



STATE OF NEW JERSEY

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

In the Matters of Kausar Ahmad, *et al.*, Montclair State University

Administrative Appeals

CSC Docket Nos. 2019-994, *et al.*

ISSUED: FEBRUARY 8, 2019 (HS)

Montclair State University (MSU) requests that Kausar Ahmad, Kenneth Bledsoe, Edwin Camacho, Giuseppa Coppola, S.E. Daughtridge, Lydia Isaac and Janki Panchu be provided with retroactive dates of provisional and permanent appointment to the title of Assistant Housekeeping Supervisor 1. These appeals have been consolidated due to common issues presented.

By way of background, agency records reflect that the above-named employees received permanent appointments to the noncompetitive title of Crew Supervisor Building Maintenance Workers, effective on various dates between October 24, 1998 and May 24, 2011, inclusive. Agency records also reflect that Camacho received a provisional appointment, pending open-competitive examination procedures, to the title of Assistant Housekeeping Supervisor 1, effective July 11, 2015.

A Statewide open-competitive eligible list for the title of Assistant Housekeeping Supervisor 1 (S1024R) promulgated on February 27, 2014 with the names of 16 eligibles and expired on February 26, 2017. The first certification from the S1024R list (OS140139), consisting of the names of five eligibles, was issued to the College of New Jersey (Mercer County) on February 28, 2014. Two permanent appointments were made from certification OS140139, effective April 7, 2014 and April 13, 2014 respectively, with the remaining eligibles on the certification being retained. The second certification from the S1024R list (OS150561) was cancelled. The third certification from the S1024R list (OS160146), consisting of the names of the six eligibles who indicated Essex County as a preferred geographic employment

location, was issued to MSU on February 25, 2016. In disposing of certification OS160146, MSU requested that the names of four eligibles be removed, the name of one eligible be recorded as not available for the current position but retained, and the name of one eligible be recorded as having responded to the notice of certification late but retained. The fourth and final certification from the S1024R list (OS160436) was cancelled.

A review of agency records also indicates the existence as of July 2015 of a special reemployment list for the title of Assistant Housekeeping Supervisor 1 containing the names of two eligibles. One eligible had been added to the list upon her demotion in lieu of layoff from Hunterdon Developmental Center on June 27, 2014, while the other had been added to the list upon his layoff from Kean University on April 30, 2015. The eligibles remained on the list until 2016.

On appeal to the Civil Service Commission (Commission), MSU states that it provisionally appointed all seven named employees to the title of Assistant Housekeeping Supervisor 1, effective July 1, 2015, but failed to notify them of the appointments.¹ It requests that agency records be updated to reflect that the employees began serving provisionally in the title of Assistant Housekeeping Supervisor 1, effective July 1, 2015. Further, MSU requests that the employees be granted retroactive dates of permanent appointment to the same title, effective July 1, 2015, upon their completion of a current working test period. It argues that if its request is not granted, the employees will be required to take an examination to become eligible for a permanent appointment to a title the duties of which they have been performing admirably since July 1, 2015. MSU hopes such will not be necessary. In support, MSU provides, among other personnel records, copies of letters signed by the Assistant Vice President for Talent Management in the Division of Human Resources, dated September 2015 and addressed on their face to the employees. The letters indicate that

approval has been granted to increase [the employee's] position from Crew Supervisor [Building Maintenance Workers] . . . to Assistant Housekeeping Supervisor [1] . . . retroactively effective to July 1, 2015.

The letters also state the employees' new salary and that copies of the letters were placed in the employee's file and sent to other university personnel (a Vice President and Associate Vice President).

In addition, MSU states that the employees have filed applications for a promotional examination for Assistant Housekeeping Supervisor 2 (PS8597J) and that it would like those applications to be processed "concurrent[ly]" with its other requested remedies.

¹ Excepting Camacho's July 11, 2015 provisional appointment, these appointments apparently were also not reported to this agency.

CONCLUSION

N.J.A.C. 4A:4-2.3(a) provides that vacancies shall be filled by promotional examination unless it is determined that it is in the best interest of the career service to hold an open-competitive examination.

N.J.A.C. 4A:4-1.1(c)2 provides that this agency may authorize the promotion, through promotional examination procedures, from the noncompetitive division, of permanent employees who meet the open-competitive requirements, to, in appropriate situations, a related above-entry level title in the competitive division.² *N.J.A.C.* 4A:4-2.5(d) provides:

When a promotion is to be made from the noncompetitive division to a related title in the competitive division . . . the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;
2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;
3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements and all titles as described in (d)1 or 2 above;
4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or
5. In extraordinary circumstances, [this agency] may set another appropriate title scope.

N.J.A.C. 4A:4-3.7(a) provides that when there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1. Special reemployment, when the available position/title is in the department or autonomous agency from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

² Such action was also authorized by this regulation as of July 1, 2015. Additionally, this is the applicable regulation in this case since Crew Supervisor Building Maintenance Workers and Assistant Housekeeping Supervisor 1 are related titles in that both belong to Occupational Group 30 (Occupations in Building, Institution and Facility Services), a subcategory that includes occupations concerned with cleanliness, orderliness and maintenance of buildings, institutions and laboratories according to the Commission's Occupational Code Dictionary. Further, Assistant Housekeeping Supervisor 1, a competitive division title, is an above-entry level title as it is supervisory and the job specification contains an experience requirement.

2. Promotional;
3. Special reemployment, when the available position/title is located in a department or autonomous agency other than that from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;
4. Regular reemployment, police, sheriff's officer, or fire reemployment; and
5. Open competitive.

N.J.A.C. 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C.* 4A:4-1.1(c)2 and authorize the retroactive provisional appointments, effective July 1, 2015, of Ahmad, Bledsoe, Camacho, Coppola, Daughtridge, Isaac and Panchu to the title of Assistant Housekeeping Supervisor 1, pending promotional examination procedures. This relief is warranted based on equitable considerations. In this regard, MSU's supporting documentation strongly suggests that it effected the employees' promotions. Specifically, the submitted personnel records state that their positions were "increase[d]" to Assistant Housekeeping Supervisor 1, effective July 1, 2015, with a new salary, and MSU states that the employees have been performing the duties of the title since that date.³ However, by MSU's own admission, it did not at the time inform the employees that they had been promoted. There is also no indication that MSU informed this agency at the time that it was seeking to promote all seven employees or that it requested the announcement of a promotional examination.

It should be noted that the existence of a Statewide open-competitive list for Assistant Housekeeping Supervisor 1 and a special reemployment list for that title, as of July 1, 2015, is not a bar to the employees' retroactive provisional appointments, pending promotional examination procedures, effective that same date. In this regard, *N.J.A.C.* 4A:4-2.3(a) expresses a preference that vacancies be filled by promotional, as opposed to open-competitive, examination, and *N.J.A.C.* 4A:4-3.7(a) provides that promotional lists have priority over open-competitive lists. Moreover, the special reemployment list resulted from layoff-related actions that occurred at Hunterdon Developmental Center and Kean University respectively, *not* MSU. Thus, the employees could have been provisionally promoted at MSU on July 1, 2015 since a promotional list also has priority over a special reemployment list when the available positions are located in a department or autonomous agency

³ The Commission is making no finding in this decision that the employees in fact meet the open-competitive requirements of the Assistant Housekeeping Supervisor 1 title.

other than that from which the eligibles were laid off, laterally displaced or demoted in lieu of layoff. See *N.J.A.C.* 4A:4-3.7(a)2 and *N.J.A.C.* 4A:4-3.7(a)3.

In light of the above, it is appropriate to announce a promotional examination for the title of Assistant Housekeeping Supervisor 1 in the employees' unit scope to incumbents serving in the noncompetitive title of Crew Supervisor Building Maintenance Workers, who meet the open-competitive requirements, as well as to any other title scope deemed appropriate by the Division of Agency Services in accordance with the provisions of *N.J.A.C.* 4A:4-2.5(d). The remedy provided is limited to the specific circumstances of this case and shall not be utilized as a precedent in any other proceeding.

Nevertheless, the Commission finds that the employees are not entitled to retroactive dates of permanent appointment to the title of Assistant Housekeeping Supervisor 1. Although MSU maintains that the employees should not have to take an examination to become eligible for permanent appointments to a title the duties of which they have been performing since July 1, 2015, the Commission is not persuaded for the reasons discussed below.

In *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987), our Supreme Court concluded that a long-term provisional employee was not entitled to retain his provisional position without complying with the examination procedures set forth in *N.J.S.A.* 11A:1-1 *et seq.* In *O'Malley*, the employee provisionally occupied a position for more than two years before he was returned to his former permanent title. No examination was conducted during this time period. The employee contended that the failure to give a timely examination vested him with the automatic right to retain his provisional position. The Court rejected this claim:

Neither the original act nor the 1986 Act expressly created such a right in favor of provisional employees. In addition, nothing in the legislative history suggests that the Legislature intended to create such a right. It is the welfare of the public, not that of a particular provisional employee, that underlies civil service legislation. We believe it would thwart the legislative intent to allow a provisional employee to retain his or her position merely because the Commission could not offer a timely test.

* * *

In the present case, however, we are persuaded that the legislative goal of appointments based on merit and fitness is the paramount consideration. *With respect to provisional employees, that goal is met by competitive examinations, not by holding a position beyond the time prescribed by the Legislature.* *Id.* at 316-317 (emphasis added).

In *Kyer v. City of East Orange*, 315 *N.J. Super.* 524 (App. Div. 1998), the court determined that the City of East Orange's (East Orange) actions in denying Kyer, a seven-year employee, the opportunity to ever achieve permanent status in her competitive career service position, contrary to the Civil Service Act, were so egregious that they warranted a unique remedy:

It is our view that a delicate balance must be struck between the public and private interests that are subject to prejudice when a governmental entity fails to comply with its statutory obligations. Estoppel is not the answer. First, the Supreme Court has precluded that solution. Second, unqualified persons may thereby be afforded an improper route to permanency. But by the same token, it is no solution to leave remediless the well-qualified, experienced, high-performing, long-term provisional employee who is unaware that her position is not permanent, who in all likelihood would have easily achieved permanency but for the municipal negligence, and whose summary discharge from employment is as obviously unfair and arbitrary as this jury found plaintiff's to be. *Id.* at 532-533.

Accordingly, the court transferred the case to this agency to retroactively determine whether Kyer would have qualified for the competitive career service position she provisionally held for seven years and, if so, "to fashion an appropriate remedy." *Id.* at 534. Ultimately, the former Merit System Board determined that, notwithstanding Kyer's years of service or the misdeeds of East Orange, she was not entitled to a permanent appointment since she did not meet the open-competitive requirements for the position at the time the provisional appointment was initially made. *See In the Matter of Ruby Robinson Kyer* (MSB, decided May 4, 1999).

In this matter, the seven employees cannot be considered to be permanent employees simply because they occupied the position of Assistant Housekeeping Supervisor 1 as long-term provisional employees. *See e.g., N.J.S.A.* 11A:4-13a (permanent appointment can only be achieved when an individual takes an examination, is placed on an eligible list and is permanently appointed from that eligible list). The employees had no property interests in their provisional positions that would give them a mandatory right to permanent appointment. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494, 497 (App. Div. 1990) (a candidate on an eligible list only has an expectancy interest in appointment); *In re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984) ("[t]he only benefit inuring to such a person is that so long as that list remains in force, no appointment can be made except from that list."); *see also, N.J.A.C.* 4A:4-4.8(a)3 (appointing authority may choose any of the top three eligibles for permanent appointment).

The facts in this matter are distinguishable from those in *Kyer*. In this regard, there is no indication in the record that the employees were ever informed

that they had become permanent in their Assistant Housekeeping Supervisor 1 positions or that they previously completed working test periods in that title, as evidenced by MSU's statement that the employees would serve *current* working test periods. Kyer, in contrast, had been *specifically erroneously informed* by her employer that she was a permanent employee. Accordingly, MSU has not established that the employees are entitled to retroactive permanent appointments to the title of Assistant Housekeeping Supervisor 1, but as already discussed, they are being afforded an examination opportunity.

As a final matter, the Commission has concerns with MSU's failure to previously report the employees' promotions. In this regard, *N.J.A.C. 4A:4-1.10(a)* provides that all initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval of this agency. MSU should take steps to ensure that this does not happen in the future.

ORDER

Therefore, it is ordered that the provisional appointments of Kausar Ahmad, Kenneth Bledsoe, Edwin Camacho, Giuseppa Coppola, S.E. Daughtridge, Lydia Isaac and Janki Panchu to the title of Assistant Housekeeping Supervisor 1, pending promotional examination procedures, effective June 1, 2015, be recorded. It is further ordered that a promotional examination be announced in accordance with this decision.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6TH DAY OF FEBRUARY, 2019



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- c. Kausar Ahmad (2019-994)
- Kenneth Bledsoe (2019-995)
- Edwin Camacho (2019-997)
- Giuseppa Coppola (2019-1007)
- S.E. Daughtridge (2019-998)
- Lydia Isaac (2019-1000)
- Janki Panchu (2019-1001)
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