



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Heath Bernstein,  
Department of Children and Families

Administrative Appeals

CSC Docket Nos. 2018-3011

**ISSUED: November 26, 2018 (SLD)**

Heath Bernstein, a Manager 3, Human Services, with the Department of Children and Families, appeals the calculation of his salary pursuant to *N.J.A.C.* 4A:3-2.9.

By way of background, the appellant received a regular appointment to the title of Manager 3, Human Resources, effective December 13, 2012. Effective June 27, 2015, the appellant was placed on step nine of salary range &34<sup>1</sup> (\$114,027.71) with an anniversary date of 14/17. Thereafter, the appellant was appointed to the Senior Executive Service (SES), effective October 17, 2015, with a salary of \$122,000. *See N.J.A.C.* 4A:3-2.5. On March 31, 2018, the appellant was returned to his title of Manager 3, Human Resources on step nine of salary range M34<sup>2</sup> (\$110,956.98) with an extra salary amount of (\$7,144.28) for a total salary of \$118,101.26, which is equivalent of the salary for an individual on Step 10 of salary range of &34. *See N.J.A.C.* 4A:3-2.9.

On appeal, the appellant argues that *N.J.A.C.* 4A:3-2.9(c)7 provides, in pertinent part, that upon return to the career service from the SES, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES. The appellant maintains that in his prior title of Manager 3,

<sup>1</sup> Management positions that are assigned to Employee Relations Group (ERG) “&” are represented by the International Brotherhood of Electrical Workers (IBEW). Management positions that are assigned to the ERG “M” are positions that either supervise employees in titles/positions that are represented by IBEW or are considered confidential.

<sup>2</sup> It is noted that salary range M34 only has nine steps.

Human Resources, he was on step nine of salary range &34, with an anniversary date of 14/17 prior to his appointment to the SES. Therefore, as he would have been advanced to step 10 on June 24, 2017, upon his return, he must be placed on step 10 of salary range &34. The appellant argues that although the appointing authority placed him on step 10 of salary range &34, it used the salary schedule that was effective July 12, 2014, instead of the salary schedule that was effective July 8, 2017. The appellant contends since his return from the SES was on March 31, 2018, after the effective date of the current salary schedule, the appointing authority should have utilized that salary schedule.

In response, the appointing authority asserts that the appellant’s salary was calculated in consultation with the Division of Agency Services.

The salary schedules, in relevant part, that were in effect:

	<b>M34 Effective 7/7/07</b>	<b>&amp;34 Effective 7/12/14</b>	<b>&amp;34 Effective 7/8/17</b>
<b>Increment</b>	\$3,963	\$4,073.54	\$4,144.83
<b>Step nine</b>	\$110,956.98	\$114,027.71	\$116,023.23
<b>Step 10</b>	----	\$118,101.26	\$120,168.06

**CONCLUSION**

*N.J.A.C.* 4A:3-2.9(c) provides, in pertinent part that:

\* \* \*

An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

\* \* \*

- 7.) Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:
  - i. The salary shall in no event be greater than the salary earned in the SES; and
  - ii. If the minimum guaranteed in (c)7 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary.

- iii. The department head may, at his or her discretion, recommend to the Chairperson or designee placement of the employee at a higher salary than the minimum.

In the instant matter, pursuant to *N.J.A.C.* 4A:3-2.9(c) the appellant was returned to his highest held class code in his permanent title in the same organizational unit. *N.J.A.C.* 4A:3-2.9(c)7 provides that upon the employee's return to the career service, the salary shall be the same as if the employee had remained in the career service. Consequently, the appellant's salary would need to be reconstructed, as if he had never entered the SES. During this process, any anniversary date increments that the employee would have received must be applied, as well as any across the board (ATB) increases that were effective during the employee's service in the SES. *See e.g., In the Matter of Quinshawna Phillips, et al., Department of the Treasury* (CSC, decided October 30, 2018). Although the appellant's salary was correctly determined to be equal to step 10 of salary range &34, based on his anniversary date, he was also entitled to the effect of the ATB that was effective July 8, 2017. Therefore, his salary should have been calculated as \$120,168.06, effective March 31, 2018. Moreover, since the appellant's current position is in the "M" ERG, his salary should be red-circled at \$120,168.06 until such time as salary range M34 increases to include this guaranteed minimum salary. *See N.J.A.C.* 4A:3-2.9(c)7iii.

### ORDER

Therefore, it is ordered that this appeal be granted and Heath Bernstein's record be changed to reflect that he was returned to the title of Manager 3, Human Resources, M34, effective March 31, 2018, at a salary of \$120,168.06. It is also ordered that the appellant receive differential back pay from March 31, 2018 until his salary is changed. Finally, it is ordered that his salary be red circled as described above.

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 21ST DAY OF NOVEMBER, 2018



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