

In the Matter of Fire District Administrator

CSC Docket No. 2013-239

(Civil Service Commission, decided December 21, 2012)

The Division of Classification and Personnel Management (CPM) requests the establishment of the unclassified title of Fire District Administrator for use in local fire districts.

In support of its request, CPM presents that fire districts are established pursuant to *N.J.S.A. 40A:14-70 et seq.* *N.J.S.A. 40A:14-70* specifically designates a fire district as a “body corporate.” As such, a fire district is not considered a municipal department and therefore is not permitted to utilize an unclassified municipal department head. CPM states that the proposed Fire District Administrator title will serve a similar role to that of a civilian Municipal Department Head in a municipal fire department or public safety department. The Fire District Administrator will perform substantial managerial duties and have the powers of appointment, but will not be considered a firefighter and will not be responsible for fire suppression or emergency response duties. However, a Fire District Administrator may participate in such activities in a volunteer capacity. Further, the Fire District Administrator will be the highest level civilian appointee in a fire district and only be subject to the legislative supervision and control of an elected Board of Fire Commissioners (Fire Commissioners).

In accordance with *N.J.A.C. 4A:3-1.3(a)5*, CPM has determined that it would not be practicable to determine merit and fitness for this title by examination and that it is not appropriate to make permanent appointments to this title. In this regard, CPM indicates that the Fire District Administrator position formulates and executes policy, subject only to legislative supervision and control by the Fire Commissioners. CPM notes that it is generally impractical to determine merit and fitness via competitive examinations as well as to make permanent appointments for positions at the principal executive level. Thus, this is why *N.J.S.A. 11A:3-5(h)* specifically assigns principal executive officers to the unclassified service. Further, particularly in the case of a newly created fire district or a fire district that is transitioning from an all volunteer to a part-paid organization, a local fire district may only wish to fill a Fire District Administrator position for a limited period of time and utilize the incumbent to mentor and train uniformed personnel to assume administrative duties as they rise in the ranks. Therefore, CPM requests the establishment of the unclassified title of Fire District Administrator to enable local Fire Commissioners to make appointments of a chief administrator to oversee their daily business affairs.

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.

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 local service, *N.J.S.A.* 11A:3-5 provides that the unclassified service shall be limited to those titles it specifically designates and all other titles created by other statutes or as the Commission may determine in accordance with criteria established by rule. *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 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.

At this juncture, it must be noted that in *In the Matter of Karl A. Shelley, Sharon K. Zimmerman and Moorestown Township Fire District No. 1*, Docket No. A-1744-94T2 (App. Div. March 20, 1996) (*Shelley*), the Appellate Division, Superior Court of New Jersey, upheld the former Merit System Board's (Board) denial of Moorestown Township's request to create the position of Fire District Administrator in the unclassified service. In *Shelley*, the request to create the unclassified Fire District Administrator title was denied due to the fact that the Moorestown Fire Commissioners had not presented any arguments that it was impracticable to determine the merit and fitness for appointment to the title through competitive examination. Moreover, it could not be considered a principal executive officer in accordance with *N.J.A.C.* 4A:3-1.3(c) because the Fire District Administrator is statutorily subject to the executive authority of the Fire Commissioners. *See N.J.S.A.* 40A:14-81.1.

In *In the Matter of Township of Burlington Fire District No. 1* (MSB, decided February 11, 2004), the Board authorized the creation of the unclassified title of Director of Fire Services only for Fire Districts with an all-volunteer force. In authorizing the creation of Director of Fire Services, the Board emphasized the challenges faced by an all-volunteer fire fighting department and the need to have a leader with an understanding of fiscal problems, personnel and labor relations, technological changes, public relations, and changes in the fire fighting field. Further, it applied *Ogden v. Department of Civil Service*, 77 *N.J. Super.* 296 (App. Div. 1962), *cert. denied*, 39 *N.J.* 238 (1963) and *Milton v. Department of Civil Service*, 71 *N.J. Super.* 135 (App. Div. 1961) and concluded that the position of Director of Fire Services was akin to that of a municipal department head.

In *Ogden v. Department of Civil Service*, *supra*, the Appellate Division held that, given the complex nature of the duties and the uniqueness of the position of General Superintendent and Chief Engineer of the Passaic Valley Water Commission, it was not practical to determine merit and fitness for the position by

examination or minimum qualification requirements. In that case, the subject position was the highest ranking full-time position in the employ of the Water Commission, answerable only to the four Commissioners whose role was analogous to that of a governing body. Moreover, since the Commissioners themselves served only part-time in the role of trustees and lacked technical training, they necessarily relied on the General Superintendent and Chief Engineer for guidance. Additionally, concurring with the findings made by the Department, the court noted the many complex duties and required abilities of the General Superintendent and Chief Engineer, involving knowledge of engineering, administration, fiscal policies, expansion programs, personnel problems, and public relations. The court further underscored the importance of the confidential relationship that must exist between the Commissioners and the General Superintendent and Chief Engineer and the fact that the Commissioners leaned heavily on this individual for advice and guidance in creating and implementing policy. Furthermore, adding to the complexity of the position was the consideration that the incumbent would be responsible for leading a workforce of 275 employees. Lastly, applying the four-part test enunciated in *Milton v. Department of Civil Service, supra*, the court concurred with the Department's finding that the position in question was analogous to that of head of a municipal department.

In *Milton, supra*, the Appellate Division determined that a municipal Superintendent of Public Properties, responsible for a department having 55 employees, was an unclassified municipal department head. In its analysis, the *Milton* court delineated four factors to be considered in assessing whether a position constitutes a department head and is therefore properly designated as unclassified: 1) whether the position allows the incumbent to hire, fire, and exercise control over subordinates; 2) whether the incumbent is in fact a subordinate of another officer of the municipality; 3) whether the nature of the duties performed are important and substantial, and not merely administrative; and 4) whether office space was provided for the incumbent in a municipal building. The court observed that the incumbent had sole and exclusive administrative control over his department and was subject only to the legislative control of the municipality.

Against this background, in the instant matter, there is no question that the title of Fire District Administrator is not specifically designated by *N.J.S.A.* 11A:3-5. There is also no specific statutory authority for the creation of an unclassified title for the position. Likewise, there is no statutory provision allowing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority. However, *N.J.S.A.* 11A:3-5(u) states that the political subdivision unclassified service shall include any title as provided by statute or as the Commission may determined in accordance with criteria established by rule. Therefore, it is necessary to evaluate this matter under *N.J.A.C.* 4A:3-1.3(a)5, which specifies that the Commission may allocate a title to the unclassified service if 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

Thus, the real issue is whether the title requires possession of knowledge and skills and the exercise of duties and functions so unique that “merit and fitness” for the position cannot be ascertained through a competitive examination process and, accordingly, allocation of the title to the unclassified service is warranted. In this vein, unlike the situation in *Shelley, supra*, initially decided more than 18 years ago, CPM has determined that it is not practicable to determine merit and fitness for Fire District Administrator by examination. Further, it cannot be ignored that *N.J.S.A.* 40A:14-81 grants the Fire Commissioners the powers, duties, and functions within the district to the same extent as in the case of municipalities relating to the prevention and extinguishment of fires and the regulations of fire hazards. Indeed, *N.J.S.A.* 40A:14-81.3 specifies that supervisory authority over personnel of a fire district may be exercised by the Fire Commissioners *or delegated*, by resolution, to any commissioner, *or any employee or employees thereof*.

Moreover, as evidenced by *Burlington Fire District No. 1, supra*, the need for an unclassified position to administer the affairs of all-volunteer Fire Districts has been well documented. Additionally, given the level and breadth of the position’s responsibilities and the fact that the position incumbent would only be answerable to the governing body, in this case the Fire Commissioners, and would retain sole administrative control over a Fire District’s employees, like in *Milton and Ogden, supra*, and consistent with the Board of Fire Commissioners’ statutory right to delegate supervisory functions over personnel, the position is equivalent to that of a municipal department head. Thus, the Commission concludes that there is good cause to permit the creation of the unclassified Fire District Administrator title to enable Fire Commissioners of fire districts to make appointments of chief administrators to oversee their business affairs.

ORDER

Therefore, it is ordered that this request be granted and that the title of Fire District Administrator is established in the unclassified service to be utilized only in Fire Districts established pursuant to *N.J.S.A.* 40A:14-70 *et seq.*

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