



**STATE OF NEW JERSEY**

In the Matter of Unclassified  
Employees, Motor Vehicle  
Commission, State Parole Board, and  
Department of State

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

CSC Docket Nos. 2024-2063, *et al.*

Request for Interim  
Noncompetitive Appointments

**ISSUED: May 1, 2024 (ABR)**

The New Jersey Governor’s Office of Employee Relations (GOER) and the Communications Workers of America (CWA) request that various titles be placed in the noncompetitive division of the career service on an interim basis in order to permanently appoint 20 individuals within the Motor Vehicle Commission (MVC), State Parole Board (SPB), and the Department of State (DOS). The petitioners also request a relaxation of *N.J.A.C. 4A:6-1.2(a)* to permit the affected employees to retain any unused vacation time newly credited to them at the beginning of calendar year 2024 and utilize any such unused vacation leave through December 31, 2025. Since these requests address similar issues, they have been consolidated herein.

By way of background, the Legislature passed the Workplace Democracy Enhancement Act (WDEA), *P.L. 2018, c. 15* (codified as *N.J.S.A. 34:13A-5.11, et seq.*), which had an effective date of May 18, 2018. The enactment of the WDEA included the following mandate:

All regular full-time and part-time employees of the public employer who perform negotiations unit work shall be included in the negotiations unit represented by the exclusive representative employee organization.

*N.J.S.A. 34:13A-5.15(5)(a)*. Thereafter, GOER and CWA reviewed the status of thousands of previously non-aligned employees in employee relations groups V, W, X, and Y to determine whether it would be appropriate to include these employees in CWA negotiations units A, P, R, and S. They also reviewed the titles assigned to

employee relations groups V, W, X, and Y to determine which titles would be appropriate to move to the CWA negotiations units. GOER and CWA agreed that certain titles could not be moved into the CWA negotiations units for various reasons. However, they also determined that certain unclassified employees in such titles (attached), based on their job duties, would need to have their titles converted to existing A, P, R, and S titles and have furnished statements from their appointing authorities attesting that these employees have been performing duties consistent with the proposed titles and satisfy the knowledge, skills, and qualifications for the proposed titles.

GOER and CWA assert that interim noncompetitive designations are necessary to implement the requirements of the WDEA. The A, P, R, and S titles at issue are currently allocated to the competitive division of the career service. GOER and CWA proffer that if unclassified employees with no underlying career service titles/statuses are moved to the subject A, P, R, and S negotiations units without first being placed into interim noncompetitive designations, they would be appointed to competitive titles provisionally, pending an open competitive examination, meaning that they could be vulnerable to displacement.

In addition, GOER and CWA ask that, should the Civil Service Commission (Commission) grant the within request, following its approval of conversion to the career service, affected employees be permitted to continue using their remaining vacation time credited at the beginning of the 2024 calendar year. However, the parties state that at the beginning of the 2025 calendar year, the affected employees would receive the annual vacation allotment in accordance with *N.J.S.A. 11A:6-2* and *N.J.A.C. 4A:6-1.2*. Moreover, each affected employee would be permitted to carry over unused vacation time from 2024, not to exceed the annual allotment permitted by the statute.

Upon its review, the Division of Agency Services (Agency Services) notes that there is no indication that the provisions of the WDEA require the movement of affected employees to titles allocated to the career service. Agency Services further states that the Commission does not need to take any action to effectuate the appointments of two of the employees on the attached list as their respective targeted titles of Geographic Information Systems Specialist 2 and Education Program Development Specialist 2 are already assigned to the noncompetitive division of the career service.

It is noted that an initial joint request from GOER and CWA for covered employees in the Office of Information Technology and the Board of Public Utilities was granted by the Commission in March 2023 and provided that other State appointing authorities could similarly make a single request to allocate titles to the noncompetitive division of the career service on an interim basis in response to the WDEA. *See In the Matter of Unclassified Employees, Office of Information Technology*

and Board of Public Utilities (CSC, decided March 15, 2023). As set forth above, the current request includes employees at the MVC, SPB, and DOS.

## CONCLUSION

*N.J.A.C.* 4A:3-1.2(c) provides that a job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Commission that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job;
2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems, and working conditions; or
3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

*N.J.A.C.* 4A:3-1.2(d) indicates that appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

*N.J.A.C.* 4A:3-1.2(g) states that if a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

*N.J.A.C.* 4A:3-3.5(a) provides that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Chairperson or designee, shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

*N.J.A.C.* 4A:3-3.5(b) states that an appointing authority may request a classification review by the Chairperson or designee in a manner and form as determined by the Chairperson or designee. Such review may be initiated by the Chairperson or designee. An employee or union representative may request a classification review in accordance with *N.J.A.C.* 4A:3-3.9.

*N.J.S.A.* 11A:6-2 indicates that vacation leave for full-time State employees in the career and senior executive service shall be at least:

- a. Up to one year of service, one working day for each month of service;
- b. After one year and up to five years of continuous service, 12 working days;
- c. After five years and up to 12 years of continuous service, 15 working days;
- d. After 12 years and up to 20 years of continuous service, 20 working days;
- e. Over 20 years of continuous service, 25 working days;
- f. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken by an employee in the career and senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining; and
- g. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken by an employee in the unclassified service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining. Nothing in this subsection shall affect any rights to vacation leave which is subject to collective negotiation or collective bargaining.

*N.J.A.C. 4A:6-1.2(a)* states, in relevant part, that full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service.

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.
2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one working day for each month of service. Thereafter, employees shall receive paid vacation leave as follows:
  - i. From the beginning of the first full calendar year of employment and up to five years of continuous service, 12 working days;
  - ii. After five years of continuous service and up to 12 years of continuous service, 15 working days;
  - iii. After 12 years of continuous service and up to 20 years of continuous service, 20 working days;
  - iv. Over 20 years of continuous service, 25 working days.
3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.
  - i. When there is a change in the calendar year in which the years of service requirement is met, due to an employee's leave without pay, the employee shall be liable for any increased vacation leave that was not earned.
4. Vacation leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

In the instant matter, GOER and CWA have identified certain employees in unclassified positions who they maintain that, based upon their job duties, should have their positions reclassified to existing titles in the A, P, R, and S bargaining units. Ordinarily, such action would be properly effectuated through the initiation of

a classification review in accordance with *N.J.A.C. 4A:3-3.5* or *N.J.A.C. 4A:3-3.9*. However, as set forth in detail in *In the Matter of Unclassified Employees, Office of Information Technology and Board of Public Utilities, supra*, the Commission found good cause to relax the criteria outlined in *N.J.A.C. 4A:3-1.2(c)* and permit the reallocation of certain titles to the noncompetitive division of the career service within those agencies and noted that each State appointing authority could make a single request to allocate titles to the noncompetitive division of the career service on an interim basis, for one pay period, in response to the WDEA. Accordingly, in this matter, the Commission similarly finds good cause to relax the criteria outlined in *N.J.A.C. 4A:3-1.2(c)* in order to allocate the subject competitive titles to the noncompetitive division of the career service on an interim basis, for one pay period, in order to effectuate the appointment of the 18 named employees into the appropriate titles. However, the Commission notes that because the titles of Geographic Information Systems Specialist 2 and Educational Program Development Specialist 2 are already allocated to the noncompetitive division, no interim noncompetitive designation is needed to effectuate the appointments of the two named employees to those titles.

In addition, as previously observed, the Commission notes there are likely similarly-affected unclassified employees in other State appointing authorities who should be accorded similar equitable relief. As such, GOER, in collaboration with other State appointing authorities and negotiations representatives, may present similar rule relaxation requests for similarly-affected unclassified employees. However, the Commission reiterates that it will only entertain one such request per affected State appointing authority.<sup>1</sup> Further, the Commission emphasizes that, except as noted above, the foregoing remedies are limited to the unique circumstances of this case and do not provide a precedent in any other matter. Finally, MVC, SPB and DOS are cautioned that, for future title changes for employees stemming from the implementation of the WDEA, they must utilize the classification review process provided under *N.J.A.C. 4A:3-3.9* or other appropriate employee appointment/movement procedures provided under Title 4A, Chapter 4 of the New Jersey Administrative Code.

As to GOER's and CWA's joint request regarding vacation leave allotment for the affected employees at issue, *N.J.A.C. 4A:1-1.2(c)* provides that a rule may be relaxed for good cause shown in a particular situation in order to effectuate the purposes of Title 11A, New Jersey Statutes. The Commission observes that in certain circumstances, its predecessor, the Merit System Board, and the Commissioner of Personnel have relaxed the applicable vacation leave rules to permit unclassified employees to retain vacation leave when their positions were reallocated to the career service. *See e.g., In the Matter of Department of Higher Education Employees* (MSB,

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<sup>1</sup> In so doing, the Commission anticipates that State appointing authorities will avoid prospective appointments of employees to unclassified positions that would be contrary to *N.J.S.A. 34:13A-5.15(5)(a)*.

decided May 25, 1993) and *In the Matter of Lydia Wang and Robert Kasinow* (Commissioner of Personnel, decided November 5, 1997). Further, the Commission recognizes that a mid-year change to vacation leave benefit entitlement could cause challenges for the appointing authorities and employees impacted by this decision. Under the circumstances, the Commission finds good cause to relax the provisions of *N.J.A.C.* 4A:6-1.2 and permit the 20 employees covered by this decision to continue using any remaining vacation time credited to them at the beginning of the 2024 calendar year through December 31, 2025. The Commission underscores that *N.J.S.A.* 11A:6-2 provides the *minimum* allotment of vacation leave for full-time State employees in the career and senior executive service, and as such, statutory provisions are not being relaxed. However, these employees shall receive annual vacation allotments for 2025 and subsequent years in accordance with *N.J.A.C.* 4A:6-1.2(a).

### ORDER

Therefore, it is ordered that the requests be granted and the specified competitive titles within the Motor Vehicle Commission, State Parole Board, and the Department of State be reallocated to the noncompetitive division of the career service on an interim basis, for one pay period, in order to effectuate the appointments of the named employees into the appropriate titles. Moreover, it is ordered that such actions be effective the first pay period following the Commission's approval. Upon successful completion of a current working test period, these employees shall attain permanent status in their respective career service titles.

It is further ordered that the 20 employees covered by this decision be permitted to retain any unused vacation time newly credited to them at the beginning of calendar year 2024 and utilize any such unused vacation leave through December 31, 2025. In so doing, the Commission further orders that vacation leave benefits for these employees for calendar year 2025 and future calendar years be calculated in accordance with *N.J.A.C.* 4A:6-1.2(a).

Finally, the remedies provided herein are limited to the facts of this case and may not be used as precedent in any other matter.

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 MAY, 2024

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

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and  
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Attachment

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Division of Agency Services  
Division of Human Resource Information Services  
Records Center



Employee	Title	New Title	Appointing Authority
Hayes, Robert V	Government Rep. 1 (55512, X98)	Contract Administrator 1 (51254, P22)	SP8
Fortunato, Deborah S.	Government Rep. 1 (55512, X98)	Paralegal/Technician 1 (30461, A17)	SP8
Martsey, Ashley D.	Government Rep. 2 (55013, X98)	Program Specialist 2 (64483, P21)	SP8
Bibb, Gwendolyn V	Government Rep. 1 (55512, X98)	Senior Management Assistant (56493, P21)	MVC
Connolly, William J	Government Rep. 1 (55512, X98)	Principal Public Information Assistant (54454, P24)	MVC
Gilchrist, Daveon	Legal Specialist (37156, X98)	Regulatory Officer 2 (56751, P29)	MVC
Marks, Ashley	Public Information Officer (54457, X30)	Senior Public Information Assistant (54453, P21)	MVC
Renda, Kelli	Secretary to the Commissioner (24514, X98)	Executive Assistant 4 (59918, R32)	MVC
Youk, Elizabeth	Secretary to the Commissioner (24514, X98)	Executive Assistant 3 (59917, P29)	DOS
Barnes, Naomi	Government Rep. 2 (55013, X98)	*Geographic Information Systems Specialist 2 (03163, P25)	DOS
Flythe, Lisa	Government Rep. 2 (55013, X98)	Grants Specialist (50730, P27)	DOS
Funelas, Vincent	Government Rep. 2 (55013, X98)	*Education Program Development Specialist 2 (70341, P28)	DOS
Greitz, Susan	Public Information Officer (54457, X30)	Principal Public Information Assistant (54454, P24)	DOS
Kelleher-Sgro, Kerry	Government Rep. 3 (54460, X98)	Administrative Analyst 3 (50075, P26)	DOS
Kipnis, Eric	Government Rep. 2 (55013, X98)	Program Specialist 3 (64485, R26)	DOS
Lorenc, Marc	Government Rep. 1 (55512, X98)	Senior Research Associate New Jersey Historical Commission (74254, P26)	DOS
Martinez, Anthony	Government Rep. 2 (55013, X98)	Business Development Representative 2 (55614, P24)	DOS
Milgrom, Stephen	Government Rep. 2 (55013, X98)	Economic Development Representative 1 (55565, R30)	DOS
Pressey, Myles	Government Rep. 2 (55013, X98)	Economic Development Representative 2 (55503, P27)	DOS
Williams, Noelle	Government Rep. 2 (55013, X98)	Senior Research Associate New Jersey Historical Commission (74254, P26)	DOS

\*Titles are already NC.