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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Delinda Holmes,
Paterson Housing Authority

Administrative Appeal

CSC Docket No. 2013-2608

ISSUED: JUL 16 2014

(SLD)

Delinda Holmes, an Assistant Purchasing Agent, Paterson Housing Authority, represented by Anthony J. Fusco, Jr., Esq., petitions the Civil Service Commission (Commission) for relief, pursuant to *N.J.S.A. 11A:2-24* and *N.J.A.C. 4A:2-5.1*, from alleged reprisal from her employer.

By way of background, the appellant had filed for a classification review, claiming that she had been performing the duties of the Purchasing Agent. The Division of State and Local Operations¹ (SLO), conducted a classification review of the appellant's position and determined that she had been performing the duties of a Purchasing Agent, and therefore, she was to be considered serving provisionally, pending promotional examination procedures in the title of Purchasing Agent, effective March 27, 2010. The appointing authority appealed, stating that the appellant had already been compensated for the changes in her work function, but that the function of the unit had changed. In *In the Matter of Delinda Holmes* (CSC, decided January 19, 2011), the Commission denied the appointing authority's appeal and ordered that the appellant's County and Municipal Personnel System (CAMPS) record be updated to reflect an interim appointment as Purchasing Agent from May 10, 2006 to June 30, 2008 and a provisional appointment, pending promotional examination procedures, from July 1, 2008 to June 30, 2010.²

¹ SLO is now known as the Division of Classification and Personnel Management (CPM).

² The appellant was returned to her permanent title of Assistant Purchasing Agent since there was a special reemployment list for the title of Purchasing Agent. Consequently, upon the appellant's provisional appointment to the subject title, the special reemployment list was certified, and the appointing authority appointed Jose Torres, effective July 1, 2010.

Subsequently, the appellant requested enforcement of the Commission's January 19, 2011 decision, arguing, in part, that her CAMPS record was not updated and that Torres had left in December 2010 to assume another position with Jackson Township. She also claimed that her salary was not in accordance with the work she performed and that the appointing authority wanted to appoint her to the lateral title of Principal Buyer. Agency records indicated that the appellant received an interim appointment to Purchasing Agent, effective May 10, 2006; was provisionally appointed to Purchasing Agent effective July 1, 2008; and was returned to her permanent title of Assistant Purchasing Agent, effective July 1, 2010. Agency records also indicated that Torres was appointed from a special reemployment list as Purchasing Agent effective July 1, 2010 and that he intergovernmentally transferred to Jackson Township effective January 3, 2011. Finally, agency records indicated that there was no incumbent currently serving in the title of Purchasing Agent with the Paterson Housing Authority. The Commission, in *In the Matter of Delinda Holmes* (CSC, decided August 15, 2012), dismissed the appellant's request for enforcement as moot since her CAMPS record was revised in accordance with the Commission's prior decision. With regard to the appellant's claim that her position should be reclassified to the title of Purchasing Agent since Torres had transferred, the Commission found that other than her statement that her salary was not in accordance with the work that she performed, she had failed to provide any evidence that she was performing the duties of a Purchasing Agent since January 2011 after Torres had transferred. With regard to the appellant's claim that the appointing authority wanted to change her title to Principal Buyer, the record indicated that an offer was made to laterally move the petitioner to the title of Principal Buyer. The Commission noted that pursuant to *N.J.A.C. 4A:4-7.6(d)*, a lateral title change shall require, in part, the consent of the employee. However, the Commission further noted that the movement of the appellant from Assistant Purchasing Agent, her permanent title, to Principal Buyer, was not in fact a lateral movement. Rather, it would be a promotion, and therefore, the appointing authority would have to utilize promotional procedures in order to change the appellant's title to Principal Buyer.

In the instant matter, the appellant initially argues that she has been retaliated against due to her prior requests for classification audits.³ Specifically, the appellant maintains that in years past, the appointing authority had paid for her to attend, during work hours, the annual seminar entitled Rutgers Public Purchasing Educational Forum. However, in 2013, it "denied [her] request to attend the required seminar." She subsequently asserts that although the appointing authority approved her request to attend the seminar, she was required

³ The appellant also requests a new classification review since she claims to be performing the duties of a Purchasing Agent. However, since there was no record that she filed the request with the Division of Classification and Personnel Management, the matter was referred to it for an audit. As such, the classification of the appellant's position will not be discussed in this decision.

to use her own time and to pay for the seminar, when in other years the appointing authority paid for the seminar and did not require her to utilize her own time.

In response, the appointing authority, represented by Daniel J. McCarthy, Esq., denies that it retaliated against the appellant for her previous appeals. In this regard, it initially asserts that it did not deny the appellant's request to attend the seminar as it granted her request for time off to attend. The appointing authority asserts that while it may approve requests to pay for employees to attend events, it is not required to do so. Moreover, it notes that in the past it had approved the appellant's requests to pay for her attendance at the seminar since it had determined that it was in its best interest to do so. However, the appointing authority maintains that since it no longer utilizes the title of Purchasing Agent, and it intends to vacate the position of Assistant Purchasing Agent, it no longer requires a Qualified Purchasing Agent. Thus, the seminar for which the appellant seeks reimbursement is no longer necessary to the appointing authority's current and future departmental functions. Moreover, it maintains that it does not compensate nor does it pay for training of its employees for positions that it does not or no longer utilizes. In this regard, the appointing authority argues that it has advised the appellant that it will be utilizing the title of Principal Buyer instead of Purchasing Agent, and as a result, it has offered the appellant a promotion to the title of Principal Buyer. However, to date, the appellant has refused to accept the promotion and instead is attempting to hold it "hostage by claiming retaliation and demanding" it pay for the seminar and her re-certification as a Qualified Purchasing Agent.

The appointing authority also disputes the appellant's claim that she is currently performing the duties of a Purchasing Agent. Moreover, it argues that, as previously noted by the Commission, it is entitled to eliminate the position of Assistant Purchasing Agent and adopt the title of Principal Buyer, provided that it utilize promotional procedures to appoint the appellant to the position. The appointing authority maintains that since it offered the appellant a promotion to Principal Buyer, which she refused, it is entitled to abolish the title of Assistant Purchasing Agent and adopt the title of Principal Buyer. In this regard, the appointing authority notes that in 2008, the United States Department of Housing Urban Development (HUD) required Housing Authorities, including the appointing authority, to restructure their operations, which included the minimization of the functions of the procurement departments. Therefore, it scaled down the operations of its procurement department to only small purchase orders tailored toward individual developments which do not require the traditional functions of a Purchasing Agent, and it therefore eliminated the position.

In response, the appellant maintains that she did not "falsely" claim that the appointing authority denied her request to attend the seminar. The appellant asserts that her supervisor verbally told her that "we are not sending you this year"

without any further explanation. The appellant maintains that although the appointing authority "is not required by statute to pay" for her continuing education credits, its denial of her request for time off to attend is an act of reprisal. Although the appellant claims her request for time off was denied, she later indicates that the time she requested was deducted from her leave balances. The appellant also denies that she requested that she be reimbursed by the appointing authority for her attendance at the seminar.

Additionally, the appellant denies that she refused to accept the promotion to the title of Principal Buyer. Rather, she claims that she sought the advice of legal counsel before making any decisions affecting her title.

The appellant also argues that although the appointing authority claims to no longer utilize the title of Purchasing Agent, and that it intends to abolish the position of Assistant Purchasing Agent, it cannot do so without the express approval of her or this agency. Moreover, the appellant asserts that she is performing the duties of a Purchasing Agent, as determined by SLO's March 18, 2010 classification decision.⁴ In this regard, she maintains that her duties have not changed since Torres transferred.

In response, the appointing authority reiterates that the appellant's claim that she was denied the time off to attend the seminar was incorrect, since she did in fact attend the seminar. Moreover, any statement that may have been made by the appellant's supervisor is irrelevant, since the appellant's request for time off to attend the seminar was granted. Therefore, the appellant's only argument can be that the appointing authority failed to compensate her for attending the seminar and for not paying for the seminar on her behalf. However, as conceded by the appellant, it is not required to pay her to attend the seminar, and thus, her appeal should be denied.

With regard to the appellant's claim that she never declined the promotion to Principal Buyer, the appointing authority maintains that the promotion was offered to her a year ago and she declined to accept. In support, it submits an August 10, 2012 memorandum to the appellant offering her the position of Principal Buyer, and notifying her that she had until August 31, 2012 to notify it of her "thoughts and views" as it was still waiting to receive a response from her about the promotion. The appointing authority maintains that while it is understandable

⁴ The appellant also asserts that while performing the duties of the Purchasing Agent, she was compensated at a lower salary than Torres. However, as noted in the Commission's prior decision, the Commission does not have the jurisdiction to review a local employee's salary, beyond ensuring that the salary was within the minimum and maximum of the salary range established for that position. In the instant matter, the appellant does not assert that she was compensated below the minimum salary established for the position.

that she confer with her attorney, taking a full year to do so stretches the bounds of reason.

Additionally, the appointing authority argues that there is no support for the appellant's claim that it is not permitted to abolish a title without her approval. It asserts that it is beyond incredulous to contemplate that one employee would be afforded the absolute power to preclude an appointing authority from managing its operations in the most efficient and effective manner.

CONCLUSION

N.J.A.C. 4A:2-5.1, generally provides that an appointing authority shall not take or threaten to take any reprisal action against employees in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority or on the employee's permissible political activities or affiliations. *See also*, *N.J.S.A.* 11A:2-24. In *Katherine Bergmann v. Warren County Prosecutor*, Docket No. A-5665-01T5 (App. Div. December 1, 2004), it was determined that an employee asserting a cause of action under *N.J.S.A.* 11A:2-24 is required to prove the following elements:

- 1) The employee "reasonably believed" in the integrity of the disclosure at the time it was made, meaning the employee had no reasonable basis to question the substantive truth or accuracy of the content of the disclosure just prior to communication (it is here that the term "reasonable belief" is borrowed from the Conscientious Employee Protection Act (CEPA), *N.J.S.A.* 34:19-1, *et seq.*, to define what is the substantive content of a "lawful disclosure");
- 2) The employee disclosed the information to a source "reasonably" deemed an appropriate recipient of such information just prior to communication (here, the term "reasonably" is used to describe the perceived proper channels through which a "lawful disclosure" should be communicated);
- 3) There is a connection, or nexus, between the disclosure and the complained of action (this is a standard cause-and-effect showing by the employee). *Carlino v. Gloucester City High School*, 57 *F. Supp. 2d* 1, 35 (D.N.J. 1999); *Kolb v. Burns*, 320 *N.J. Super.* 467, 476 (App. Div. 1999).

Only after the employee satisfies the criteria above does the appointing authority bear the burden of showing that the action taken was not retaliatory. *See*

Wright Line, 251 NLRB 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977).

Using the test as enumerated above, the appellant has failed to present a *prima facie* case of reprisal. Although the appellant met the first and second prong of the test, she has failed to satisfy the third prong of the test. In this regard, the appellant has not presented any documentation of any action taken against her. In this regard, the appellant was granted the time off to attend the seminar. Moreover, as acknowledged by the appellant, the appointing authority was not required to either compensate her for her time or the cost of attending the seminar. See *In the Matter of Edward Oskay, State Parole Board* (CSC, decided September 24, 2008). Accordingly, the appellant has failed to present a *prima facie* case of reprisal.

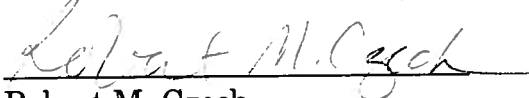
With regard to the appellant's claim that the appointing authority cannot abolish the titles of Purchasing Agent and Assistant Purchasing Agent without her approval, the Commission does not agree. Although it is true that she must consent to either a lateral or promotional appointment to another title, such as the title of Principal Buyer, the abolishment of the Purchasing Agent and Assistant Purchasing Agent titles is a separate matter and does not require an employee's consent. Rather, in order to abolish any given position occupied by a permanent incumbent, the appointing authority must submit a layoff plan to CPM and proceed through the required layoff procedures. See *N.J.A.C. 4A:8-1 et seq.* Upon approval of the layoff, this agency would then determine the title rights of all affected employees. However, it is noted that since the title of Principal Buyer is considered to be a promotion from the title of Assistant Purchasing Agent, an individual in the title of Assistant Purchasing Agent would not have a title right to the title of Principal Buyer.

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 15TH 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

Attachments

c: Delinda Holmes
Anthony J. Fusco, Jr., Esq.
Irma Gorham
Daniel J. McCarthy, Esq.
Joseph Gambino
Kenneth Connolly

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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Delinda
Holmes, Paterson Housing
Authority

Request for Enforcement

CSC Docket No. 2011-4557

ISSUED: **AUG 16 2012** (CSM)

Delinda Holmes, an Assistant Purchasing Agent with the Paterson Housing Authority, petitions the Civil Service Commission (Commission) for enforcement of the attached decision rendered by the Commission at its meeting on January 19, 2011.

By way of background, the petitioner asserted that she was performing the duties of Purchasing Agent since the resignation of an interim Purchasing Agent on or about April 2006. As such, the former Division of State and Local Operations (SLO)¹ conducted a classification review and determined that the petitioner had been performing the duties of a Purchasing Agent since 2002 and that she was to be considered serving provisionally, pending promotional examination procedures, in the title of Purchasing Agent, effective March 27, 2010. The appointing authority appealed SLO's finding, stating that the petitioner received compensation for changes in her work function for the period of February 22, 2000 to July 24, 2007, and arguing that the job functions of the Purchasing Unit had changed. However, the employee whose position was being filled by the interim Purchasing Agent, Jose Torres, was appointed from a special reemployment list effective July 1, 2010 when his term of elective office ended. In denying the appointing authority's appeal, the Commission ordered that the petitioner's County and Municipal Personnel System (CAMPS) record be updated to reflect an interim appointment as Purchasing Agent from May 10, 2006 to June 30, 2008 and a provisional appointment, pending promotional examination procedures, from July 1, 2008 to June 30, 2010.

¹ Now, the Division of Classification and Personnel Management (CPM).

In her request for enforcement, the petitioner states her CAMPS record has not been updated to reflect her interim and provisional appointments to Purchasing Agent. She also states that Torres left the Paterson Housing Authority in December 2010 to assume another position with Jackson Township. Further, the petitioner presents that prior to receiving the Commission's decision, a hearing to determine her status as it relates to the "Office Union" in which the administrative workers of the Paterson Housing Authority belong was held. In this regard, she provides a partial copy of a hearing determination finding that her position would be considered a "professional employee" for purposes of Public Employee Relations Commission (PERC) certification and recognition. This documentation also states that it was anticipated that Torres would be leaving and that the petitioner would again temporarily assume the Purchasing Agent responsibilities. She states that since receiving the Commission's determination in this matter, she has been approached by the Executive Director, Assistant Executive Director, Personnel Officer, and Legal Counsel for the Paterson Housing Authority regarding the possibility of changing her title. The petitioner maintains that "this is much deeper than changing a title." Therefore, the petitioner requests that her CAMPS records be updated. She also claims that her salary is not in accordance with the work she performs.

In response, the appointing authority states that on April 1, 2011, it had a discussion with the petitioner regarding an offer to laterally move her to the title of Principal Buyer but she had not indicated if this proposed action would be desirable.

A review of the petitioners' CAMPS record indicates that in accordance with the Commission's decision, she received an interim appointment to Purchasing Agent effective May 10, 2006 and she received a provisional appointment to Purchasing Agent effective July 1, 2008. Additionally, her CAMPS record shows that on July 1, 2010 she was returned to her permanent title of Assistant Purchasing Agent. It is further noted that Torres' CAMPS record indicates that he was appointed from a special reemployment list as Purchasing Agent effective July 1, 2010 and that he intergovernmentally transferred to Jackson Township effective January 3, 2011. According to agency records, there is no incumbent currently serving in the title of Purchasing Agent with the Paterson Housing Authority.

CONCLUSION

In the present matter, the record indicates that the petitioner's CAMPS record has been revised in accordance with the Commission's decision. Accordingly, any request for enforcement in that regard is moot. Regardless, although not precisely articulated in the record, it appears that the petitioner is arguing that her position should be reclassified to Purchasing Agent based on the fact that Torres left the Paterson Housing Authority in January 2011 and the

arbitration document she submitted with her appeal indicated that she would temporarily assume the Purchasing Agent responsibilities.

However, as noted in the initial determination, the foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by CPM through an audit or other formal study. Thus, classification reviews are generally based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. This agency's established classification review procedures in this regard have been affirmed following formal Civil Service Commission review and judicial challenges. *See In the Matter of Community Service Aide/Senior Clerk (M6631A), Program Monitor (M62780), and Code Enforcement Officer (M00410)*, Docket No. A-3062-02T2 (App. Div. June 15, 2004) (Accepting policy that classification reviews are limited to auditing current duties associated with a particular position because it cannot accurately verify duties performed by employees in the past). *See also, In the Matter of Engineering Technician and Construction and Maintenance Technician Title Series, Department of Transportation*, Docket No. A-277-90T1 (App. Div. January 22, 1992) and *In the Matter of Theresa Cortina* (Commissioner of Personnel, decided May 19, 1993). In this case, other than the petitioner's statement that her salary is not in accordance with the work that she performs,² she has not provided any evidence that she was performing the duties of a Purchasing Agent since January 2011 after Torres transferred. However, should she feel that she has been performing the duties of a Purchasing Agent, the petitioner should request that CPM perform a current classification review of her position in accordance with *N.J.A.C. 4A:3-3.9*.

With respect to her concern that the appointing authority wants to change her title to Principal Buyer, the record indicates that an offer was made to laterally move the petitioner to the title of Principal Buyer. Thus, while the appointing authority may want to change her title, *N.J.A.C. 4A:4-7.6(d)* states that a lateral title change *shall* require the consent of the employee, the head of the organizational unit, and this agency, unless it is the result of a reclassification of her position, a change in the State Classification Plan or part of an agreed upon pre-layoff action. Therefore, the petitioner is *not* required to consent to a lateral movement. Regardless, this agency would not approve such an action since movement from the title of Assistant Purchasing Agent to Principal Buyer would

² The Commission has no jurisdiction over local salaries as long as an employee is not being paid a base salary below the minimum or above the maximum established salary for the employee's title. *See N.J.S.A. 11A:3-7(d)* and *N.J.A.C. 4A:3-1(a)2*.

be considered a promotional, *not* lateral movement. Therefore, the appointing authority would have to utilize promotional procedures in order to change the petitioner's title to Principal Buyer.

ORDER

Therefore, it is ordered that this request be dismissed as moot.

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 15TH DAY OF AUGUST, 2012



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Merit System Practices
and Labor Relations
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Delinda Holmes
Irma Gorham
Kenneth Connolly
Joseph Gambino

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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Delinda Holmes,
Paterson Housing Authority

CSC Docket No. 2010-3240

Classification Appeal

ISSUED: JAN 21 2011 (CSM)

The Paterson Housing Authority (Paterson) appeals the attached decision of the Division of State and Local Operations (SLO) that the proper classification of Delinda Holmes' position is Purchasing Agent. The appointing authority seeks an Assistant Purchasing Agent classification.

The record in the present matter establishes that Holmes' permanent title is Assistant Purchasing Agent. By letter dated March 12, 2010, Holmes contacted SLO and asserted that since the resignation of the interim Purchasing Agent on or about April 2006, Michael Figel, the position of Purchasing Agent had not been filled or advertised and that she had been performing those duties. In this regard, it is noted that agency records indicate that Figel received an interim appointment as Purchasing Agent effective November 25, 2002 in order to fill in for the permanent Purchasing Agent, Jose Torres, who commenced a leave of absence on July 1, 2002 to fill an elective public office. Therefore, Holmes requested that SLO perform a desk audit of her position.

In support of her request, Holmes provided SLO with voluminous documentation¹ that included internal salary adjustment memoranda indicating that from as early as February 26, 2002 to November 22, 2002, she received additional compensation for extra tasks she has performed in the capacity of acting

¹ Generally, a Position Classification Questionnaire (PCQ), which details the duties performed by a position, is submitted in support of classification actions. However, a PCQ was not filed in this case and SLO relied on documentation provided by Holmes and phone contact with the appointing authority.

Purchasing Agent during Torres' absence. Holmes also provided an Application Form for Registered Public Purchasing Official, dated June 11, 2009 and June 13, 2009, signed by the appointing authority, verifying that the Assistant Purchasing Agent, Holmes, is responsible for the overall purchasing operation of the appointing authority, so that she could participate in a program for the designation of Registered Public Purchasing Official. In correspondence dated June 23, 2009, the appointing authority advised Rutgers University, the school conducting the training for Registered Public Purchasing Agent, that Holmes had been charged with the purchasing responsibility on a day-to-day basis and had the supervisory responsibility for the management of the purchasing unit since the resignation of Figel in May 2006. In its March 18, 2010, decision, SLO determined that Holmes had been performing the duties of a Purchasing Agent since 2002 when Torres began his leave of absence. Therefore, SLO advised the appointing authority that Holmes is considered to be serving provisionally, pending promotional examination procedures, in the title of Purchasing Agent, effective March 27, 2010.²

On appeal, the appointing authority states that SLO's finding that Holmes has assumed the duties of Purchasing Agent since July 1, 2002 is erroneous. Rather, it states that on November 25, 2002, Figel received a provisional appointment³ as Purchasing Agent and he worked until his resignation on May 9, 2006. Further, the appointing authority states that Holmes did receive salary compensation for changes in her work function for the period of February 22, 2000 to July 24, 2007. Specifically, she was provisionally appointed as Assistant Purchasing Agent on February 22, 2000, received an interim salary adjustment for serving as acting Purchasing Agent from February 26, 2002 to May 16, 2002 and from July 1, 2002 to November 22, 2002, and received a special increase on July 24, 2007 over and above what other staff members received. The appointing authority also states that Torres had been approved for leaves of absence to serve in elected office. Further, the appointing authority maintains that the job functions of the Purchasing Unit have changed dramatically as a result of the Housing Authority operating under a Housing and Urban Development (HUD) mandated Asset Based Management system. Therefore, the appointing authority appeals the determination that Holmes be considered serving provisionally as a Purchasing Agent pending promotional procedures effective March 27, 2010.

In response, Holmes states that in her initial appeal to SLO, she only argued that she assumed the duties of Purchasing Agent since the resignation of Figel in April 2006, *not* since July 2002 when Torres left to assume duties as an elected official. She also states that she was provisionally appointed as an Assistant Purchasing Agent on February 22, 2000 and received compensation for various

² A review of Holmes' County and Municipal Personnel System (CAMPS) record indicates that this transaction has not been recorded.

³ As noted earlier, Figel received an interim appointment on November 25, 2002.

times she assumed the duties of acting Purchasing Agent. However, she questions why Figel was hired provisionally instead of as an interim appointment⁴ when he was covering for an employee on leave. Holmes also states that she received a "special increase" for assuming additional duties as they relate to the new Asset Management System. With respect to the job functions of the unit changing, Holmes explains that while the workload has increased and the duties are more involved, the functions are still being done by the Purchasing Unit. Given that she recently became a Registered Public Purchasing Official and Qualified Purchasing Agent, Holmes questions why the appointing authority is asking her to change her title to "Senior Buyer" and what certification was issued to jeopardize her job. In a supplemental submission, Holmes provides copies of recent newspaper articles indicating that Torres was returned to his position as Purchasing Agent.

Although provided the opportunity, Paterson did not provide any additional arguments or information for the Civil Service Commission (Commission) to review in this matter.

A review of Torres' CAMPS record reflects he was on approved leaves of absence for elective office from July 1, 2002 and that he was resigned in good standing effective July 1, 2008 since his term of elected office exceeded six years. Torres' CAMPS record further reflects that Paterson appointed him from the special reemployment list for Purchasing Agent effective July 1, 2010. However, Torres' CAMPS record was not updated to reflect his resignation and he was not placed on the special reemployment list until SLO issued its determination with respect to Holmes.

CONCLUSION

N.J.A.C. 4A:6-1.17(a)1 states that a permanent employee in local service shall be granted a leave of absence without pay to fill elective public office for the term of the office. The employee shall be entitled to return to his or her permanent title within six years from the date the leave begins, provided that a written request to return is submitted to the appointing authority before the leave expires. If the term of the elective office exceeds six years, the employee's name shall be placed on a special reemployment list at the expiration of the six years. *N.J.A.C.* 4A:6-1.17(a)4 states that any appointments to fill the position of the employee during the leave to fill elective public office shall be made from appropriate eligible lists, but any such appointments shall be interim and shall terminate upon the return of the employee on such leave to the permanent title. *See also, N.J.S.A.* 11A:6-14.

⁴ In Paterson's appeal, as noted above, it states that it hired Figel provisionally.

N.J.A.C. 4A:3-3.9(f)2 states, in pertinent part, that in local service, when a classification appeal is upheld, the effective date of implementation shall be an appropriate date established by the [Commission].

In the present matter, Holmes appealed the matter of her position's classification to SLO on March 12, 2010, stating that she has performed the duties of a Purchasing Agent since April 2006. The foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by SLO through an audit or other formal study. Thus, classification reviews are generally based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. This agency's established classification review procedures in this regard have been affirmed following formal Civil Service Commission review and judicial challenges. *See In the Matter of Community Service Aide/Senior Clerk (M6631A), Program Monitor (M62780), and Code Enforcement Officer (M00410)*, Docket No. A-3062-02T2 (App. Div. June 15, 2004) (Accepting policy that classification reviews are limited to auditing current duties associated with a particular position because it cannot accurately verify duties performed by employees in the past). *See also, In the Matter of Engineering Technician and Construction and Maintenance Technician Title Series, Department of Transportation*, Docket No. A-277-90T1 (App. Div. January 22, 1992) and *In the Matter of Theresa Cortina* (Commissioner of Personnel, decided May 19, 1993).

In this case, SLO reviewed and analyzed the documentation provided by the appellant and in conjunction with discussions it had with Paterson's Personnel Office, concluded that Holmes' position would be properly classified as Purchasing Agent and assigned her an effective date of March 27, 2010. Paterson has not presented any evidence that Holmes' position should not have been classified as Purchasing Agent. Indeed, although a PCQ was not submitted, the documentation provided by Holmes clearly indicates that her position should be classified as Purchasing Agent. For example, the June 23, 2009 letter from Paterson to Rutgers University as part of Holmes' application for Registered Public Purchasing Official indicated that Holmes:

currently has been charged with the purchasing responsibility on a [day-to-day] basis and has the supervisory responsibility for the management of the purchasing unit since the resignation of our Purchasing Agent in 2006. She also served as Acting Purchasing Agent twice during her tenure.

Additionally, the June 11, 2009 application for Registered Public Purchasing Official, signed by the appointing authority for Paterson, clearly indicated that the Assistant Purchasing Agent, Holmes, was responsible for the overall purchasing operation of the agency. Therefore, given that no promotional list existed for Purchasing Agent, SLO's determination that Holmes is to be considered serving provisionally pending promotional examination procedures in the title of Purchasing Agent effective March 27, 2010 is technically correct.

As noted earlier, if a leave of absence for elective office exceeds six years, that employee's name shall be placed on a special reemployment list at the expiration of the six years. In the case of Torres, he was resigned in good standing on July 1, 2008 since his term of elected office exceeded six years. Thus, if Holmes had been performing the duties since May 2006, as evidenced by the documentation in the record, when Figel resigned, even though there was no eligible list for Purchasing Agent in existence, in accordance with *N.J.A.C. 4A:6-1.17(a)4*, she should have received an interim appointment to Purchasing Agent. However, the question becomes what to do after Torres' sixth leave expired and he was resigned from the Purchasing Agent position, retroactively, effective July 1, 2008. Although not explicitly stated in the rules, had Torres been timely resigned from his position in July 2008, the Purchasing Agent position at issue should have been either vacated or filled in accordance with Civil Service law and rules (*i.e.*, a provisional appointment, if needed, issuance of a promotional announcement and examination, issuance of a certification, and a working test period for an appointee). In no uncertain terms, the June 23, 2009 documentation from Paterson indicates that Holmes performed the duties since Figel left in May 2006. Additionally, agency records do not reflect that a promotional announcement has ever being issued to Paterson for Purchasing Agent and Torres was appointed to the title from a special reemployment list on July 1, 2010.

While Torres should have been resigned from his Purchasing Agent title in July 2008 after the expiration of his sixth leave, it cannot be ignored that Holmes did not appeal the matter of her classification until March 12, 2010, arguing that she had been performing the duties of a Purchasing Agent since April 2006, almost *four years* after Figel resigned from the position of Purchasing Agent on May 9, 2006. Holmes does not explain in her submissions the inordinate delay in pursuing the matter of her classification with SLO. Therefore, since Holmes did not pursue the matter of her classification at an earlier time, as noted earlier, SLO's determination that Holmes should be considered serving provisionally as a Purchasing Agent effective March 27, 2010 is technically correct. However, given that SLO relied in part on June 2009 documentation from the appointing authority that Holmes was performing duties of a Purchasing Agent since Figel left in May 2006, it would be unfair not to provide her with an equitable remedy in this situation. *See In the Matter of Sabrina Cheng* (CSC, decided June 9, 2010). Similarly, given her untimely appeal of this matter, any equitable remedy provided

to Holmes should not adversely impact Torres, who was appointed from the special reemployment list. Therefore, Holmes' CAMPS record should be updated to reflect an interim appointment as Purchasing Agent from May 10, 2006 to June 30, 2008. Since Torres could no longer be on a leave to fill an elected office as of July 1, 2008, Holmes' interim appointment cannot go past that date. Therefore, since she was still performing the duties of a Purchasing Agent at that time and no promotional list existed, her CAMPS record should reflect her provisional appointment as Purchasing Agent from July 1, 2008 to June 30, 2010. In this regard, it must be emphasized that failure to give a timely Civil Service examination does not vest a provisional appointee with the right to retain the provisional appointment or the right to a permanent appointment absent a showing of negligence or intentional misconduct. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987).

It is also noted that in compliance with *N.J.A.C. 4A:3-3.5(c)1*, upon receipt of a classification determination from SLO, the appointing authority shall either effect the required change in the classification of an employee's position, assign duties and responsibilities commensurate with the employee's current title, or reassign the employee to duties and responsibilities to which the employee has permanent rights. As such, even assuming that Paterson agreed with SLO's determination, in compliance with *N.J.A.C. 4A:3-3.5(c)1*, it could remove the higher level duties it assigned Holmes so that she would have duties and responsibilities commensurate with her permanent title of Assistant Purchasing Agent. Paterson has apparently done this by appointing Torres from the special reemployment list for Purchasing Agent.

ORDER

Therefore, it is ordered that this appeal be denied. It is further ordered that Delinda Holmes' CAMPS record be updated to reflect an interim appointment to Purchasing Agent from May 10, 2006 to June 30, 2008 and a provisional appointment, pending promotional examination procedures, to Purchasing Agent from July 1, 2008 to June 30, 2010.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
ON THE 19TH DAY OF JANUARY, 2011

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Merit System Practices
& Labor Relations
Civil Service Commission
Written Record Appeals Unit
PO Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Delinda Holmes
Irma Gorham
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF STATE AND LOCAL OPERATIONS
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

March 18, 2010

Ms. Irma Gorham, Executive Director
Paterson Housing Authority
60 Van Houten St, P.O. Box H
Paterson, NJ 07509

Dear Ms. Gorham:

In a letter dated March 12, 2010 it was brought to the New Jersey Civil Service Commission's (NJCSC) attention that your Assistant Purchasing Agent, Ms. Delinda Holmes, has been assuming the duties of Purchasing Agent since your prior purchasing agent, Mr. Jose Torres, accepted elected office on 07/01/2002.

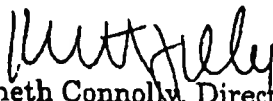
In accordance with N.J.A.C. 4A:6-1.17 a permanent employee shall be granted a leave of absence without pay to fill elective public office for a maximum of six years. Any appointment to the title during this 6 year period shall be made interim and shall terminate upon the return of the permanent employee from such leave to the permanent title. The employee shall only be entitled to return to his or her permanent title within six years, if the term of the elective office exceeds six years, the employee will be removed from the title and the employee's name shall be placed on a special reemployment list for future appointment.

In consideration of the information provided by the employee and our discussions with the Paterson Housing Authority Personnel Office, Ms. Holmes has been charged with the purchasing responsibilities of the Housing Authority on a day-to-day basis and has the supervisory and managerial responsibility of the purchasing unit. It is apparent Ms. Holmes has performed these duties since the Purchasing Agent (Mr. Torres) left the Housing Authority to accept elected office in 2002. Since the leave can no longer be extended past 6 years, effective July 1, 2008, Mr. Torres shall be removed from the Purchasing Agent title and placed on a Special Re-employment listing for future vacancies. In addition, the NJCSC has determined

that Ms. Holmes is considered to be serving provisionally pending promotional examination in the title of Purchasing Agent effective March 27, 2010.

According to the New Jersey Administrative Code 4A:3-3.9, either the appointing authority or the affected employee may appeal this determination within 20 days of receipt of this notice. This appeal should be addressed to Written Record Appeals Unit, Division of Merit System Practices and Labor Relations, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note the submission of an appeal must include written documentation and/or argument substantiating the portions of the determination being disputed and the basis for appeal.

Sincerely,


Kenneth Connolly, Director
State and Local Operations

KC/SC

C: Ms. Carol Brevard, Personnel Officer
Ms. Delinda Thorne Holmes (Employee)
Ms. Nora Koch, Assistant Director (NJCSC)
Records Unit: Delinda Holmes, 000069331