



STATE OF NEW JERSEY

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

In the Matter of Police Chief,
Paterson

CSC Docket No. 2023-2167

Reconsideration Request

ISSUED: November 1, 2023

Paterson, represented by Aymen A. Aboushi, Esq., requests reconsideration of the final administrative determination in *In the Matter of Police Chief, Paterson* (CSC, decided February 22, 2023).

As discussed in the original decision, Paterson referred to *N.J.S.A. 40:69A-60.7* for the proposition that “any City of the First Class” may provide by ordinance that the city may appoint a Police Chief “who shall serve in the unclassified service of the civil service of the city” and noted that it is “a city of the First Class as a matter of law.” Paterson further referred to *Newark Superior Officers Association v. Newark*, 98 *N.J.* 212 (1985), for the proposition that “there were special reasons why the largest cities in New Jersey needed the flexibility and discretion to appoint and remove their police chiefs on an unclassified basis . . .” Paterson argued that it was “critical that a city of its size be able to manage its police department and affairs through an unclassified Police Chief position.” Paterson further argued that “not converting the Chief position to an unclassified one would defeat the policy goals of *Newark Superior Officers Association v. Newark*, [*supra*]. Indeed, while *N.J.S.A. 40:69A-60.7* references a Mayor-Council Plan D [*sic*] form of government, that distinction falls within the portion of the statute that was overturned by the Court in *Newark Superior Officers Association v. Newark*, [*supra*].” In its February 22, 2023, decision, the Civil Service Commission (Commission) indicated that “the issue before [it] is whether Paterson is entitled to appoint a Police Chief in the unclassified service pursuant to *N.J.S.A. 40:69A-60.7* and 4A:3-1.3(a)3.” After reviewing the court’s determination in *Newark Superior Officers Association v. Newark*, *supra*, the Commission found that the court clearly indicated that the 1981 amendment to *N.J.S.A. 40:69A-60.7*, which replaced “has or shall hereafter adopt the form of government designated as ‘Mayor-Council Plan C’” with “*prior to the effective date of*

this amendatory and supplementary act has adopted the form of government designated as ‘Mayor-Council Plan C’,” (emphasis added) is special legislation and should be severed. However, the Commission noted that the court did not determine that severing this grandfather clause would mean that *N.J.S.A. 40:69A-60.7* would apply to any city of the first class. Rather, the court found that *N.J.S.A. 40:69A-60.7* applies to municipalities that are or “may in the future become first class cities operating under the ‘Mayor-Council Plan C’ form of government.” As such, the Commission determined that *N.J.S.A. 40:69A-60.7* remained applicable to cities of the first class that operate under the Mayor-Council Plan C form of government. The Commission further found that Paterson operates under the “Mayor-Council Plan D” form of government¹ and thus, its reliance on *N.J.S.A. 40:69A-60.7* was misplaced. Accordingly, the Commission determined that Paterson’s assertion that it may appoint a Police Chief in the unclassified service pursuant to *N.J.S.A. 40:69A-60.7* was not supported by available information.

In its request for reconsideration, Paterson argues that “the Commission’s denial of Paterson’s request is based solely on the fact that the City is a ‘Mayor-Council Plan D’ (‘Plan D’) form of government instead of a ‘Mayor-Council Plan C’ (‘Plan C’) form of government . . . As such, the Commission concluded Paterson could not have an unclassified police chief simply because it was a Plan D rather than a Plan C municipality. Nevertheless, the Commission still has the legal authority to make any position unclassified under other authority, which point was not addressed by the Commission”² Paterson refers to *N.J.S.A. 11A:3-5* and *N.J.A.C. 4A:3-1.3(a)* and maintains that “the Commission’s Decision fails to address the issue of whether a municipality, in the particular circumstances of Paterson, is entitled to have its police chief be unclassified, by way of the powers bested in the Commission and given the totality of the circumstances” In this regard, Paterson refers to *N.J.S.A. 11A:1-2*, *N.J.A.C. 4A:1-1.1* and *N.J.A.C. 4A:1-1.2(c)* and emphasizes that the Commission may relax rules for good cause. Paterson further maintains that the State Constitution “reinforces that any law in New Jersey should be construed to empower local public entities with the tools they need to properly perform their roles in local government” and “not hamstringing municipalities in the performance of their functions.” Paterson argues that “there is nothing inherently necessary for a police chief to be in the classified [career] service. This point is demonstrated by the New Jersey State Police. There is no specific statute that requires State Troopers of any rank to be classified.” Paterson refers to *State Troopers Fraternal Association v. State of New Jersey*, 115 *N.J. Super.* 53 (Ch. Div. 1971), *aff’d* 119 *N.J. Super.* 375 (App. Div. 1972), *aff’d* 62 *N.J.* 302 (1973), in which the court found that it was “satisfied beyond

¹See <https://ecode360.com/8548359> and <https://www.patersonnj.gov/department/#:~:text=The%20City20of%20Paterson%20Municipal%2DD%20Mayor%2DCouncil%20Form>).

² At the outset, it is noted that in matters of this nature, the burden of proof is on the appellant. See *N.J.A.C. 4A:2-1.4(c)*. In other words, the onus is not on the Commission to perfect an appellant’s appeal or request. Furthermore, Paterson has not provided any explanation as to why it did not present this argument in its initial request. Moreover, as more fully discussed below, this matter is directly governed by other statutory provisions and not by Civil Service law and rules.

any doubt that the Legislature in 1921 intended the members of the State Police to be in in the unclassified service.” See 62 *N.J.* at 304. Paterson maintains that “none of State Police ranks are filled by competitive examinations, not from rank-and-file State Troopers up to the Chief of Staff or even the Superintendent/Colonel him or herself; all positions are unclassified – regardless of whether there is a specific statute that requires this result.” Next, Paterson refers to *N.J.A.C.* 4A:3-1.3 and argues that “a police chief leading a department in a municipality having a population in excess of 150,000 citizens holds a *per se*, executive leadership position” and that “a police chief also is inherently managerial under the New Jersey Employer-Employee Relations Act (NJEERA). See *N.J.S.A.* 34:13A-3(d), (f), (g) . . .” Paterson contends:

It is a fundamental principle that managerial roles have no inherent job protection, and if a manager is not performing properly, they can and should be summarily removed for the health of the municipality as well as the employees and citizens for whom they serve. This principle is consistent with the Commission’s own regulations as *N.J.A.C.* 4A:1-1.3 explains: ‘Unclassified service’ means those position and job titles outside of the senior executive service, not subject to the tenure protections of Title 11A, New Jersey Statutes or these rules . . .’ Accordingly, the Commission’s own regulations support the fact that Paterson must be permitted to select the individual who would best service its police force and the needs of its community rather than be hamstrung by the competitive process.

Paterson reiterates its arguments regarding *Newark Superior Officers Association v. Newark*, [*supra*,] for the proposition that its request “is supported by precedential case law.” Paterson refers to *In the Matter of Edward Santiago* (CSC, decided August 13, 2014) and presents that “the Commission has permitted the City of Plainfield, which has a Mayor-Council form of government, to demote its police chief to police captain . . . Plainfield’s ordinances for its Department of Public Affairs and Safety (Police) now reflect that it has a public safety director and no longer has a police chief title³ – an extreme measure . . . Paterson does not seek to employ such a drastic measure to solve the issues with its police department.” Paterson argues that “finding sufficient cause to remove an underperforming police chief, considering generally the need for progressive discipline to make the case hold and recognizing that Paterson would have the burden of proof, and, also appreciating that any municipality only has forty-five (45) days to establish a disciplinary case under Title 40A (*i.e.*, *N.J.S.A.* 40A:14-147), is almost an impossible task.” Paterson further argues that *N.J.S.A.* 40:69A-60.7 offers advantages to cities of the first class including “a wider choice of individuals to select as its next chief” who “does not have to come from the City’s ranks which can pose a problem associated with bias and friendships that make policy implementation and deployment a challenge.” Finally, Paterson

³ As discussed in *In the Matter of Edward Santiago, supra*, Plainfield reorganized its police department in which the position of Police Chief was eliminated and a civilian Director of Public Affairs and Safety was appointed. As a result, Santiago, who was serving as Police Chief, was demoted in lieu of layoff to the title of Police Captain.

notes that “on or about March 27, 2023, New Jersey Attorney General (AG), Matthew J. Platkin, the State’s highest law enforcement officer . . . announced that his Office was taking over the day-to-day operations of the Paterson Police Department . . . Notably, the AG did not select a superior officer from within the Paterson Police Department to lead it. Instead, the AG immediately turned to outside, seasoned law enforcement professionals to lead the Department which is exactly what Paterson is seeking to do by way of this [request].”

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case and the reasons that such evidence was not presented during the original proceeding.

In the present matter, Paterson has failed to meet the standard for reconsideration. Paterson does not present new evidence or additional information which was not presented at the original proceeding which would change the outcome of the original decision, nor has Paterson proven that a clear material error has occurred in the original decision. Accordingly, based on the record presented, Paterson has failed to support its burden of proof in this matter.

At the outset, it is noted that Paterson does not contend that the Commission in its original decision either misinterpreted the provisions of *N.J.S.A.* 40:69A-60.7 or the court’s determination in *Newark Superior Officers Association v. Newark, supra*. Rather, it now asserts, in essence, that the Commission may circumvent or contravene statutory law and “precedential case law” utilizing the “Commission’s own regulations.” In other words, Paterson is asserting that the Commission may ignore the plain language of *N.J.S.A.* 40:69A-60.7 and grant its request on other grounds. As such, the Commission is perplexed as to how Paterson can submit these arguments in good faith.

In this regard, it is noted that the Legislature has entrusted the Commission with broad power to supervise all aspects of the civil service selection process. *See, e.g., N.J.S.A.* 11A:2-11; *Bor. of Park Ridge v. Salimone*, 21 *N.J.* 28, 48 (1956). In addition, the Commission has been given great flexibility by the Legislature to ensure that our civil service laws are administered to achieve their primary purpose to promote efficient service in government through appointments based on merit and fitness. *N.J. Const.*, Art. VII, sec. 1, par. 2; *Avalon v. Dept. of Civil Service*, 32 *N.J. Super.* 39, 43 (App. Div. 1954). In addition, as Paterson notes, *N.J.A.C.* 4A:1-1.2(c) provides, in part, that “the Commission may relax these rules [*i.e.*, Title 4A of the New Jersey Administrative Code,] for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.” However, the request presented by Paterson is directly governed by *N.J.S.A.* 40:69A-60.7. In this regard, the Commission has not been granted the power

or authority to modify or contravene established law (*N.J.S.A. 40:69A-60.7*) or “precedential case law” (*Newark Superior Officers Association v. Newark, supra*). In other words, *N.J.S.A. 40:69A-60.7* and *Newark Superior Officers Association v. Newark, supra*, preempt any argument Paterson has presented pursuant to Civil Service law and rules.

As extensively discussed in the Commission’s original decision, the Legislature enacted *N.J.S.A. 40:69A-60.7* to permit cities of the first class which adopted a Mayor-Council Plan C form of government to appoint a Police Chief in the unclassified service. Furthermore, as also discussed, the court in *Newark Superior Officers Association v. Newark, supra*, upheld the validity and scope of *N.J.S.A. 40:69A-60.7*. Moreover, as noted above, the Commission cannot relax statutory provisions. The Commission further emphasizes that the Legislature has not subsequently amended the scope of *N.J.S.A. 40:69A-60.7* to permit **any** city of the first class, as Paterson contends, to appoint a Police Chief in the unclassified service. Thus, Paterson’s initial request was not denied “simply because it was a Plan D rather than a Plan C municipality.” Rather, the Legislature has specifically limited the appointment of a Police Chief in the unclassified service to those cities of the first class which adopted a Mayor-Council Plan C form of government.

With regard to Paterson’s reference to the New Jersey State Police, it is not clear from the record as to why Paterson determined that a comparison between its municipal police department, which is governed by *N.J.S.A. 40A:14-118, et seq.* and whose officers are hired and promoted pursuant to Civil Service rules and laws, and a State agency, which is governed by *N.J.S.A. 53:1-1, et seq.* and whose officers are **not** hired and promoted pursuant to Civil Service rules and laws, would support its position. In addition, as unambiguously stated by the court in *State Troopers Fraternal Association v. State of New Jersey, supra*:

It is evident that the structure of the State Police force does not fit within the concept of the Civil Service Act. The officers and men are not subject to any position classification plan approved and published by the Civil Service Commission. There are no provisions for the establishment of employment lists, the testing of applicants, or the filling of vacancies in higher positions under the aegis of the Civil Service Commission. The unique nature of the Division is well described in the case of *In re Bernaducci*, 85 *N.J. Super.* 152 (App. Div. 1964) . . . The care taken to assure civil service rights for civilian employees [of the State Police] emphasizes the deliberate Legislative purpose not to do so in the case of State Police personnel. *See* 115 *N.J. Super.* 53 at 510-511.

Even assuming, *arguendo*, that controlling law did not exist, Paterson’s comparison would clearly be misplaced.

Similarly, the issue of whether “a police chief also is inherently managerial,” is immaterial in the present matter. Paraphrasing the court’s determination above,

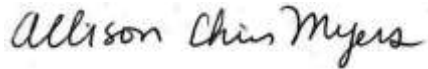
given that the Legislature carved out a specific exemption for Police Chiefs in cities of the first class which adopted a Mayor-Council Plan C form of government emphasizes the deliberate Legislative purpose not to do so in the case of any city or any city of the first class. Moreover, as noted above, the Legislature has not subsequently amended *N.J.S.A. 40:69A-60.7* or enacted any other provision to permit any city of the first class or any city to appoint a Police Chief in the unclassified service.

ORDER

Therefore, it is ordered that this request be denied.

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 1ST DAY OF NOVEMBER, 2023



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Aymen A. Aboushi, Esq.
Kathleen Long
Division of Agency Services
Records Center