



STATE OF NEW JERSEY

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

In the Matter of David Thummel,  
Department of the Treasury

CSC Docket No. 2017-3083

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Classification Appeal

ISSUED: JUL 19 2017 (RE)

David Thummel appeals the attached decision of the Division of Agency Services (DAS) which found that his position with the Department of the Treasury is properly classified as Auditor 1, Taxation. He seeks a Supervising Auditor, Taxation job classification in this proceeding.

By way of background, Mr. Thummel received a regular appointment to the title Auditor 1, Taxation on September 20, 2014 in accordance with *In the Matter of David Thummel* (CSC, decided February 4, 2015). This position is located in the Division of Taxation, Audit Activity, Inheritance and Estate Tax, Team 1, reports to a Chief Audit Activity Treasury, and has supervisory responsibilities over two Auditors 2, Taxation and three Auditors 3, Taxation. DAS performed a detailed analysis of the appellant's Position Classification Questionnaire (PCQ) and other materials submitted, and determined that his position was properly classified as Auditor 1, Taxation.

On appeal to the Civil Service Commission (Commission), the appellant argues that Auditors 1, Taxation have not been required to supervise during his employment, and that a Supervising Auditor, Taxation is a first-level supervisor. He states that the language in the job specifications does not support the supervisory levels as discussed by DAS, and that some Supervising Auditors, Taxation do not supervise an Auditor 1, Taxation, as evidenced by the organizational charts he submitted. Further, the appellant argues that in *Thummel, supra*, the Commission found that his assistant supervisory duties of audit activities were sufficient for an Auditor 1, Taxation classification, and therefore, the primary-level supervisor is not required to supervise personnel. He

maintains that the Employee Relations Group (ERG) and the Civil Service<sup>1</sup> do not define "a higher level supervisor or primary-level supervisor," but merely classify titles. He provides bargaining unit definitions for "job specification" and "position description" and states that these are the proper means for determining job titles. He states that job specifications are the defining criteria for determining the current job title and level of supervision, and argues that secondary-level and primary-level supervisors are not defined, and therefore cannot be used in determining the classification of a position.

Rather, the appellant contends that the job specification defines the level of supervision, and the Supervising Auditor, Taxation job specification has no language requiring the supervision of Auditors 1, Taxation. He argues that bargaining units merely combine groups of employees whose activities are closely related and whose conditions of work are governed by a single element of activity for purposes of wages, union rights, and hours of work. The appellant contends that the Commission has redefined a desk audit as the study of duties and responsibilities of a position within a bargaining unit, and maintains that the Commission has changed from classifying positions based on the job specification to classifying them based on bargaining units. The appellant cites *In the Matter of Luz Rodriguez-Ghaul, Department of Labor and Workforce Development* (CSC, decided December 16, 2015) as an example of the Commission relying on the definition of the title on the job specification rather than the bargaining unit. The appellant argues that "the statute" (not provided) states that job titles are determined based on job specifications, and that if a primary-level supervisor is an assistant supervisor pursuant to *Thummel*, then a secondary level supervisor is a Supervising Auditor, Taxation. In short, he asserts that the ERG classifies job titles, but does not define them, and maintains that many other appointments to positions within the Division of Taxation would be considered misclassified as the incumbents did not appropriately supervise when approved for upward reclassification by the Commission. He contends that 100% of his duties and responsibilities involve supervising a group of auditors, and therefore his position should be reclassified.

## CONCLUSION

The definition section of the job specification for Auditor 1, Taxation states:

Under direction of a Supervising Auditor, Taxation in the Division of Taxation, Department of Treasury, assists in supervising the field or office auditing work and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related work as required.

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<sup>1</sup> Actually the Office of the Governor.

The definition section of the job specification for Supervising Auditor, Taxation states:

Under general direction of a Chief Auditor, or other supervisory official in the Division of Taxation, Department of the Treasury, plans, supervises, and coordinates the work of audit personnel engaged in field audits or office audits and/or examining and verifying of accounts and records, both internal and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related work as required.

In the instant matter, DAS found that the appellant's position was properly classified as an Auditor 1, Taxation on the basis that he is not performing the duties of a second-level supervisor, *i.e.*, he is not supervising a primary-level supervisor. The appellant's argument that the Commission has changed from classifying positions based on the job specification to classifying them based on bargaining units is misplaced. Rather, because of numerous position classification challenges, it became necessary for this agency to consider the legality of having supervisory and non-supervisory incumbents classified by the same title that is included in either a primary-level or secondary-level employee relations group. Therefore, in 2015, the Commission determined that classifying employees in titles assigned to primary-level and secondary-level supervisory employee relations groups who do not have formal performance evaluations responsibility for subordinate staff members could create a conflict of interest between incumbents who are required to supervise staff serving in the same title. *See West Orange Board of Education v. Wilton 57 N.J. 417 (1971)*. In addition, it was found that a major factor in this agency's setting of the compensation levels (*i.e.*, class codes) for titles assigned to secondary-level supervisory employee relations group is that incumbents in these bargaining units all have the authority to recommend the hiring, firing, and disciplining of employees who supervise subordinate employees. Therefore, since October 2015, the Commission has upheld the classification standard that in order for a position to be classified in a title assigned the primary-level or secondary-level employee relations group, incumbents are required to be the rater of employee, or subordinate-level supervisory employee, performance using a formal performance evaluation system. *See In the Matter of Alan Handler, et al.*, (CSC, decided October 7, 2015); *In the Matter of Marc Barkowski, et al.*, (CSC, decided October 19, 2016); and *In the Matter of David Bobal, et al.*, (CSC, decided November 23, 2016).

In making classification determinations, emphasis is placed on the Definition section to distinguish one class of positions from another. The Definition portion of a job specification is a brief statement of the kind and level of work being performed in a title series and is relied on to distinguish one class from another. Nonetheless, when a title is supervisory in nature, the Commission has found that, along with

the myriad of other supervisory duties that must be performed, the essential component of supervision is the responsibility for formal performance evaluation of subordinate staff. See *In the Matter of Timothy Teel* (MSB, decided November 8, 2001).

As noted earlier, in the past, positions could be classified in titles that were in the "R" ERG if they have supervisory responsibilities, or performed work that is more complex. However, in *Handler, supra*, the Commission found that:

in order to be classified at the level of Auditor 1, an incumbent must supervise subordinate staff, including having the responsibility for performing formal performance evaluations. Merely making recommendations regarding a subordinate's performance, or even assisting in the preparation of a performance evaluation is not sufficient. Rather, to be considered a supervisor, the individual must be the person actually administering and signing off on the evaluation as the subordinate's supervisor.

With respect to secondary-level supervisory titles, in *Bobal, supra*, which also involved the Supervising Auditor, Taxation title, the Commission specifically determined:

[c]lassifying employees in the title in the "S" ERG without performance evaluation responsibility for at least one primary-level supervisor could create a conflict of interest between secondary supervisory and primary supervisory staff being represented by the same bargaining unit.

Thus, the appellant's reliance on *Thummel* is misplaced, as *Thummel* was decided February 4, 2015, prior to *Handler* on October 7, 2015 and *Bobal* on November 23, 2016.

The appellant cites *Rodriguez-Ghaul, supra*, as an example of the Commission relying on the definition of the title on the job specification rather than the bargaining unit. However, its determination was made on December 16, 2015, and the basis for a denial was clearly a lack of supervision required for the "R" ERG. Nevertheless, the definition section of the job specification of the requested title in that decision clearly required supervision. While the definition of Auditor 1, Taxation provided above is not the paragon of clarity, it is clear that the title is at the supervisory level, especially when compared to the Auditor 2, Taxation definition.<sup>2</sup> In this respect, the Commission notes that DAS should undertake an

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<sup>2</sup> The Commission recently found that Auditor 1, Taxation title, was a supervisory level title. See *In the Matter of Fred DeVoe* (CSC, decided January 18, 2017).

analysis of the Auditor 1, Taxation job specification in order to make any necessary modifications in the verbiage regarding required supervision.

That said, the Supervising Auditor, Taxation is in the "S" ERG, or is a second-level supervisory title, and it is axiomatic that an important factor to be considered for "S" ERG titles is that they must supervise the work of the next highest supervisory level employees in the title series. *See Bobal, supra*. The appellant does not do so since none of the employees under his supervision is in a supervisory level title. He supervises and assigns work to his staff of Auditors 2 and 3, Taxation, and as such, his work most closely matches the job definition for Auditor 1, Taxation. Accordingly, the record establishes that the proper classification of the appellant's title is Auditor 1, Taxation.

Moreover, the Commission is not persuaded by the appellant's arguments regarding the classification of his colleagues. The appellant's position stands on its own and is classified based on the duties he performs. The duties performed by other individuals, whether properly or improperly classified, are irrelevant in determining the proper classification of the appellant's position. Regardless, as evidenced by *Thummel, supra*, the classification standard with respect to primary and secondary level supervisory employees was not settled by the Commission until October 2015. Thus, there may be positions which were reclassified to these higher-level titles prior to October 2015. However, it cannot be ignored that the duties of a position may change over time due to such things as attrition or addition of staff members. Accordingly, when an employee requests a classification review of his and her position, it is done based on the duties currently assigned and being performed in that position and not those of other positions. Nevertheless, regardless if a position's duties have changed over time due to such things as attrition of subordinate staff or if a position was previously classified based on a different classification standard, this does not, by itself, provide a basis on which the Commission, *sua sponte*, would order a current classification review of these positions utilizing a new classification standard. In this regard, by way of comparison, if a title is reevaluated for compensation purposes to a lower class code, the incumbent's base salary is retained, or, if above the maximum for the lower class code, is red-circled until the maximum step of the lower range is increased to a level at or above the employee's base salary. *See N.J.A.C. 4A:3-4.11(a)*. Stated differently, Civil Service rules generally hold position incumbents harmless when the standards that set the level of position compensation and/or classification had to be revised over time based on this agency's review.

Civil service rules only permit an employee the right to appeal the classification of the position he or she currently encumbers. *See N.J.A.C. 4A:3-3.9*. Generally, the incumbent of a position and his or her supervisor, manager, and appointing authority are in the best position to attest to the duties performed in the position. Similarly, that employee is not in the best position to attest to the duties

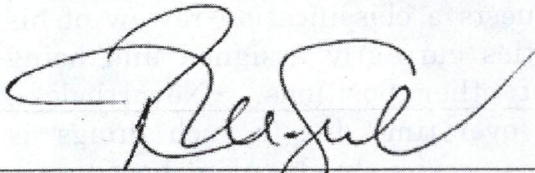
and responsibilities of another employee's position. Thus, in conjunction with the fact that the duties, responsibilities, reporting relationships, and classification standards may change over time, position classification reviews cannot simply be triggered based on a co-worker's speculation of the duties assigned to a position he or she does not encumber. While there may be a situation where the Commission could order such a review of other positions, for the reasons stated earlier, it is not warranted in this matter. However, the Department of the Treasury is directed to ensure that **any** employee in the titles of Auditor 1, Taxation and Supervising Auditor, Taxation are currently assigned appropriate supervisory duties as described above.

### ORDER

Therefore, the position of David Thummel is properly classified as an Auditor 1, Taxation.

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  
THE 13<sup>th</sup> DAY OF JULY, 2017




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Robert M. Czech, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Enclosure

c: David Thummel  
Douglas Ianni  
Kelly Glenn  
Records Center



Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
AGENCY SERVICES  
P.O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair Chief Executive Officer

March 16, 2017

Mr. David Thummel  
3526 Shelmire Avenue  
Philadelphia, PA 19136

**RE: Classification Appeal - Auditor 1, Taxation**  
AS Log# 12160013, Position# [REDACTED] EID# [REDACTED]

Dear Mr. Thummel:

This is to inform you, and the Department of the Treasury, of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information and documentation submitted.

**Issue:**

You are appealing your current title of Auditor 1, Taxation (R271- 50817) is not consistent with your current assigned duties and responsibilities. You contend that the title Supervising Auditor, Taxation (S30- 50819) is consistent with the duties that you currently perform.

**Organization:**

Your position is located in the Division of Taxation, Audit Activity, Inheritance & Estate Tax, Team 1. You report directly to Michael Rosen, Chief Audit Activity Treasury (&33- 61060) and have supervisory responsibility for the following; two (2) positions of Auditor 2, Taxation and three (3) positions of Auditor 3, Taxation.

**Finding of Fact:**

The primary responsibilities of your position include, but are not limited to the following:

- Performing the PAR review for two (2) Auditor 2, Taxation positions and three (3) Auditor 3, Taxation positions; monitoring and evaluating team members' performance to ensure they meet established PAR standards.
- Reviewing Inheritance and Estate Tax team's audits for accuracy in accordance with the New Jersey Administrative Code.
- Assigning work to Auditors of lower grade; providing training when necessary; preparing team monthly report for management; educating team members on workplace policies, rules, procedures, and standards.
- Interacts with executors, administrators, and representatives of estates who filed Inheritance and Estate Tax Returns.

**Review and Analysis:**

Your position is currently classified by the title Auditor 1, Taxation (R27-50817). The definition section of the job specification for this title states:

“Under direction of a Supervising Auditor, Taxation, in the Division of Taxation, Department of Treasury, assists in supervising the field or office auditing work and/ or examining and verifying of accounts and records, both internally and of taxpayer, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related work as required.”

You contend that the title Supervising Auditor, Taxation (S30-50819) is an appropriate title for your position. The definition section of the job specification for this title states:

“Under general direction of a Chief Auditor, or other supervisory official in the Division of Taxation, Department of the Treasury, plans, supervises, and coordinates the work of audit personnel engaged in field audits or office audits and/ or examining and verifying of accounts and record, both internal and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related work as required.”

The title Supervising Auditor, Taxation (S30- 50819) is included in the “S” Employee Relations Group, which is comprised of titles responsible for secondary level supervision. As such, incumbents of those titles are responsible for preparing and signing Performance Assessment Reviews (PARs) in the evaluation of first level supervisors. A review of your position finds that it does not possess the supervisory responsibility associated with titles in the “S” Employee Relations Group, and therefore, the title Supervising Auditor, Taxation is not appropriate for your position.



Mr. David Thummel

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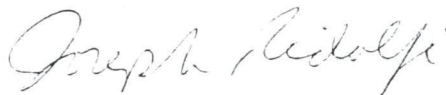
The assigned duties and responsibilities of your position are significantly descriptive and commensurate with tasks assigned to the title Auditor 1, Taxation.

**Determination:**

Based upon the finding above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current title of Auditor 1, Taxation (R27-50817). Therefore, the classification of your position will remain unchanged.

Please be advised that in accordance with N.J.A.C. 4A:3-3.9, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, PO Box 312, Trenton New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Joseph Ridolfi, Team Leader  
Agency Services

JR/io

C: Laura Budzinski, Treasury, Human Resources

10/16/2017

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Based upon the information provided, the following information is provided for your information and is not intended to constitute an offer of insurance or any other financial product. It is provided for informational purposes only.

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