



## STATE OF NEW JERSEY

In the Matter of Lori Gallon, City of Trenton

CSC Docket No. 2015-2653

## FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: 31 2015

(CSM)

Lori Gallon appeals her date of appointment from the special reemployment list for Assistant Administrative Analyst, City of Trenton, and seeks additional relief.

By way of background, the appellant was permanently appointed as an Administrative Analyst effective March 23, 1998 and, for reasons of economy and efficiency, was laid off effective January 23, 2009. Subsequently, the appellant received a temporary appointment as an Assistant Administrative Analyst effective April 6, 2009 which was discontinued on October 7, 2009. Effective October 8, 2009, the appointing authority attempted to provisionally appoint the appellant, pending open competitive examination procedures, to Assistant Administrative Analyst. However, the request to record her appointment in the County and Municipal Personnel System (CAMPS) was rejected since there was a complete open competitive list for Assistant Administrative Analyst (M6227J) and the appellant's name was not on the list. Thereafter, the appellant's name was certified from the special reemployment list for Assistant Administrative Analyst and she was appointed effective August 29, 2014.

On appeal, the appellant states that she was rehired by the appointing authority on October 8, 2009, but her appointment was not recorded in CAMPS. When her appointment was finally recorded in CAMPS in March 2015, the appellant contends that she received an incorrect retroactive appointment date of August 29, 2014 and she further asserts that she should have been reappointed as an Administrative Analyst. Therefore, the appellant requests that her record be

corrected to reflect her appointment as an Administrative Analyst effective October The appellant also requests a retroactive provisional appointment to Personnel Officer from October 11, 2011 to November 24, 2013 due to asserted outof-title duties and that she be returned to the title of Administrative Analyst effective November 25, 2013. Additionally, the appellant requests lump sum differential pay for the work she has performed as an Administrative Analyst based on the current union contract and that she receive a lump sum payment for the outof-title work she performed in an acting capacity as a Personnel Officer from October 11, 2011 to November 24, 2013. The appellant argues that the fact that she was recorded as inactive in CAMPS until March 2015 hampered her from submitting a classification appeal to document her out-of-title duties. Further, the appellant details a number of asserted retaliatory actions taken against her by a prior administration. She explains that she signed a new CAMPS form prepared by the current administration under duress, after she was instructed to remove all comments on a prior form where she stated she was performing out-of-title work since October 2009, only to ensure that she would be finally recorded as an active employee in CAMPS.

In response, the appointing authority states that it supports the appellant's request for a retroactive appointment date to the title of Assistant Administrative Analyst effective October 8, 2009. The appointing authority explains that it attempted to record the appointment in 2009 but it was never notified as to the basis for the rejection. However, the appointing authority maintains that there are no documents in the appellant's personnel file that validate her other requests.

It is noted that when the appellant's name was certified from the special reemployment list on February 19, 2014 (OL140207), her name was listed in the 4<sup>th</sup> position. However, a review of agency records indicates that the individuals listed in the first three positions were *not* impacted by the January 23, 2009 layoff. Rather, those individuals had their names placed on the special reemployment list as a result of layoffs that occurred in 2010 and 2011 that impacted different departments.

## CONCLUSION

*N.J.S.A.* 11A:4-12 states that when more than one list exists, the priority of lists shall be as follows:

- c. Special reemployment when the available position is located in a department other than that from which the eligible was laid off or demoted;
  - e. Open competitive.

N.J.A.C. 4A:4-1.10(c) provides that when a regular appointment is made, a retroactive appointment date may be ordered due to administrative error, administrative delay or other good cause. Generally, this unique remedy has been reserved for two particular situations. First, and germane to this matter, retroactive appointment dates have been granted in circumstances in which an employee was actually serving in and performing the duties of a title, but, due to some error or other good cause, his or her attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing the appointment.

In this case, the appellant was laid off from her permanent title of Administrative Analyst on January 23, 2009. Therefore, effective that day, her name would be placed on the special reemployment list for Administrative Analyst as well as special reemployment lists for lateral and lower related titles, such as Assistant Administrative Analyst. See N.J.A.C. 4A:8-2.1(c). Given that a special reemployment list has priority over an open competitive list, the existence of the open competitive list for Assistant Administrative Analyst (M6227J) at the time the appointing authority attempted to appoint the appellant in October 2009 did not provide a basis on which not to record her appointment. While it is not evident in the record as to why the special reemployment list was not certified in October 2009, it is clear that the appointing authority intended to fill an Assistant Administrative Analyst position in its Public Works department and the existence of an open competitive list for the title precluded the appellant's appointment. Given that the special reemployment list would have priority over an open competitive list and, at the time, no other individuals would have been on that list, the appellant should have been appointed from the special reemployment list for Assistant Administrative Analyst effective October 8, 2009.

With respect to the appellant's request for an appointment to her previously held title of Administrative Analyst, a provisional appointment to Personnel Officer, and differential pay, it is clear that the appointing authority intended to fill the position the appellant encumbers at the level of an Assistant Administrative Analyst. As noted above, the appointing authority specifically requested to fill the position in its Public Works department by provisionally appointing the appellant, pending open competitive examination procedures, to the title of Assistant Administrative Analyst. In this regard, there is no legal obligation for an appointing authority to fill a vacant position in another department for which it utilizes a special reemployment list at the same level title from which the employee was laid off. With regard to her claim that she was unable to file a classification appeal, even though the appellant's appointment was not recorded in CAMPS, the fact that she was laid off and had special reemployment rights provided her with the necessary standing on which to file a classification appeal against encumbered

positions that could be filled by using the special reemployment list. See In the Matter of Emily Graham-Weber, Carmen Fermicola and James Heller (Commissioner of Personnel, decided March 16, 1993).

Additionally, it cannot be ignored that the appellant was employed by the appointing authority since October 2009, but other than claiming that her inactive status in CAMPS hampered her ability to file a classification appeal, she never raised the issue of her position classification or the performance of out-of-title duties for almost six years, until 2014. 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 this agency through an audit or other formal study. Thus, classification reviews are 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 (M6278O), and Code Enforcement Officer (M00410), Docket No. A-3062-202T2 (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 Transportation, Docket No. A-277-90T1 (App. Div. January 22, 1992). there is no basis on which to appoint her to the title of Administrative Analyst or provisionally appoint her as Personnel Officer.

Finally, even if there was a basis to order her appointment to the above noted titles, 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.

## ORDER

Therefore, it is ordered that this be appeal be granted in part and Lori Gallon's appointment from the special reemployment list to Assistant Administrative Analyst be recorded as October 8, 2009.

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 29<sup>TH</sup> DAY OF JULY, 2015

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