supervisory positions. Accordingly, it is appropriate to refer the matter of the job specifications for all food service and cooking related titles utilized by the Department of Corrections to Agency Services for review and to make any modifications it deems necessary for consistency and correctness.

While the Commission has found that it is not appropriate to continue the wholesale acceptance of inmate supervision as qualifying experience for the subject title, an equitable remedy is warranted in this situation. In this regard, there is no evidence in this record that the provisional position encumbered by Cortes is misclassified and he continues to serve provisionally in the title under test. Additionally, the examination was cancelled due to a lack of qualified applicants. Under these circumstances, it is appropriate to relax the provisions of *N.J.A.C. 4A:4-2.6(a)* to accept the totality of all the appellants’ experience and admit them to

the examination. However, it must be emphasized that this remedy is limited to this situation and shall not be used as precedent in any other proceeding.

### ORDER

Therefore, it is ordered that these appeals be granted, the examination cancellation be rescinded, and the appellants' application processed for prospective employment opportunities only. Additionally, Agency Services is directed to review the job specifications for all food service and cooking related titles utilized by the Department of Corrections and to make any modifications it deems necessary for consistency and correctness.

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 29<sup>TH</sup> DAY OF APRIL , 2020

*Deirdre' L. Webster Cobb*

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