

In the Matter of Jason Anderson, et al., Sheriff's Officer, Passaic County
CSC Docket Nos. 2014-1574, 2014-1575, 2014-1576, 2014-1577, 2014-1578
(Civil Service Commission, decided March 26, 2014)

The Passaic County Sheriff's Office, represented by Albert Buglione, Esq., appeals the attached decisions of the Division of Classification and Personnel Management (CPM) that the positions of Jason Anderson, Javier Castellanos, Jose Sayan, Robert Scott and John Welsh are properly classified as Sheriff's Officer. The appointing authority seeks classifications of County Correction Officer in these proceedings.

The record in the present matter establishes that CPM conducted classification reviews of the individuals' positions after concerns were submitted by Javier Custodio, President of P.B.A. Local #286, about Passaic County having these individuals working out-of-title. CPM performed a detailed analysis of their Position Classification Questionnaires (PCQs), and related documentation. All of the named individuals work at the Passaic County Sheriff's Office. Jason Anderson is assigned to the Computer Forensics Support Unit, and reports to a Sheriff's Officer Sergeant. Javier Castellanos is assigned to the Gang Intelligence Unit, and reports to an Undersheriff. Jose Sayan is assigned to the Community Policing Unit, and reports to an Undersheriff. Robert Scott is assigned to the Communications Unit, and reports to a Sheriff's Officer Captain. John Welsh is assigned to the Bureau of Corrections, Support Services, and reports to a County Correction Sergeant. Each of these employees receives general supervision and has no supervisory or lead worker responsibilities.

As described in the attached determinations, CPM found that, based on the primary duties of the positions, the individuals are properly classified in the title Sheriff's Officer. On appeal, the appointing authority argues that these individuals are performing duties consistent with the County Correction Officer title. The appointing authority requests that these individuals be permitted to continue performing their duties. It opines that in order to be Sheriff's Officers, these individuals must be reassigned differing duties, and that other individuals will require training and instruction to carry out the duties formally performed by these individuals.

For each employee, the appointing authority reiterates some of the duties performed, and concludes that these duties are consistent with the County Correction Officer title. Specifically, it indicates that Mr. Anderson's duties are related to the monitoring and guarding of inmates in the jail. It indicates that Mr. Anderson's assignments relate to maintenance of Computer Systems in the jail, as well as utilizing computer software to assist in conducting investigations. It contends that since the duties involve maintenance and security in the jail, his duties are primarily those of County Correction Officer.

For Mr. Castellanos, the appointing authority indicates that his duties are also related to monitoring and guarding of inmates in the jail. It states that identifying gang members maintains security and protection of the inmates as it is necessary to separate individuals affiliated with different gangs. It indicates that Mr. Castellanos selects inmates suitable to participate in the Reality Check program and transports them from their units to the area where the program is being held.

For Mr. Sayan, the appointing authority indicates that his duties are related to caretaking and guarding of inmates in the jail, and it argues that a Sheriff's Officer does not have any interaction with inmates. Also, the appointing authority maintains that "other duties" listed in CPM's determination comprise only a small portion of daily responsibilities and are not indicative of his frequent interaction with inmates in the jail. It contends that CPM did not have a comprehensive understanding of the duties of the position.

For Mr. Scott, the appointing authority indicates that his duties include maintaining and staffing the Ambulance Division, supervising inmates, maintaining emergency response vehicles, providing CPR and radio system training, and monitoring Public Safety Telecommunicators.

For Mr. Welsh, the appointing authority indicates that his duties include identifying and interacting with gang members, which involves guarding and monitoring inmates. It states that he exercises independent judgment in identifying, interviewing and investigating gang members and gang activity in the jail, and that these are the duties of a County Correction Officer.

CONCLUSION

The definition section of the job specification for Sheriff's Officer states:

Under direction, performs one or more functions in the following areas: maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics, investigations, apprehension of violators of the law; forensics and other related assignments which may include Emergency Management as required by the operational needs of the jurisdiction (County), may be assigned to perform other law enforcement or public safety related duties outside the parameters of a courtroom environment, which may include criminal investigations, patrol duties, dispute intervention/resolution, public safety/service assistance, traffic control and enforcement, motor vehicle accidents, etc., and/or other assignments as determined by the appointing authority.

The definition section of the job specification for County Correction Officer states:

Under supervision during an assigned tour of duty at a correctional facility, guard inmates serving court imposed sentences for the commission of criminal offenses; does other related duties.

It is long-standing policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities relate to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. Moreover, it is permissible for employees to be assigned some work duties above or below the proper level of their titles. However, those duties cannot constitute the primary focus of the employee's duties and should only be occasionally assigned, for example, for such reasons as emergency coverage.

Each of the audited positions have specific tasks assigned to them, both within and outside of the jail. The mere fact that the incumbent of a position performs duties at a jail does not establish that that individual guards inmates as the primary focus of his or her position. County Correction Officer duties involve such activities as observing conduct and behavior to prevent disturbances and escapes: inspecting locks, doors and window bars for tampering; searching inmates and cells for contraband activities; guarding and directing inmates during work assignments; patrolling assigned areas for evidence of forbidden acts, infractions or unsatisfactory attitudes; employing force to maintain order; and changing undesirable attitudes and behavior patterns.

Regarding Mr. Anderson's position, the duties listed in CPM's decision encompass the majority of his tasks. The major focus of this position involves investigations, which is a responsibility of a Sheriff's Officer as listed in the definition section of the job specification for that title. In addition, Mr. Anderson's PCQ indicates that he spends 5% of his time tracking crisis situations or physically restraining prisoners as necessary. Performing investigations regarding inmates is not the same as guarding inmates serving court imposed sentences for the commission of criminal offenses. Additionally, maintenance of computer systems in the jail is not monitoring and guarding inmates, which involves direct custody, care and contact with inmates. Rather, it is related to the general security of the jail.

As to Mr. Castellanos' position, again, the duties listed in CPM's decision encompass the majority of his tasks. The major focus of this position, involving 50% of his time, is coordinating the Reality Check program and assisting in the identification of possible gang members by interviewing inmates on intake. For another 15% of the time, Mr. Castellanos conducts follow-up interviews of inmates

identified as gang members. Basically, Mr. Castellanos gathers information and conducts programs, presentations, and training. While the appointing authority argues that these duties are “related” to the guarding and monitoring of inmates, these duties do not match those of the County Correction Officer title. However, criminal identification is an aspect indicated in the definition for Sheriff’s Officer, and conducting programs, presentations, and training is more closely related to Sheriff’s Officer duties than to County Correction Officer duties.

The majority of Mr. Sayan’s duties, 60%, are to coordinate the Reality Check program. Another 30% of his time is spent coordinating the Project Lifesaver program for children and seniors. For the remaining 10% of his time, he provides identification cards and cell phones to seniors. There is no question that this position is clearly a Sheriff’s Officer position, as these duties are public safety related duties outside the parameters of a courtroom environment, and do not involve guarding inmates serving court imposed sentences. For the Reality Check program, Mr. Sayan interviews inmates to select those to speak to youth in Passaic County, vets all inmate panelists, and moves them from their housing units to the chapel. There is no prohibition for a Sheriff’s Officer to have interaction with inmates. Interviewing inmates for selection, and teaching them how to behave in the program, has a primary focus on the program, and not on guarding the inmates. While the inmates may still need to be escorted, they are escorted for purposes of participating in the program, and not for routine purposes.

The appointing authority argues that if this appeal is denied, another officer will require training and additional instruction to carry out those duties performed by Mr. Sayan. This argument is unpersuasive. In this regard, any individual who would take over the duties performed by Mr. Sayan would also be classified as a Sheriff’s Officer. How well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. *See In the Matter of Debra DiCello* (CSC, decided June 24, 2009).

For 90% of the time, Mr. Scott maintains and staffs the Sheriff’s Department Ambulance Division, which is utilized by corrections and law enforcement staff, maintains first aid kits and external defibrillators, maintains response vehicles, provides CPR training, programs portable and vehicle radios, verifies access to State Criminal Justice data, provides training in the use of the departmental radio system, and supervises Public Safety Telecommunicators. For 10% of the time, he supervises inmates. The majority of these duties are more closely related to the job definition for Sheriff’s Officer, as they are public safety related duties outside the parameters of a courtroom environment, and do not have guarding inmates as the primary focus.

The primary focus of Mr. Welsh's position involves identification investigations, which is directly listed in the job specification for Sheriff's Officer. Although those tasks may involve interacting with gang members in jail, the primary purpose of the interaction is not to guard the inmates, but to identify them and gather information for public safety purposes. The fact that Mr. Welsh exercises independent judgment does not establish that he performs County Correction Officer duties.

The preponderance of the evidence does not establish that any of these positions, as reviewed by CPM, has County Correction Officer duties as the primary focus. A review of the duties of each individual indicates that a County Correction Officer classification of these positions is not warranted.

Based on this determination, the appointing authority must take the out-of-title duties away from these individuals, assign them duties commensurate with their permanent titles and either hire Sheriff's Officers from the current list to fill their positions or laterally transfer existing Sheriff's Officers to their positions. Should there not be County Correction Officer positions available for the individuals to return to, layoff procedures must be instituted. In this regard, the Commission has extensively explained the difference between the County Correction Officer and Sheriff's Officers title series to this appointing authority in prior decisions. *See In the Matter of the Sheriff's Officers and County Correction Officers Layoff, Passaic County Sheriff's Office* (CSC, decided March 26, 2008); and *In The Matter of Sheriff's Officers and County Correction Officers Appointments, Passaic County Sheriff's Office* (CSC, decided July 16, 2008). Further, the Commission has indicated to the appointing authority that it does not have unlimited discretion in its assignment of appropriate duties between incumbents in the County Correction Officer and Sheriff's Officer titles. *See In the matter of County Correction Sergeant (PC2668G), Passaic County* (MSB, decided August 9, 2006); *In The Matter of Sheriff's Officers and County Correction Officers, Passaic County Sheriff's Office* (MSB, decided February 27, 2008).

One final comment is warranted in this matter. With regard to Mr. Anderson *et al.*, the appointing authority has, once again, assigned the duties of Sheriff's Officer to County Correction Officer incumbents. However, in this matter, the appointing authority is asserting that the duties performed by these individuals are those of County Correction Officer. The duties of each title have been repeatedly explained to the appointing authority and the Commission is disturbed at the appointing authority's repeated attempts to circumvent the Merit System. The appointing authority was at least twice advised not to assign Sheriff Officer duties to County Correction Officers, but did so nevertheless. The appointing authority is warned that, in the future, such noncompliance will not be tolerated and could lead to an additional assessment of fines or other sanctions pursuant to *N.J.A.C. 4A:10-2.1*.

A thorough review of the entire record fails to establish that the appointing authority has presented a sufficient basis to warrant a County Correction Officer classification of the positions encumbered by Jason Anderson, Javier Castellanos, Jose Sayan, Robert Scott and John Welsh.

ORDER

Therefore, the positions of Jason Anderson, Javier Castellanos, Jose Sayan, Robert Scott and John Welsh are properly classified as Sheriff's Officer.

This is the final administrative determination in these matters. Any further review is to be pursued in a judicial forum.