



STATE OF NEW JERSEY

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

In the Matter of Police Chief,
Paterson

CSC Docket No. 2023-2167

Court Remand

ISSUED: July 3, 2024

The Superior Court of New Jersey, Appellate Division, has remanded the decision of the Civil Service Commission (Commission) in *In the Matter of Police Chief, Paterson* (CSC, decided February 22, 2023), *aff'd on reconsideration* (CSC, decided November 1, 2023) for further consideration. The Court did not retain jurisdiction.

By way of background, in its initial request, Paterson referred to *N.J.S.A. 40:69A-60.7* and *Newark Superior Officers Association v. Newark*, 98 *N.J.* 212 (1985), for the proposition that “any City of the First Class” may appoint a Police Chief in the unclassified service as “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 . . .” In its February 22, 2023, decision, the Commission indicated that the issue 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 *N.J.A.C. 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 did not determine that *N.J.S.A. 40:69A-60.7* would apply to any city of the first class but rather, the court found that it applies to municipalities that are or “may in the future become first class cities operating under the ‘Mayor-Council Plan C’ form of government.” Given this, 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 government and as a result, its reliance on *N.J.S.A. 40:69A-60.7* was misplaced. As such, 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 argued, in part, that “the Commission still has the legal authority to make any position unclassified under other authority” namely, *N.J.S.A.* 11A:3-5 and *N.J.A.C.* 4A:3-1.3(a). Paterson opined that it was entitled to have an unclassified Police Chief “given the totality of the circumstances” and argued that, pursuant 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), the Commission may relax rules for good cause. In addition, Paterson referred to *N.J.A.C.* 4A:3-1.3 and maintained 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” Paterson concluded that “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.”

The Commission determined that Paterson had failed to meet the standard for reconsideration pursuant to *N.J.A.C.* 4A:2-1.6(b). The Commission noted that 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. The Commission again emphasized that it cannot relax statutory provisions. The Commission further emphasized 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. 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. Furthermore, 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 previously, 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.

Thereafter, Paterson pursued an appeal with the Appellate Division. During the pendency of this matter in the Appellate Division, the issue arose as to whether the Commission has the independent authority, pursuant to *N.J.S.A.* 11A:3-5 and *N.J.A.C.* 4A:3-1.3, to permit the appointment of an unclassified Police Chief in Paterson notwithstanding *N.J.S.A.* 40:69A-60.7 and *Newark Superior Officers Association v. Newark, supra*. As such, the Appellate Division remanded the matter to the Commission for further review. Accordingly, the Commission will now examine whether the provisions of Title 11A, New Jersey Statutes, and Title 4A, New Jersey Administrative Code, would permit the Police Chief title in Paterson to be reallocated

to the unclassified service despite the existence of *N.J.S.A.* 40:69A-60.7 and *Newark Superior Officers Association v. Newark, supra*.

CONCLUSION

The Commission will first consider, independently of *N.J.S.A.* 40:69A-60.7 and *Newark Superior Officers Association v. Newark, supra*, whether the request to reallocate the Police Chief title in Paterson meets the criteria pursuant to *N.J.S.A.* 11A:3-5 and *N.J.A.C.* 4A:3-1.3. At the outset, it is noted that our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981). As noted by the court in *Connors v. Bayonne*, 36 *N.J. Super.* 390 (App. Div. 1955), the New Jersey Legislature adopted the Civil Service Act "primarily . . . to remove employment in the classified service from political control, partisanship and personal favoritism, and to maintain stability and continuity in ordinary public employment." *Id.* at 396.

N.J.S.A. 11A:3-5 provides various titles that are statutorily placed into the unclassified service. It further allows for placement in the unclassified service of "[a]ny title as provided by statute or as the Civil Service Commission may determine in accordance with criteria established by rule." *N.J.S.A.* 11A:3-5(u).

N.J.A.C. 4A:3-1.1(a) provides, in pertinent part, that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service as provided in *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3 (Unclassified service), in turn, provides:

(a) A job title shall be allocated by the Civil Service Commission to the unclassified service when:

1. In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
2. In local service, the title is so designated under *N.J.S.A.* 11A:3-5;
3. The title is designated unclassified by another specific statute;
4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
5. The Civil Service Commission determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person

whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates subject only to the legislative power of the governing body and applicable statutes.

- (c) In local service, a principal executive officer, for purposes of unclassified appointments under *N.J.S.A.* 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the Civil Service Commission.
- (d) In State service, a principal executive officer, for purposes of unclassified appointments under *N.J.S.A.* 11A:3-4(h), is one who is appointed by the Governor with the advice and consent of the Senate.

As indicated above, a title is deemed to be allocated to the career service, unless it is specifically allocated to the unclassified service by *N.J.S.A.* 11A:3-5, by another statute, or by the Commission in accordance with the criteria set forth in *N.J.A.C.* 4A:3-1.3. Clearly, the title of Police Chief is not specifically designated as unclassified by *N.J.S.A.* 11A:3-5. However, *N.J.S.A.* 11A:3-5 provides, in pertinent part, “The political subdivision unclassified service shall not be subject to the provisions of this title unless otherwise specified and shall include the following . . . h. Principal executive officers . . . u. Any title as provided by statute or as the Civil Service Commission may determine in accordance with criteria established by rule . . .”

As a preliminary matter, it is reiterated that the parameters for reclassifying the Police Chief title are expressly provided for by *N.J.S.A.* 40:69A-60.7, not *N.J.S.A.* 11A:3-5. As thoroughly explained in the Commission’s prior decisions, Paterson does not meet the standard for reclassification under that statute. Paterson nonetheless asserts that the Commission may still reclassify the title “in accordance with criteria established by rule.” *N.J.S.A.* 11A:3-5(u). The Commission rejects this argument.

The Commission interprets the relevant provisions of *N.J.S.A.* 11A:3-5(u), as creating two mutually exclusive categories of titles that may be reclassified: titles that may be reclassified as provided by separate statutes and titles that may be reclassified in accordance with the Commission’s rules. When the parameters for reclassification of a specific title are established by a separate statute and those parameters are not met, the Commission does not interpret its enabling statute as granting it authority to nevertheless allow for reclassification of that **same title**. In other words, when the Legislature has enacted a separate statute that establishes reclassification criteria, as it has for Police Chief, the Commission cannot reallocate that same title under the general authority of Title 11A of the New Jersey Statutes or Title 4A of the New Jersey Administrative Code. Therefore, because Paterson does not meet the parameters for reclassification of its Police Chief under *N.J.S.A.* 40:69A-60.7, the Commission does not have authority to reclassify the title based on the criteria set forth in its regulations. To interpret *N.J.S.A.* 11A:3-5(u) differently would

create a conflict between, Title 11A, the Commission’s enabling statute and *N.J.S.A.* 40:69A-60.7. Furthermore, the Administrative Procedure Act, *see N.J.S.A.* 52:14B-1 to -15, defines an administrative rule, in pertinent part, as an “agency statement of general applicability and continuing effect that implements or interprets law or policy.” *See N.J.S.A.* 52:14B-2. Accordingly, agency rules are designed to interpret or supplement but not contravene existing law. To determine otherwise would result in a conflict between statutory schemes as the Commission would be empowered to reallocate any title to the unclassified service despite existing law that would provide otherwise. Additionally, as noted by the court in *State v. Cagno*, 409 *N.J. Super.* 552, 600 (App. Div. 2009), “[i]t is a settled canon of statutory construction that ‘where there is any conflict between a general and specific statute covering a subject in a more minute and definite way the latter will prevail over the former.’ *In re Mun. Court of the Borough of E. Newark*, 390 *N.J. Super.* 513, 519, 915 A.2d 1116 (Law Div.2006) (quoting *Ackley v. Norcross*, 122 *N.J.L.* 569, 6 A.2d 721 (Sup.Ct.1 939), *aff’d* 124 *N.J.L.* 133, 11 A.2d 106 (E. & A.1940)).” Here, *N.J.S.A.* 40:69A-60.7 specifically governs the reclassification of Police Chiefs, compared to *N.J.S.A.* 11A:3-5(u), which provides general criteria for reclassifying any title. Thus, to the extent there is a conflict between the statutes, *N.J.S.A.* 40:69A-60.7 must prevail here.

Nonetheless, even if the Commission did have independent authority to reclassify the title, which it does not, the Police Chief title in Paterson does not meet the criteria for reclassification under *N.J.A.C.* 4A:3-1.3. First, the title of Police Chief in Paterson should not be unclassified as a “principal executive officer” pursuant to *N.J.S.A.* 11A:3-5h. *N.J.A.C.* 4A:3-1.3(c) defines a principal executive officer (in local service) as “a managerial title which is *independent of other executive authority*, and is established by statute or designated by the Civil Service Commission” (emphasis added). It is noted that generally, in New Jersey municipalities, a Police Chief is not a “principal executive officer.” *See City of East Orange v. New Jersey State Department of Personnel*, Docket No. A-2968-91T5 (App. Div. February 16, 1993). In this regard, the controlling statute, *N.J.S.A.* 40A:14-118, provides that a Police Chief is “directly responsible to the appropriate authority for the efficiency and routine day to day operations” of the police department, and further provides that his or her duties are to be discharged “pursuant to policies established by the appropriate authority.” With respect to “appropriate authority,” *N.J.S.A.* 40A:14-118 provides:

As used in this section, ‘appropriate authority’ means the mayor, manager, or such other appropriate executive or administrative officer, such as a full-time director of public safety, or the governing body or any designated committee or member thereof, or any municipal board or commission established by ordinance for such purposes, as shall be provided by ordinance in a manner consistent with the degree of separation of executive and administrative powers from the legislative powers provided for in the charter or form of government either adopted by the municipality or under which the governing body operates.

This is reflected in Paterson’s available ordinances, *i.e.*, the 1979 Revised General Ordinances of the City of Paterson,¹ which indicates, in §5-74, that the Department of Public Safety, which is headed by the Public Safety Director, consists of certain divisions and agencies, including the Police Division.² Section 5-75 provides that “the Public Safety Director, under the supervision of the Mayor, shall . . . (2) Supervise the Police Chief, Fire Chief, and Director of the Office of Emergency Management, who shall be directly responsible to the Public Safety Director for the efficiency and routine day-to-day operations of the police and fire rank-and-file . . . (5) Determine policy and direction for the Police Division, Fire Division and Office of Emergency Management.” Thus, in the instant matter, the record demonstrates that the position of Police Chief in Paterson does not meet the definition of “principal executive officer.”

Turning to *N.J.A.C.* 4A:3-1(a)3, although there is a specific statutory authority that designates Police Chief as unclassified under certain conditions, as thoroughly discussed by the Commission in its previous decisions and as mentioned above, Paterson does not meet the criteria pursuant to *N.J.S.A.* 40:69A-60.7. With respect to *N.J.A.C.* 4A:3-1(a)4, there is no statute providing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority.

The next issue is whether the Police Chief in Paterson is an unclassified department head pursuant to *N.J.A.C.* 4A:3-1.3(b). In this regard, *N.J.A.C.* 4A:1-1.3 defines “department” in local service, “where not otherwise defined by statute, means the largest type of organization unit established by ordinance or resolution, as appropriate, that is not a sub-unit of any other organization unit for the purpose of administering the political subdivision.” It is noted that pursuant to Paterson’s available ordinances, *supra*, in §5-4, “the City government shall, in addition to the elected City Council and the Mayor, be comprised of the following offices, departments, divisions and agencies . . . B. Departments: (1) Department of Administration[;] (2) Department of Finance[;] (3) Department of Economic Development[;] (4) Department of Health and Human Services[;] (5) Department of Law[;] (6) Department of Public Works[;] (7) Department of Public Safety[; and] (8) Department of Community Development.” As noted previously, the Division of Police falls under the Department of Public Safety. Furthermore, as noted above, *N.J.A.C.* 4A:3-1.3(b) defines a department head in a municipality as a person “whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates **subject only** to the legislative power of the governing body and applicable statutes.” (emphasis added). Under §5-6, Appointment, term and removal of department heads,

¹ See <https://ecode360.com/PA1437>.

² As also indicated on Paterson’s website, “The mission of the Public Safety Department is to protect and serve residents of Paterson through the work of four divisions: Police Division[;] Fire Division[;] Office of Emergency Management[; and] Animal Control.” See <https://www.patersonnj.gov/department/index.php?structureid=127>.

“Each department shall be headed by a director, who shall be appointed by the Mayor with the advice and consent of the Council.”; and in §5-7, Powers and duties of department heads, “The head of a department, subject to the charter, ordinances of the City and the direction and supervision of the Mayor, shall:

- A. Prescribe the internal organization of the work of his department, including, with the approval of the Mayor, the establishment of such divisions and bureaus as may be required for the proper conduct of said work, and make, alter and enforce individual work assignments.
- B. Appoint his subordinate officers and employees within his department and may, with the approval of the Mayor, remove such officers and employees subject to the provisions of the Revised Statutes, Title 11A, Civil Service, or other general laws.
- C. Approve or disapprove payrolls, bills and claims chargeable to the departmental appropriations.
- D. Maintain such records of work performance and unit costs thereof as may be approved or required by the Business Administrator.
- E. Provide such information and reports on the work of the department as may from time to time be required by the Mayor.
- F. Exercise such other or different powers of administrative supervision and direction as the Mayor may delegate to him.

As such, the Police Chief is under the direction and supervision of the Public Safety Director, who is under the authority of the Mayor. Hence, the Police Chief in Paterson does not meet the definition of “department head” according to *N.J.A.C. 4A:3-1.3(b)*.

The remaining criteria to be discussed is the practicability of testing for the Police Chief title. *N.J.S.A. 11A:1-2a* declares that it is the public policy of this State to select and advance employees on the basis of their relative knowledge, skills and abilities. In other words, pursuant to *N.J.A.C. 4A:3-1(a)5*, the issue is whether the Police Chief title requires the possession of knowledge, skills and the exercise of duties and functions so unique that “merit and fitness” for the position cannot be ascertained through a competitive examination process. It is noted that the job analysis for the Police Chief title identifies knowledge, skills and abilities that may be evaluated utilizing the competitive examination process. Specifically, as noted in the 2024 Senior Police Orientation Guide, under the section, “Exam Development”:³

³ As indicated in the “Introduction” section of the Orientation Guide, “The New Jersey Civil Service Commission (CSC) has prepared this supplemental orientation guide for promotional candidates who will participate in the June 2024 Senior-Level Police oral exams (Police Chief, Deputy Police Chief, and Police Inspector).”

A job analysis was conducted to identify the knowledge, skills and abilities that are necessary to perform the duties of a Police Chief, Deputy Police Chief, and Police Inspector. A job analysis is the process of critically examining the Knowledge, Skills and Abilities (KSAs) required to perform successfully on the job. As part of this job analysis, staff from the [Commission] visited various police departments throughout the state. They gathered information about on-the-job activities by interviewing and surveying incumbent (permanent) Police Chiefs, Deputy Police Chiefs, and Police Inspectors. Based on this job analysis, several work components were identified. Each exam has been developed around the work components found to be most critical to the specific title. The work components include:

Criminal Law
 Police Management
 Police Administration
 Personnel Problem Solving
 Police Personnel Management (Leadership/Supervision)
 Community Policing
 Court Decisions and Case Law

In addition, it is noted that Police Subject Matter Experts (SMEs) are available to the Commission in developing test items, reviewing test materials and assessing candidates' performances on a test in order to evaluate candidates for Police Chief. For many years, the title of Police Chief has been successfully tested utilizing an oral examination consisting of questions that are, as indicated in the Orientation Guide, "scenario-based, where candidates are placed in a job-related situation and asked how they should best respond to it (e.g., disciplinary problems, crime prevention, police/community relations, organizational change, etc.). Justification for correct responses will be based on the collective experience of Police Subject Matter Experts. For these questions, candidates will have to apply their technical knowledge and knowledge of administrative and supervisory principles." Accordingly, there is no indication that the Police Chief title cannot be practicably tested for nor did Paterson provide in its initial request or in its request for reconsideration any evidence to suggest otherwise.

Given this, none of the criteria pursuant to *N.J.S.A.* 11A:3-5 and *N.J.A.C.* 4A:3-1.3 to permit the reallocation of the Police Chief title in Paterson to the unclassified service have been met in the present matter.

However, Paterson maintains that the Commission may relax the provisions of *N.J.A.C.* 4A:3-1.3 pursuant to *N.J.A.C.* 4A:1-1.2(c) which provides, "These rules shall be considered the means by which the statutory purposes of the civil service system are carried out. The Civil Service Commission may relax these rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the

purposes of Title 11A, New Jersey Statutes.” Notably, Paterson’s “good cause” arguments are predominantly based on *N.J.S.A. 40:69A-60.7* and *Newark Superior Officers Association v. Newark, supra*. In this regard, for example, Paterson asserts that it is “similarly situated” to Newark and Jersey City in that “all three are very populous, diverse, and have exceptionally large police departments.” Although Paterson meets the definition of a city of the first class pursuant to *N.J.S.A. 40A:6-4*, it does not substantiate its argument.⁴ As noted in the concurring opinion in *Newark Superior Officers Association v. Newark, supra*, “the opinion recognizes that it is the combination of ‘diverse populations and volatile situations’ reflected in a ‘history of tension of social problems’ that goes into the legislative judgment. (citation omitted) Not every municipality that grows in population may exhibit the same characteristics. It will be time enough to judge whether such a municipality must be included in the class when we have the case.” (citation omitted) Paterson also opines that unlike these municipalities, it does not have the “freedom to select a Police Chief of their choosing without the limitations imposed by the competitive process and the Rule of Three” and that “if a *classified* police chief is not performing or up to the task of moving the public safety of the City and the operations of its police department forward, Paterson’s only option (right now) is to attempt to remove the chief for cause as provided in *N.J.A.C. 4A:2-2.1 et seq.* Admittedly, this is a daunting challenge . . .” Paterson presents mere speculation in this regard without providing any evidence to support its contentions.⁵ Regardless, Paterson’s “good cause” arguments have no bearing in the instant matter before the Commission. As discussed in the

⁴ In this regard, it is noted that U.S. Census Bureau data indicates that as of April 1, 2020, the population of Paterson was 159,732, see <https://www.census.gov/quickfacts/fact/table/patersoncitynewjersey,US/AFN120217>, whereas the population of Newark was 311,549 and Jersey City had a population of 292,449. See <https://www.census.gov/quickfacts/fact/table/patersoncitynewjersey,US/AFN120217>; <https://www.census.gov/quickfacts/fact/table/newarkcitynewjersey,essexcountynewjersey,NJ/LFE041219>; and <https://www.census.gov/quickfacts/fact/table/jerseycitycitynewjersey,US/PST045223>. Thus, per U.S. Census Bureau data for 2020, Paterson has only slightly more than half the population of Newark and slightly below 55% of the population of Jersey City. With regard to their respective police departments, as noted in a recent March 2024 news article, for every 10,000 residents, Paterson has 26.55 officers whereas Newark has 33.34 officers and Jersey City has 30.63 officers. As further noted in the article, “Among New Jersey’s large urban centers plagued by high crime, only Elizabeth – with 24.8 officers per 10,000 residents – has fewer cops per capita than Paterson.” See <https://www.northjersey.com/story/news/paterson-press/2024/03/25/paterson-police-department-size-lags-officers-nj-per-capita/73071174007/#:~:text=The%20Silk%20City%20has%2026.55,so%20disparate%20at%20first%20glance.> See also, <https://www.aol.com/many-cops-paterson-per-capita-081813218.html>.

⁵ In this regard, it is noted that a review of available employment records finds that in the preceding 25 years, there is no evidence of any Paterson Police Chief who had either been removed for cause or was disciplined. However, it is noted that on March 27, 2023, Attorney General Matthew J. Platkin announced that his Office would be “superseding the Paterson Police Department, and assuming control of all police functions” and Isa Abbassi was assigned to “become the Officer-in-Charge of the Paterson Police Department in May [2023].” See <https://www.njoag.gov/attorney-general-platkin-assumes-control-of-paterson-police-department/>. Moreover, the court in *Newark Superior Officers Association v. Newark, supra*, noted that the purpose of *N.J.S.A. 40:69A-60.7* was “to provide for a police chief’s greater cooperation with and accountability to the administration of cities of the first class,” *id.* at 224, and not how quickly the city administration may remove a Police Chief.

Commission's previous decisions, Paterson's request is directly governed by *N.J.S.A.* 40:69A-60.7.

In this regard, as noted above, a title may only be allocated to the unclassified service if it is specifically allocated by *N.J.S.A.* 11A:3-5, by another statute, or by the Commission in accordance with the criteria set forth in *N.J.A.C.* 4A:3-1.3. Here, because, as noted above, the reclassification of the Police Chief Title is governed by a separate statute, the Commission cannot relax its rules to allow for reclassification of that title. This again, would create a conflict between Title 11A, Chapter 4A, and *N.J.S.A.* 40:69A-60.7. Accordingly, the Commission cannot relax its regulations so as to contravene a statute.

Moreover, as previously discussed in the Commission's initial decision, the court in *Newark Superior Officers Association v. Newark*, *supra*, 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" (emphasis added). *Id.* at 231. Paterson argues that "when *N.J.S.A.* 40:69A-60.7 was created to give Plan C municipalities the ability to have an unclassified police chief, the Legislature simultaneously repealed nearly all of the statutes in Mayor-Council Plan B, C, D, E, and F forms of government, although it grandfathered those entities that were already created . . . All of these statutory changes went into effect in January 1982 – over forty (40) years ago . . . Thus, the Commission's independent decision on whether Paterson's police chief should be unclassified should not be hung up on whether it is a Plan C or Plan D municipality, but on the practicality and totality of the circumstances when compared to other municipalities of similar ilk (*i.e.*, Newark and Jersey City) which have unclassified police chiefs." However, the matter in *Newark Superior Officers Association v. Newark*, *supra*, was decided in 1985, well after the Faulkner Act had been amended. Yet the court did not find that "any" city of the first class could appoint an unclassified Police Chief but rather, upheld the criteria that only a city of the first class operating under the Mayor-Council Plan C form of government could appoint an unclassified Police Chief.

In essence, Paterson is requesting that the Commission relax the provisions of *N.J.S.A.* 40:69A-60.7 and circumvent the court's holding in *Newark Superior Officers Association v. Newark*, *supra*. However, the Commission emphasizes again that it does not have the authority to relax statutory provisions nor can it circumvent "precedential case law." Therefore, unless Paterson can successfully petition the Legislature to amend *N.J.S.A.* 40:69A-60.7 or the courts to determine that *N.J.S.A.* 40:69A-60.7 should apply to Paterson,⁶ there is no remedy that the Commission can provide in this matter.

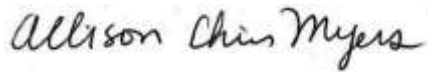
⁶ It is noted that the court in *Newark Superior Officers Association v. Newark*, *supra*, in applying the three-part test, pursuant to *Vreeland v. Byrne*, 72 *N.J.* 292 (1977), to determine whether *N.J.S.A.* 40:69A-60.7 was special legislation, found, in part, that there was no municipality that was excluded that should be included, *i.e.*, there was no other municipality beside Newark and Jersey City who met the criteria at that time. *Id.* at 223 to 224.

ORDER

The Commission finds that it does not possess the independent authority, pursuant to *N.J.S.A.* 11A:3-5 and *N.J.A.C.* 4A:3-1.3, to reallocate the Police Chief title in Paterson to the unclassified service as this matter is directly governed by *N.J.S.A.* 40:69A-60.7 which the Commission does not have the jurisdiction to relax.

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 3RD DAY OF JULY, 2024



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