

Air Guard Firefighter (UA-O17; 40/12)
 Air Guard Fire Captain (UA-R20; 40/12)
 Air Guard Battalion Chief (UA-S23; 4E/12)
 Air Guard Deputy Fire Chief (UA-&26; N4/12)

The bargaining units were assigned by the Governor's Office of Employee Relations. Additionally, Agency Services advises that it has provided notice and the opportunity to review the proposal to all collective negotiations units and all articulated issues have been reviewed and resolved. Finally, Agency Services requests that the changes specified become effective beginning on the first pay period following Civil Service Commission (Commission) approval of these actions.

CONCLUSION

In matters involving the question of whether a particular title should be allocated to the career or unclassified service, the starting point is the New Jersey Constitution, Article VII, sec. 1, par. 2, providing that:

Appointments 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; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law (emphasis added).

An interpretation of Civil Service law governing the unclassified service must be made in view of this constitutional mandate and a strict interpretation is generally given in matters concerning allocation to the unclassified service. *See In the Matter of Investigator, Penal Institution, et al., Essex County* (MSB, decided September 16, 1997).

In State service, *N.J.S.A.* 11A:3-4 provides that the unclassified service shall be limited to those titles it specifically designates, which includes military service of the State, and all other titles created by law or as the Commission may determine. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated to the unclassified service when:

- 1) In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
- 2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;

- 3) The title is designated unclassified by another specific statute;
- 4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
- 5) The Commission determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See Walsh v. Department of Civil Service*, 32 N.J. Super. 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 N.J. 424, 434 (1983); *State v. Clark*, 15 N.J. 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 N.J. Super. 362, 371 (App. Div. 1981). This principle of ascertaining "merit and fitness" for promotions and appointments through an open-competitive examination process is at the very heart of our merit system.

Against this background, in this matter, there is no question that the proposed new titles constitute military service titles. Additionally, the Staff Assistant and Special Staff Officer titles are already allocated to the unclassified service. Moreover, the record reflects that members of DMAVA's 177TH Fighter Wing are currently performing duties which are outside of their current title series' job descriptions. These duties include providing fire protection and emergency medical services for the 177TH Fighter Wing as well as the Atlantic City International Airport. These incumbents risk their health and safety to protect persons and property. Thus, the Commission concludes that there is good cause to permit the creation of the unclassified Air Guard Firefighter title series.

ORDER

Therefore, it is ordered that the request be granted and incumbents in certain Staff Assistant and Special Staff Officer positions will be cross-walked to the corresponding level of the Air Guard Fire Fighter series with the appropriate salary. This action shall be effective March 9, 2024, the beginning of the first pay period following the issue date of this decision.

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 28TH DAY OF FEBRUARY, 2024

Allison Chris Myers

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