



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Cristina Allen, *et al.*,  
Department of Corrections

CSC Docket Nos. 2018-3681 *et al.*

Administrative Appeals

ISSUED: AUGUST 3, 2018 (CSM)

Cristina Allen, Lakesha Amons, Joseph Bellavance, Jose Borrero, William Brady, Isaac Carrero, Jerry Coker, Kimberly Collins, Matthew Coogan, Michael Cook, Jasmin Copeland, Delilah Correa-Perrione, Richard DeHainaut, Edward Drzewiecki, Stephen Echevarria, Luis Estrada, Alexander Figueroa-Sanchez, Thomas Frizziola,<sup>1</sup> Todd Galganske, Shanice Gaskin, Delmar Glanton, James Gross, Jr., Samuel Hansen, Marquis Hill, Jonathan Huang,<sup>2</sup> Stephen Indoe, Anthony Jacobs, Keith Karrer, Thomas Kish, Daniel Klein, Kimeko Lancaster, John Latona, Alnetha Little, Hai Luong, George Mack, Michael Mann, Marcin Markowski, Anthony Martinez, John McCloskey, Gregory McCrary, Jr., Antonio Megaro, William Meringer, David Mollyk, Sr., Jason Morozowski, Harmon Murphy, Jr., Denisse Narvaez, Amir Nathari, Douglas Perrone, Szymon Popek, John Raebig, Victoria Reese, Ashley Riegel, Rafiel Rodriguez, Kevin Rodriguez, Jr., Santiago Roman, Joseph Sandomierski, William Searless, Alyce Serlick, Jamal Sloan El, Richard Smialowicz, David Smith, Jarron Smith, Eddie Solis, Kenny Solorzano, Tavon Spearman, Craig Sweetman, Brigham Tallmadge, Mark Thornton, Raquel Tirado, Dana Walker, Christopher Whitlock and Tamika Williams, Senior Correctional Police Officers or Correctional Police Sergeants with the Department of Corrections, appeal the determination of their salaries upon appointment to the

<sup>1</sup> It is noted that Thomas Frizziola, Antonio Megaro, Douglas Perrone, and Szymon Popek resigned effective May 20, 2016, October 28, 2016, July 10, 2017, and December 15, 2017 as Senior Correction Officers, respectively.

<sup>2</sup> It is noted that Jonathan Huang is currently a Correctional Police Sergeant.

title of Senior Correction Officer.<sup>3</sup> These appeals have been consolidated due to common issues presented.

By way of background, the appellants present that they went through the four phases of the recruitment process for Correction Officer Apprentice between February 2012 and July 2012. During that time frame, they state that they were repeatedly advised by the appointing authority that the major terms and conditions of their employment would be governed by the collective negotiations agreement with the Policeman's Benevolent Association, Local 105 (PBA) in effect between July 1, 2007 and June 30, 2011, or until that agreement was replaced by a successor agreement (Agreement 1). At that time, Agreement 1 provided that a Correction Officer Recruit would have an annual salary of \$40,000.00 during the recruit phase and \$55,842.47 upon appointment as a Senior Correction Officer. On June 11, 2012, the appointing authority and the PBA agreed to a successor agreement (Agreement 2). Specifically, that agreement indicated that individuals who become Correction Officer Recruits or Correction Officer Recruits, Juvenile Justice Commission, on or after July 1, 2012, would be subject to a different salary scale, that changed the pay scale upon appointment to Senior Correction Officer to \$44,039.00. The appellants note that Agreement 2 was not published on the appointing authority's website until January 2013, the Compensation Compendium until July 13, 2013, or on the Public Employment Relations Commission's (PERC) website until June 3, 2013. However, the appellants indicated that Agreement 2 was presented to them in October 2012.

Although Agreement 2 reducing the salary scale upon appointment to Senior Correction Officer was reached on June 11, 2012, the appellants claim that the appointing authority never advised them of the change during the Human Resource Orientation and offer of employment on or about July 5, 2012. In this regard, they claim that the appointing authority did not disclose this information because it knew the successor pay scale was so significantly reduced that disclosing it would result in the majority of candidates not accepting an appointment of July 16, 2012. The appellants state that they relied "heavily and exclusively" on the salary scale in Agreement 1 when they were recruited and made a life changing decision by accepting an appointment and giving up their primary source of income in the private sector. Subsequently, after five months of employment, in October 2012, the appellants present that they were given a letter dated September 12, 2012 by Academy Instructors indicating that the revised salary scale contained in Agreement 2 applied to them. Upon their orientation with the PBA in October 2012, the appellants complained and were advised by the union that the matter was being handled by the appointing authority. However, no action was taken, and, on November 2, 2013, when they were moved to the title of Senior Correction Officer,

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<sup>3</sup> In accordance with P.L. 2017, c. 293, Senior Correction Officer has been renamed Senior Correctional Police Officer effective May 1, 2018. *See also*, N.J.S.A. 11A:2-11.1.

they were not paid in accordance with Agreement 1, but instead, at the significantly lower salary scale contained in Agreement 2.

The appellants maintain that they continued to complain to their union about the situation and was reassured by the PBA that the matter was being handled by the appointing authority. However, it was not until October 7, 2016, that the PBA's counsel contacted the appointing authority to have the salary issue corrected. In response, by letter dated December 6, 2016, the appointing authority advised the appellants that the signing of Agreement 2 predated the effective date they entered the academy. Further, it noted that the academy class was notified of the change in salary scale several weeks after their arrival at the academy. Therefore, the appointing authority indicated that it was limited in what actions it could take as it is obligated by the collective negotiations agreement. Although the appellants attempted to pursue a grievance in this matter, in a letter dated May 16, 2018, counsel for the PBA advised them that it could only file a grievance over an alleged breach of contract. Thus, since the appellants were being paid consistent with the contract, the PBA would not file a grievance on their behalf. However, the PBA advised that the appellant could file a "non-contractual" grievance directly with the appointing authority. Nevertheless, the appellants claim that past practice of the PBA was to represent both union members and non-members regarding non-contractual issues, and did so in October 2012, but now has changed its position and will not represent them on this issue.

In support of their appeals, the appellants state that their case is similar to that of S.R.-T. In that matter, they claim that S.R.-T. was offered a salary consistent with Agreement 1. Although S.R.-T. started her Academy in March 2012, she became disabled, was unable to complete the Academy, and was "recycled," starting an Academy in December 2012 and graduating on March 25, 2013. However, despite becoming a Correction Officer Recruit on or after July 1, 2012, upon her subsequent appointment as a Senior Correction Officer, S.R.-T. was provided a salary consistent with the salary scale contained in Agreement 1. Although not the same, the appellants maintain that their situation is analogous to S.R.-T.'s as they were led to believe when they accepted their appointments that their salaries would be based on Agreement 1. Given the fact that they attempted to pursue this matter with the PBA since 2012, that the PBA did initially pursue the matter, but advised in 2018 that it would not pursue the matter, the appellants maintain that the Civil Service Commission (Commission) should entertain their appeals as timely. The appellants seek the Commission to adjust their salaries consistent to the pay scales included in Agreement 1 and that they be awarded retroactive differential pay.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) provides that an appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed, and *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause.

The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeals unreasonably exceeds that threshold of finality. Specifically, the appellants concede that they were made aware of the change in the salary scales in October 2012. Although they attempted to informally and/or through the PBA to address their concerns with the appointing authority, the appellants did not appeal the matter of their salaries to the Commission until May 2018.<sup>4</sup> Indeed, the appellants were clearly advised in December 2016 by the appointing authority that it was limited in what actions it could take with respect to their salaries as it was obligated to comply with the collective negotiations agreement. As such, the appellants were aware of the situation being appealed in October 2012 and that the appointing authority would not change their salaries in December 2016, yet they did not file an appeal with the Commission until more than one year after that notification. The responsibility to file a timely appeal rests solely with the appellants. Further, the filing of an appeal in a different forum does not toll the time to file an appeal with the Commission. *See In the Matter of Sandra Alexander* (MSB, decided March 9, 2005); *In the Matter of Richard Vogel* (MSB, decided March 9, 1999); *In the Matter of Jose Gonzalez* (MSB, decided June 23, 1998). Additionally, the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. *See Savage v. Old Bridge-Sayreville Med. Group*, 134 N.J. 241, 248 (1993) (Ignorance of the specific basis for legal liability did not operate to extend time to initiate legal action). As such, the Commission dismisses these appeals on the grounds that they are untimely.

Although the Commission has dismissed these appeals on the basis that they are untimely, even assuming *arguendo* that the appellants filed timely appeals, the appellants have not demonstrated that any Civil Service law or rule was violated. Essentially, the appellants maintain that they were offered a higher salary during the recruitment phase, that the appointing authority purposely failed to disclose that the collective negotiations agreement had changed prior to their actual appointment date which resulted in them receiving a lower salary, and that they accepted the appointment, possibly forgoing other career opportunities, based on the promise that they would receive the higher salary.<sup>5</sup> It is unfortunate that the PBA and/or the appointing authority did not advise the appellants prior to them

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<sup>4</sup> The last appeal was filed in July 2018.

<sup>5</sup> The appellants have not identified any specific forgone opportunities.

accepting their positions that the governing collective negotiations agreement had changed. However, *N.J.S.A. 11A:3-7(b)* provides:

Prior to adoption or implementation of an amendment, change or modification to the compensation plan for State employees which amendment, change or modification affects public employees represented by a majority representative or designated pursuant to *N.J.S.A. 34:13A-5.3*, the State shall negotiate with the majority representative for an agreement on the amendment, change or modification of the compensation plan. The State shall negotiate in good faith with the majority representative, a State employee compensation plan shall not be amended, changed or modified except pursuant to a written agreement between the State and the majority representative following negotiations.

As noted by both the appointing authority and PBA counsel's letter to them of May 16, 2018, the appellants are being correctly paid consistent with the salary scales set forth in Agreement 2. The appellants have not presented the misapplication of any Civil Service law or rule and the Commission does not have standing to change the State compensation plan that was modified pursuant to a collective negotiations agreement. In this regard, the Commission does not have jurisdiction to enforce or interpret grievance procedures or other items which are contained in a collective bargaining agreement negotiated between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is at PERC. *See N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-5.4(c)*.

With respect to S.R.-T., agency records indicate that she prevailed in an appeal of her removal from the Correction Officer Recruit (S9987M), Department of Corrections eligible list. The Commission ordered that she receive a retroactive appointment, for seniority and salary step placement, consistent with the date she would have been appointed from the list had she not been removed. Although S.R.-T. attended an academy subsequent to that of the appellants, her retroactive appointment was prior to the July 1, 2012 change in the contract. Therefore, she was properly placed at the salary scale consistent with Agreement 1 upon her appointment to Senior Correction Officer. Accordingly, her employment history differs from the appellants' situation and does not demonstrate persuasive proof to change their circumstances.

### ORDER

Therefore, it is ordered that these appeals be dismissed as untimely.

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 1<sup>ST</sup> DAY OF AUGUST, 2018



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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and  
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Attachment

- c: Appellants Listed on Attachment A
- The Honorable Troy Singleton
- Elizabeth Whitlock
- Kelly Glenn
- Records Center

**ATTACHMENT A**

|                            |             |                      |             |
|----------------------------|-------------|----------------------|-------------|
| Cristina Allen             | (2018-3681) | Marcin Markowski     | (2018-3455) |
| Lakesha Amons              | (2018-3519) | Anthony Martinez     | (2018-3587) |
| Joseph Bellavance          | (2018-3454) | John McCloskey       | (2018-3512) |
| Jose Borrero               | (2018-3447) | Gregory McCrary, Jr. | (2018-3458) |
| William Brady              | (2018-3451) | Antonio Megaro       | (2018-3656) |
| Isaac Carrero              | (2018-3585) | William Meringer     | (2018-3514) |
| Jerry Coker                | (2018-3617) | David Mollyk, Sr.    | (2018-3716) |
| Kimberly Collins           | (2018-3569) | Jason Morozowski     | (2018-3584) |
| Matthew Coogan             | (2019-185)  | Harmon Murphy, Jr.   | (2018-3515) |
| Michael Cook               | (2018-3598) | Denisse Narvaez      | (2018-3579) |
| Jasmin Copeland            | (2018-3566) | Amir Nathari         | (2018-3456) |
| Delilah Correa-Perricone   | (2018-3597) | Douglas Perrone      | (2018-3634) |
| Richard DeHainaut          | (2018-3452) | Szymon Popek         | (2018-3653) |
| Edward Drzewiecki          | (2018-3450) | John Raebig          | (2018-3801) |
| Stephen Echevarria         | (2018-3443) | Victoria Reese       | (2018-3575) |
| Luis Estrada               | (2018-3586) | Ashley Riegel        | (2018-3574) |
| Alexander Figueroa-Sanchez | (2018-3445) | Rafiel Rodriguez     | (2018-3577) |
| Thomas Frizziola           | (2018-3453) | Kevin Rodriguez, Jr. | (2018-3510) |
| Todd Galganske             | (2018-3564) | Santiago Roman       | (2018-3613) |
| Shanice Gaskin             | (2018-3511) | Joseph Sandomierski  | (2018-3618) |
| Delmar Glanton             | (2018-3726) | William Searles      | (2018-3588) |
| James Gross, Jr.           | (2018-3764) | Alyce Serlick        | (2018-3571) |
| Samuel Hansen              | (2018-3572) | Jamal Sloan El       | (2018-3655) |
| Marquis Hill               | (2018-3518) | Richard Smialowicz   | (2018-3578) |
| Jonathan Huang             | (2018-3628) | David Smith          | (2018-3513) |
| Stephen Indoe              | (2018-3457) | Jarron Smith         | (2018-3737) |
| Anthony Jacobs             | (2018-3448) | Eddie Solis          | (2018-3589) |
| Keith Karrer               | (2018-3449) | Kenny Solorzano      | (2018-3567) |
| Thomas Kish                | (2018-3565) | Tavon Spearman       | (2018-3446) |
| Daniel Klein               | (2018-3619) | Craig Sweetman       | (2018-3573) |
| Kimeko Lancaster           | (2018-3738) | Brigham Tallmadge    | (2018-3633) |
| John Latona                | (2018-3576) | Mark Thornton        | (2018-3570) |
| Alnetha Little             | (2018-3725) | Raquel Tirado        | (2019-2)    |
| Hai Luong                  | (2018-3563) | Dana Walker          | (2018-3568) |
| George Mack                | (2018-3591) | Christopher Whitlock | (2018-3582) |
| Michael Mann               | (2018-3444) | Tamika Williams      | (2018-3657) |