



STATE OF NEW JERSEY

In the Matter of Unclassified	:	FINAL ADMINISTRATIVE ACTION
Employees, Office of Information	:	OF THE
Technology and Board of Public	:	CIVIL SERVICE COMMISSION
Utilities	:	
	:	
	:	
CSC Docket Nos. 2023-1732 and	:	Request for Interim
2023-1733	:	Noncompetitive Appointments
	:	
	:	

ISSUED: March 15, 2023 (ABR)

The New Jersey Governor’s Office of Employee Relations (GOER) and the Communications Workers of America (CWA) request that various titles be placed in the noncompetitive division of the career service on an interim basis in order to permanently appoint the following 25 individuals within the Office of Information Technology (OIT) and the Board of Public Utilities (BPU). Since these requests address similar issues, they have been consolidated herein.

By way of background, the Legislature passed the Workplace Democracy Enhancement Act (WDEA), *P.L.* 2018, c. 15 (codified as *N.J.S.A.* 34:13A-5.11, *et seq.*), which had an effective date of May 18, 2018. The enactment of the WDEA included the following mandate:

All regular full-time and part-time employees of the public employer who perform negotiations unit work shall be included in the negotiations unit represented by the exclusive representative employee organization.

N.J.S.A. 34:13A-5.15(5)(a). Thereafter, GOER and CWA reviewed the status of thousands of previously non-aligned employees in employee relations groups V, W, X and Y to determine whether it would be appropriate to include these employees in CWA negotiations units A, P, R, and S. They also reviewed the titles assigned to employee relations groups V, W, X and Y to determine which titles would be appropriate to move to the CWA negotiations units. GOER and CWA agreed that certain titles could not be moved into the CWA negotiations units for various reasons.

However, they also determined that certain unclassified employees in such titles (attached), based on their job duties, would need to have their titles converted to existing A, P, R and S titles and have furnished statements from their appointing authorities attesting that these employees have been performing duties consistent with the proposed titles and satisfy the knowledge, skills, and qualifications for the proposed titles. GOER and CWA also agreed that the conversion process should begin with employees in two smaller departments: OIT and BPU.

GOER and CWA assert that interim noncompetitive designations are necessary to implement the requirements of the WDEA. The A, P, R, and S titles at issue are currently allocated to the competitive division of the career service. GOER and CWA proffer that if unclassified employees with no underlying career service titles/statuses are moved to the subject A, P, R and S negotiations units without first being placed into interim noncompetitive designations, they would be appointed to competitive titles provisionally, pending open competitive examination (PAOC), meaning that they could be vulnerable to displacement.

Upon its review, the Division of Agency Services notes that there is no indication that the provisions of the WDEA require the movement of affected employees to titles allocated to the career service.

CONCLUSION

N.J.A.C. 4A:3-1.2(c) provides that a job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Civil Service Commission (Commission) that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job;
2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems, and working conditions; or
3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

N.J.A.C. 4A:3-1.2(d) indicates that appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

N.J.A.C. 4A:3-1.2(g) states that if a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no

greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

N.J.A.C. 4A:3-3.5(a) provides that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Chairperson or designee, shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

N.J.A.C. 4A:3-3.5(b) states that an appointing authority may request a position classification review by the Chairperson or designee in a manner and form as determined by the Chairperson or designee. Such review may be initiated by the Chairperson or designee. An employee or union representative may request a position classification review in accordance with *N.J.A.C. 4A:3-3.9*.

In the instant matter, GOER and CWA have identified certain employees in unclassified positions who they maintain that, based upon their job duties, should have their positions reclassified to existing titles in the A, P, R and S bargaining units. Ordinarily, such action would be properly effectuated through the initiation of a classification review in accordance with *N.J.A.C. 4A:3-3.5* or *N.J.A.C. 4A:3-3.9*. However, it is imperative to note that with the Civil Service Act, the Legislature has declared, in relevant part, that “[i]t is the public policy of the State to protect career public employees from political coercion and to ensure the recognition of such bargaining and other rights as are secured pursuant to other statutes and collective negotiations law.” See *N.J.S.A. 11A:1-2e*. The Commission further observes that the Legislature has imposed only very limited restrictions on the movement of titles and employees from the unclassified service to the noncompetitive division of the career service. Compare *N.J.S.A. 11A:3-2.2* (prohibiting the transfer of titles and individuals in the State unclassified service or senior executive service during the six-month period immediately preceding the termination of the Governor’s four-year term) with *N.J.S.A. 11A:3-6* (requiring the Commission to hold a public hearing before reaching a determination on a decision to move a title from the career service to the unclassified service). While the Commission acknowledges that there is no indication that the provisions of the WDEA require the movement of affected employees in the unclassified service to titles allocated to the career service, the Commission notes that reallocation of a title may follow a legislative enactment, even if the Legislature does

not expressly direct the Commission to take action. *See e.g., P.L. 2019, c. 271* (creating, in relevant part, Status Neutral Licensure program) and *In the Matter of Reallocation of Technician MVC* (CSC, decided October 21, 2020) (providing a reallocation of the then-career service title of Technician MVC title to the noncompetitive division on an interim basis based, in part, upon the Legislature's creation of the Status Neutral Licensure program). However, it is critical to note that the Commission's approval of interim noncompetitive title reallocations attributable to legislative enactments have generally been singular actions that have been limited in scope, as opposed to a patchwork of reallocation decisions for a large number of State agencies based upon a legislative program over a long period. *See e.g., In the Matter of Department of Community Affairs, Various Titles* (CSC, decided July 31, 2019); *In the Matter of Reallocation of Titles in the Department of Health* (CSC, decided August 15, 2018); *In the Matter of Reallocation of Technician MVC, supra*.

Additionally, it is inescapable that the parties have essentially undertaken a position classification review without the significant formal involvement of Agency Services in that capacity. While GOER and CWA seem to reasonably represent the interests of the appointing authorities and affected employees and the Commission sees no evidence of bad faith on the part of the parties, the Commission is concerned that the potential for repeated title reallocations and/or rule relaxations based upon the WDEA could undermine the integrity of the appointment and classification systems and clash with the Commission's duty to uphold the constitutional mandate that "[a]ppointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive. . . ." *N.J. Const.* art. VII, § 1, ¶ 2. Additionally, while the Commission is mindful of the parties' concern about the potential displacement of affected unclassified employees, it also observes that unclassified employees do not have a vested right to retain their positions, regardless of qualifications, length of service, *etc.*, as unclassified appointments are purely discretionary and may be terminated at any time without reason or cause. *See N.J.A.C. 4A:4-1.3(b)*. *See also, In the Matter of Lucille Sanitoro* (MSB, decided November 8, 1996).

Finally, the Commission does not find that the parties have established that the requested action meets the technical requirements of *N.J.A.C. 4A:3-1.2(c)*. In this regard, the Commission observes that the WDEA took effect on May 18, 2018. Given that nearly five years have elapsed since that effective date and the parties have not offered an explanation for the lengthy delay in presenting the subject requests to the Commission, the Commission finds it difficult to conclude that the requested action constitutes a "need for *immediate* appointments arising from a *new* legislative program" as contemplated by *N.J.A.C. 4A:3-1.2(c)*.

Nevertheless, in an effort to avoid impeding what appears to be a good faith, carefully-planned movement of positions in response to the WDEA, while also

balancing the Commission's above-noted concerns, the Commission finds good cause to relax the criteria outlined in *N.J.A.C.* 4A:3-1.2(c) in order to allocate the above referenced titles to the noncompetitive division of the career service on an interim basis, for one pay period, in order to effectuate the appointment of the 25 named employees into the appropriate titles. In so doing, the Commission observes that there are likely similarly-affected unclassified employees in other State appointing authorities who should be accorded similar equitable relief as the OIT and BPU employees involved in this matter. As such, GOER, in collaboration with other State appointing authorities and negotiations representatives, may present similar rule relaxation requests for similarly-affected unclassified employees. However, the Commission stresses that it will only entertain one such request per affected State appointing authority.¹ Further, the Commission emphasizes that, except as noted above, the foregoing remedies are limited to the unique circumstances of this case and do not provide a precedent in any other matter. Finally, OIT and BPU are cautioned that, for future title changes for employees stemming from the implementation of the WDEA, they must utilize the classification review process provided under *N.J.A.C.* 4A:3-3.9 or other appropriate employee appointment/movement procedures provided under Title 4A, Chapter 4 of the New Jersey Administrative Code.

ORDER

Therefore, it is ordered that these requests be granted and the specified titles within the Office of Information Technology and the Board of Public Utilities be reallocated to the noncompetitive division of the career service on an interim basis, for one pay period, in order to effectuate the appointment of the 25 named employees into the appropriate titles. It is further ordered that such actions be effective the first pay period following the Commission's approval. Upon successful completion of a current working test period, these employees shall attain permanent status in their respective career service titles. The remedies provided herein are limited to the facts of this case and may not be used as precedent in any other matter.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ In so doing, the Commission anticipates that State appointing authorities will avoid prospective appointments of employees to unclassified positions that would be contrary to *N.J.S.A.* 34:13A-5.15(5)(a).

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF MARCH, 2023

Allison Chris Myers

Allison Chris Myers
Acting Chairperson
Civil Service Commission

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and
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Attachment

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Full Name	Department	WVXY Title	Agreed-Upon APRS Title	EEID #'s
Bianco, Cynthia	BPU	Confidential Assistant	Administrative Assistant 2 (P21)	[REDACTED]
Boylan, Rachel	BPU	Legal Specialist	Regulatory Officer 2 (P29)	[REDACTED]
Diamond, Kimberly	BPU	Legal Specialist	Regulatory Officer 2 (P29)	[REDACTED]
Dillon, Kevin	BPU	Gov Rep 3	Program Specialist 2 (P21)	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Flores, Angelita	BPU	Gov Rep 3	Administrative Assistant 1 (P24)	[REDACTED]
Gurkas, Charles	BPU	Confidential Assistant	Executive Assistant 3 (29)	[REDACTED]
Hardy, Jacqueline	BPU	Legal Specialist	Regulatory Officer 2 (P29)	[REDACTED]
Hornsby, Michael	BPU	Project Specialist	Program Specialist 2 (P21)	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nawaz, Zainab	BPU	Gov Rep 2	Administrative Analyst 3 (P26)	[REDACTED]
Nedza, Kevin	BPU	Gov Rep 2	Standards and Procedures Technician 2 (P24)	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pierce, Earl	BPU	Gov Rep 2	Administrative Analyst 3 (P26)	[REDACTED]

Richardson, Stacy	BPU	Legal Specialist	Program Specialist 4 (S29)	
Ross, Michelle	BPU	Communications Manager	Business Dev Rep 1 (P27)	
Saldana-Tier, Ianhi	BPU	Legal Specialist	Regulatory Officer 1 (P26)	
Weaver, Eric	BPU	Gov Rep 1	Environmental Engineer 3 (R25)	
Weisband, Heather	BPU	Confidential Clerk	Regulatory Officer 2 (P29)	
Campi, Frank	OIT	Gov Rep 2	Administrative Analyst 3 Information Systems (P26)	
Cobb, Ralph	OIT	Gov Rep 2	Supervisor Information Technology (R31)	
Cunningham, Robert	OIT	Gov Rep 2	Administrative Analyst 4 Information Systems (R29)	
Dollbaum, Daniel	OIT	Gov Rep 2	Administrative Analyst 3 Information Systems (P26)	
Hinton, Tracey	OIT	Gov Rep 2	Administrative Analyst 3 Information Systems (P26)	
Londar, Mikhail	OIT	Gov Rep 1	Data Processing Systems Programmer 1 (P29)	
Mendez, Roberto	OIT	Gov Rep 2	Data Processing Systems Programmer 1 (P29)	
Svoboda, Frank	OIT	Gov Rep 2	Telecommunications Systems Analyst 3 (R31)	
Thomas, Joseph	OIT	Gov Rep 2	Network Administrator 2 (P30)	