



STATE OF NEW JERSEY

In the Matter of David Wroblewski,
Perth Amboy

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

CSC Docket No. 2023-375

Administrative Appeal

ISSUED: February 22, 2023 (HS)

David Wroblewski, a part-time Building Subcode Official, Perth Amboy, appeals the denial of his request for pro-rated vacation leave.

As background, the appellant received a provisional appointment, pending open competitive examination procedures (part-time), to the title of Building Subcode Official effective February 1, 2011. The appointment was converted to a regular appointment effective March 12, 2012.

On appeal to the Civil Service Commission (Commission), the appellant presents a grievance form in which he stated that “[p]roportionate vacation time [is] not permitted.” A management representative wrote on the form that “[t]he City of Perth Amboy does not pay vacation on part-time employees.” The appellant also wrote, as part of his statement of grievance, that sick time was calculated “per State rule,” not union contract, and that he was excluded from the union. Presumably referring to salary, the appellant also wrote “No percentage increase yearly.”

In response, the appointing authority, represented by Robert J. Merryman, Esq., initially proffers that the instant matter should be dismissed on jurisdictional and procedural grounds because the grievance form the appellant presented is the “State of New Jersey” Grievance Procedure Form, and the State employee grievance process does not apply to it or the appellant. On the issue of vacation time accrual, the appointing authority indicates its recognition of its obligation to provide vacation leave to part-time employees like the appellant on a pro-rated basis. It presents that

the appellant's hours of work fluctuate based on the workload of the Construction Department. As of October 6, 2022, the appointing authority expected the appellant to work 384 hours in 2022, while a full-time employee would work 1,820 hours.¹ Had the appellant been a full-time employee, according to the appointing authority, he would have been entitled to 15 vacation days. The appointing authority proposes that the accrual of proportionate vacation leave be based on the total hours worked the previous year. Thus, the appointing authority proposes that based on the 384 hours he was expected to work in 2022, the appellant would be entitled to 21% of the full-time allotment, or 3.16 days, in 2023.²

The appellant did not reply to the appointing authority's response.

CONCLUSION

Initially, it is noted that the appointing authority asks that the instant matter be dismissed because the grievance form the appellant presented is the "State of New Jersey" Grievance Procedure Form, and the State employee grievance process does not apply to it or the appellant. The appointing authority points to no authority demonstrating that such a harsh result must follow merely because the appellant happened to use a form that should normally only be used by State employees. Moreover, as discussed below, the Commission has jurisdiction over the substance of the appellant's complaint, namely the vacation leave issue. Thus, the Commission will proceed to address the merits.

N.J.S.A. 11A:6-3 and *N.J.A.C.* 4A:6-1.2(b) provide that after the first year of employment, full-time local employees shall be entitled to vacation leave no less than as follows:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;
2. After 10 years of service and up to 20 years of continuous service, 15 working days; and
3. After 20 years of continuous service, 20 working days.

N.J.S.A. 11A:6-7 provides, in pertinent part, that part-time employees shall receive proportionate vacation leave. *N.J.A.C.* 4A:6-1.2(e) provides that part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. *N.J.A.C.* 4A:1-1.3 provides that "[p]art time employee" means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency. It has been well established in prior decisions of the Merit System Board and the Commission, that permanent part-time and 10-month local employees

¹ Or 35 hours per week based on 52 weeks in a year.

² The appointing authority acknowledged that this figure could be subject to adjustment if the appellant worked more or less than the anticipated hours for the remainder of 2022.

are entitled to be proportionately credited with the mandated minimum vacation leave allotments. *See e.g., In the Matter of Vacation and Sick Leave Entitlement, Rockaway Township Library* (MSB, decided April 21, 2004); *In the Matter of Berkeley Township Aides Association* (CSC, decided June 21, 1983), *aff'd on reopening* (September 20, 1983).

The appointing authority has recognized its obligation to provide proportionate vacation leave to part-time employees. The Commission takes no issue with the appointing authority's proposed methodology to determine the amount of proportionate vacation leave the appellant should receive. In this regard, the appointing authority would take the number of hours the appellant works as a percentage of the number of hours a full-time employee would work and apply that percentage to the full-time employee's vacation leave entitlement to arrive at the proportionate vacation leave entitlement. However, the Commission cannot agree with the *timing* of crediting leave under the appointing authority's proposal. Specifically, the appointing authority proposes to credit leave in a given year based on the total hours worked in the *previous* year, thus effectively withholding all vacation leave until the following year. The Commission has deemed this practice impermissible. In this regard, since *N.J.A.C.* 4A:6-1.2(g) provides that vacation leave not used in a given year *because of business necessity* shall accumulate and be granted in the next year only, Civil Service law and rules prohibit the blanket practice of withholding all employees' vacation leave until the following year. *See also, N.J.S.A.* 11A:6-3e. Therefore, if the appointing authority does not credit the full allotment of leave at the beginning of the year in which it is earned, it would be required to credit vacation leave each month as it is earned. *See In the Matter of Vacation Leave Entitlement, Vineland City School District* (MSB, decided January 16, 2008), *aff'd* Docket No. A-3029-07T3 (App. Div. July 22, 2009).

Since the accumulation of vacation leave is statutory pursuant to *N.J.S.A.* 11A:6-3e, the Commission can offer no remedy for impacted employees prior to 2022. Accordingly, as of January 1, 2022, all part-time employees employed by the appointing authority, including the appellant, shall receive the requisite amount of vacation leave. Therefore, with regard to the appellant, he should be provided with the proportionate amount of vacation leave for 2022. For his 2023 allotment, the appointing authority must provide him the appropriate proportionate amount, effective January 1, 2023, or he may be provided with vacation leave as he earns it throughout the year.

The Commission adds the following comments on other issues the appellant raised. The Commission has no jurisdiction to decide whether the appellant should be covered by a union and have his sick time calculated per the union contract. The proper forum to bring such concerns is the Public Employment Relations Commission. *See N.J.S.A.* 34:13A-1, *et seq.* The Commission also lacks jurisdiction over the salary issue, at least as it has been presented here. In this regard, salary

issues in local service are not reviewable by the Commission unless the salary is outside the established range for the job title. In this regard, *N.J.S.A.* 11A:3-7 and *N.J.A.C.* 4A:3-4.1 provide that when a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range.

ORDER

Therefore, it is ordered that the appellant and all part-time employees employed by the appointing authority be provided with the requisite proportionate amount of vacation leave, effective January 1, 2022, consistent with this decision.

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 22ND DAY OF FEBRUARY, 2023



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