B-30

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Superintendent of Weights and Measures, Hudson County

CSC Docket No. 2014-1698

Administrative Appeal

ISSUED: OCT 24 2014 (WR)

Hudson County, represented by Cindy Nan Vogelman, Esq., seeks to appoint a Superintendent of Weights and Measures outside of the procedures set forth in *N.J.S.A.* 11A:1-1, *et seq.* (the Civil Service Act) and Title 4A of the New Jersey Administrative Code.

The appointing authority wishes to appoint an individual to the subject title pursuant *N.J.S.A.* 51:1-43, which provides that governing bodies of a county shall appoint a county superintendent. The appointing authority contends that the Civil Service Commission (Commission) lacks jurisdiction to establish qualifications for the subject title that are substantially different or more onerous than those listed in *N.J.S.A.* 51:1-48, which requires all county superintendents to be "persons of sufficient scientific knowledge to properly inspect, examine and report on the technical conditions of said standards," and *N.J.A.C.* 13:47B-4.1, which only requires county superintendents to have successfully completed a course in basic weights and measures. While the appointing authority recognizes that *N.J.S.A.* 51:1-52 places an incumbent in the career service, it argues that the Commission's "involvement commences only after the county superintendent has been duly appointed . . . [and thus] has no role prior to or in the appointment process." Finally, in light of *In the Matter of Rose Ann Fischer, County of Hudson* (CSC, decided November 20, 2013), the appointing authority requests that the Commission recognize the subject position as a non-competitive position.

CONCLUSION

The Commission is vested with broad statutory authority concerning the appropriate classification of all positions within the career service, senior executive service and unclassified service. *See N.J.S.A.* 11A:3-1. In connection with appeals properly before the Commission, the Commission has the right and duty to interpret and apply statutes, including those outside of the Civil Service Act, to resolve the disputes before it. *See Matter of Allen*, 262 *N.J. Super.* 438, 444 (App. Div. 1993); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000); *In the Matter of John Kowaluk* (MSB, decided February 26, 2003).

N.J.S.A. 51:1-52 places a Superintendent of Weights and Measures in the career service. That statute, in conjunction with *N.J.S.A.* 11A:4-1.2, *N.J.S.A.* 11A:3-1, and *N.J.A.C.* 4A:3-3.1, permits the Commission to promulgate rules to effectuate the Civil Service Act and classify job titles, which includes the establishment of minimum education and experience qualifications for each title. While the appointing authority contends that *N.J.S.A.* 51:1-48 and *N.J.A.C.* 13:47B-4.1 establish the qualifications for the subject title, *N.J.S.A.* 11A:12-1 states that any law or statute inconsistent with the Civil Service Act is superseded to the extent of that inconsistency. Nonetheless, it does not appear that an inconsistency exists. *N.J.A.C.* 13:47B-4.1 applies to Weights and Measures Officers and not to a County Superintendent. *N.J.S.A.* 51:1-48 provides that all county superintendents "shall be persons of sufficient scientific knowledge to properly inspect, examine, and report on the technical abilities of said standards." "Sufficient scientific knowledge" has appropriately been defined in the job specification for the subject title as "five (5) years of experience in servicing, repairing, testing or calibrating, weighing and measuring devices." It is noted that the job specification indicates that applicants must successfully complete a training program, which is consistent with the statutory and regulatory provisions that the appointing authority cites. The Commission thus has the statutory and regulatory authority to establish the minimum education and experience requirements of a Superintendent of Weights and Measures. Therefore, the appointing authority cannot appoint an individual to this title unless he or she meets the qualifications as set forth in the job specification.

Additionally, as noted in *In the Matter of Rose Ann Fischer*, *supra*, the Superior Court of New Jersey, Law Division granted the appointing authority's request for declaratory judgment that Ms. Fischer was not the duly appointed Superintendent of Weights and Measures for Hudson County. Specifically, the Superior Court noted that there was no indication that Ms. Fischer's appointment as a Superintendent of Weights and Measures was approved by a resolution of the Hudson County's governing body as required by *N.J.S.A.* 51:1-43 and *N.J.S.A.* 51:1-53. However, the Superior Court did not find that this agency's examination process for the title of Superintendent of Weights and Measures was itself

inappropriate. Thus, *N.J.S.A.* 51:1-43 and *N.J.S.A.* 51:1-53 merely require that the official governing body of Hudson County issue a resolution appointing the individual hired from any eligible list issued by this agency. It does not provide an appointing authority the ability to appoint an individual outside of the Civil Service process.

Finally, it is noted that the appointing authority's request that the subject position be placed in the non-competitive division was referred to the Division of Classification and Personnel Management for review on January 28, 2014 and is still pending.

ORDER

Therefore, it is ordered that this appeal be denied.

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 22nd DAY OF OCTOBER, 2014

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