

B-7



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jonah Kozma,
Department of Human Services

CSC Docket No. 2014-1631

Administrative Appeal

ISSUED: JUL 18 2014 (DASV)

Jonah Kozma, an Assistant Head Grounds Worker, requests a regular appointment as a Superintendent of Institutional Grounds with the Vineland Developmental Center, Department of Human Services.

By way of background, the petitioner was appointed provisionally pending promotional examination procedures as a Superintendent of Institutional Grounds effective March 23, 2013. An examination (PS8490K) for the position was announced and the petitioner was the only applicant. The resulting eligible list promulgated with the petitioner's name on September 12, 2013 and expires on September 11, 2016. A certification was issued on September 20, 2013. The appointing authority returned the certification, requesting its cancellation and stating that the petitioner had been returned to his prior permanent title of Assistant Head Grounds Worker effective January 11, 2014.¹ The certification was then cancelled on January 14, 2014.

In the instant matter, the petitioner indicates that he timely responded to the Notice of Certification for Superintendent of Institutional Grounds (PS8490K). However, he was informed by the appointing authority that the position was no longer available. The petitioner would be "demoted back" to his Assistant Head Grounds Worker title because he never held the position of Head Grounds Worker. He was also advised that he may apply for any future vacancy postings for Head

¹ The petitioner was permanently appointed to the Assistant Head Grounds Worker title on April 14, 2007.

Grounds Worker. However, the petitioner questions why the appointing authority would be willing to appoint him as a Head Grounds Worker, which needs an exemption from the promotional hiring freeze, when he had already been certified as a Superintendent of Institutional Grounds. He notes that he has no disciplinary history or time and leave issues, has "significantly exceeded essential criteria" as indicated in his performance evaluation, and performs his duties "above and beyond" without complaint. The petitioner believes that he has been "unjustly targeted" "for some unexplained reason" as evidenced by his supervisor telling him not to go to Employee Relations. Moreover, the petitioner states that he and his union representative inquired about his certification and were told conflicting information, such as who actually denied him an appointment: management, the Chief Executive Officer, or "Trenton." Further, the petitioner indicates that he was informed that the reason why he was denied an appointment was because he was the only eligible on the list. However, the petitioner questions that reason since other employees, who were also the only eligible on their list, were able to be appointed. Moreover, the petitioner contends that other employees receive higher salaries, in particular, maintenance supervisors are at a salary range 19. In comparison, the petitioner complains that he was "dropped to a salary range 13" despite running the grounds department for over four and a half years as an Assistant Head Grounds Worker, Crew Supervisor, Building Maintenance Programs, and Superintendent of Institutional Grounds. It is noted that the petitioner served an interim appointment as a Crew Supervisor, Building Maintenance Programs, from October 8, 2011 through March 22, 2013, prior to his provisional appointment as a Superintendent of Institutional Grounds. In support of his request, the petitioner submits various documents relating to his appointments and his performance evaluation.

In response, the appointing authority explains that in December 2013, a meeting with the petitioner and his supervisor was held where the petitioner was notified that management had decided to return him to his prior permanent title of Assistant Head Grounds Worker. He was also informed that if other "appropriate titles" became available, such as Head Grounds Worker, he could apply. The appointing authority elaborates that prior to July 2011, Vineland Developmental Center had an East and West campus, and a Superintendent of Institutional Grounds would supervise two grounds crews and provide executive oversight for both campuses. It indicates that with the closure of the West campus, the demand for the grounds crew was reduced by 40% to 50%. Thus, it asserts that there is no longer a need for the Superintendent of Institutional Grounds position because executive oversight has been assumed by the Engineer in Charge of Maintenance 1. Further, the appointing authority notes that supervision of the East campus grounds crew will be assigned to a Head Grounds Worker position once the position "becomes available."² Additionally, it states that since the petitioner's provisional

² The appointing authority does not specify who currently supervises the grounds crew.

appointment in March 2013, two administrations have served the Vineland Development Center and a multitude of organizational changes have been made. Based on the foregoing, the appointing authority asserts that it exercised its option, pursuant to *N.J.A.C. 4A:4-4.2c(2)ii*, to vacate the petitioner's provisional appointment as the certification was incomplete with less than three interested eligibles. Moreover, it maintains that the petitioner does not possess a right to a permanent appointment. The appointing authority emphasizes that the petitioner's Notice of Certification specifies that the certification "is not a guarantee that you will be scheduled for an interview, nor is it a promise of employment." Therefore, it submits that the petitioner has not met his burden of proof in this matter and his appeal should be denied.

In reply, the petitioner disputes that the grounds crew's workload was cut by 40% to 50% when the West campus closed. He states that the West campus spans 27 acres, whereas the East campus is located on approximately 140 acres. Thus, he calculated that the claimed reduction of the workload would only be about 21%. However, the petitioner indicates that the grounds crew still cuts the grass and maintains the cemetery on the West campus. In addition, he states that there is only one grounds crew with two supervisors and five to six ground workers. Both supervisors have their offices on the East campus. Additionally, the petitioner questions why the appointing authority would "demote" him instead of promote him to a Head Grounds Worker if the Chief Executive Officer wants to vacate the Superintendent of Institutional Grounds position. Furthermore, the petitioner contends that he is still supervising the grounds department and is the "Assistant to no one." Lastly, he claims that Woodbine Developmental Center has one campus, but it employs two supervisors, a Superintendent of Institutional Grounds, and a Head Grounds Worker. The grounds department at Woodbine Developmental Center is also under the supervision of an Engineer in Charge of Maintenance 1, as currently is the case with Vineland Developmental Center. The petitioner notes that the only change with Vineland Developmental Center was that oversight of the grounds crew was previously done by the Business Manager. Therefore, the petitioner reiterates that it is unfair to vacate the subject position considering that other employees have been appointed when their names were the only one on an eligible list.

CONCLUSION

N.J.A.C. 4A:4-4.2c(2)ii provides in relevant part that:

An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

* * *

2. From promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment.

* * *

ii. When fewer than three interested eligibles are certified and a provisional who is currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; or vacate the position/title.

Moreover, pursuant to *N.J.A.C.* 4A:1-1.3, a permanent employee means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period. A provisional appointment means employment in the competitive division of the career service pending the appointment of a person from an eligible list. Additionally, the method by which an individual can achieve a permanent appointment in a competitive title is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. The steps necessary to perfect a regular appointment, include, but are not limited to, this agency's review and approval of a certification disposition proposed by an appointing authority and the employee's completion of a mandatory working test period. *See e.g., In the Matter of Roger Fort* (CSC, decided May 7, 2014).

The Civil Service Commission (Commission) has reviewed this matter and finds that the petitioner is not entitled to the remedy he seeks. The petitioner argues that other individuals have been appointed despite being the sole eligible on their eligible list and he was somehow "targeted." However, pursuant to *N.J.A.C.* 4A:4-4.2c(2)ii, the appointing authority was within its authority to vacate the petitioner's position and not make a permanent appointment. Moreover, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position which he or she is occupying. *See O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Furthermore, the Commission does not have jurisdiction to review the termination of a provisional appointment. *See N.J.S.A.* 11A:2-6 and *N.J.A.C.* 4A:2-2.1. Nevertheless, in this

case, the Commission notes that the appointing authority has presented organizational reasons for its actions. In that regard, the Commission is mindful that administrative agencies, such as Vineland Developmental Center, have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them. Deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection is responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., January 10, 1992); *See In the Matter of Correction Major, Department of Corrections* (CSC, decided October 5, 2011), *aff'd on reconsideration* (CSC, decided December 21, 2011), *aff'd on appeal*, Docket No. A-2697-11T4 (App. Div. August 15, 2013). Thus, when classifying the kinds of employment and in providing designations for those engaged in various classifications, the only requirement for the Commission when it exercises its broad reclassification powers is to ensure that such action is not arbitrary, capricious, or unreasonable. *See Mullin v. Ringle*, 27 N.J. 250 (1958); *Carls v. Civil Service Commission*, 17 N.J. 215, 223 (1955). In the present case, the petitioner challenges the appointing authority's reasons by presenting conflicting statistics about the grounds crew's workload and the organizational structure of another developmental center. However, the Commission does not find the appointing authority's decision in not utilizing a Superintendent of Institutional Grounds position at the Vineland Developmental Center to be arbitrary, capricious, or unreasonable given its overall organizational plan for the Engineer in Charge of Maintenance 1 to have executive oversight and a Head Grounds Worker to have supervision of the East campus grounds crew. It is also noted that there is no legal obligation to fill a vacant position. *See In the Matter of Paul Philipps* (CSC, December 2, 2009) (Appointing authority not required to appoint eligible from an incomplete Deputy Police Chief certification even though a genuine vacancy existed); *see also, In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005).

Nonetheless, the petitioner claims that he is still supervising the grounds department and is the "Assistant to no one." In addition, the appointing authority does not specify who currently supervises the grounds crew. Under these circumstances, although the Commission is denying the petitioner's request for a regular appointment, a position classification issue has been presented. Accordingly, it is appropriate for that matter to be referred to the Division of Classification and Personnel Management for review.³

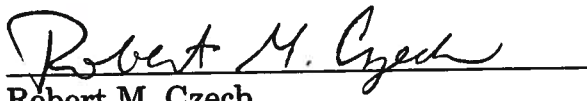
³ Should the classification review determine that the petitioner's position is properly classified as a Superintendent of Institutional Grounds or Head Grounds Worker, the appointing authority must take steps within 30 days of receipt of the reclassification determination to either effect the required change in the classification or assign duties and responsibilities commensurate with the petitioner's current title or to which the petitioner has permanent rights. *See N.J.A.C. 4A:3-3.5(c)1.*

ORDER

Therefore, it is ordered that this petition be denied. It is further ordered that the classification of the petitioner's position be referred to the Division of Classification and Personnel Management for review.

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 16TH DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Jonah Kozma
 Lois Robinson
 Christina Mongon
 Kenneth Connolly
 Joseph Gambino