



B-51

STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Job Banding for Software Development Specialist 1 and 2, and Network Administrator 1 and 2, Office of Information Technology

CSC Docket No. 2016-938

Request for Stay

ISSUED: (CSM) OCT 08 2015

The Communications Workers of America (CWA), represented by Annmarie Pinarksi, Esq., petitions the Civil Service Commission (Commission) for a stay of the Commission's decision rendered on July 29, 2015 assigning the Software Development Specialist 1, OIT, Software Development Specialist 2, OIT, Network Administrator 1, OIT, and Network Administrator 2, OIT titles to job bands.

By way of background, the Office of Information Technology (OIT) developed a job banding proposal for the subject titles that ties advancement to relevant demonstrated skill and competencies. Accordingly, it proposed modified job specifications to the Division of Agency Services (Agency Services) for the subject titles that included band summaries, tasks associated with each band level, competencies associated with each band level and minimum requirements. Agency Services evaluated the relative knowledge, skills and abilities as set forth in the job specifications and determined that movement to a higher level within the band can be accomplished outside of traditional examination procedures while satisfying the mandate that appointments and promotions be based on merit and fitness. However, in order to implement the banding of these titles at OIT, it would be necessary to create an OIT specific variant for the subject titles and to convert the 28 employees serving provisionally, pending promotional examination procedures in the titles, to interim appointments. The OIT provided notice to the CWA that it had requested job specification modifications for the subject titles and Agency Services notified the CWA that it was updating the subject job specifications and that it was requesting N.J.A.C. 4A:4-1.6 be relaxed in order to permit interim appointments. Thereafter, since the proposed request was in compliance with N.J.A.C. 4A:3-3.2A(b), the Commission assigned the subject titles to job bands in the

determination *In the Matter of Job Banding for Software Development Specialist 1 and 2, and Network Administrator 1 and 2, Office of Information Technology (CSC, decided July 29, 2015)* (copy attached).

In its request dated August 27, 2015, the CWA presents that by letter dated July 28, 2015, it filed its opposition with the Commission to the banding request for the subject titles. In support, it attaches a copy of its submission dated July 28, 2015 which argues that since June 2013, the New Jersey Legislature has passed resolutions that provided clear notice that job banding is invalid, notwithstanding minor amendments made to the rules by the Commission, and is contrary to the New Jersey Constitution and the Civil Service Act. Therefore, the CWA argued that the Commission could not implement any request for job banding as the Legislature declared it null and void. Further, even if valid, the CWA asserts that it is unnecessary to band the subject titles given that 136 incumbents are currently occupying the titles, which demonstrates that OIT has had no difficulty promoting individuals to higher titles. Additionally, the petitioner asserts that it engaged in discussions with Commission staff in 2014 regarding a selective certification process for the subject titles. However, after it forwarded minor edits to a proposal for this project in September 2014, this agency never responded and, on July 20, 2015, the CWA received the job banding proposal from OIT. Therefore, the CWA requested that the Commission postpone its consideration of banding the subject title in order to afford it the opportunity to develop a complete record.

It is noted that the petitioner's August 27, 2015 request for a stay indicated that it wanted to be advised by August 31, 2015 if the Commission would stay its decision in this matter. By letter dated September 2, 2015, staff from the Commission's Division of Appeals and Regulatory Affairs (DARA) advised the CWA that its request was under review and a response would be provided after a thorough review of the submission it had provided. Subsequently, by letter dated September 15, 2015, DARA advised the petitioner that it needed to address the factors pursuant to *N.J.A.C. 4A:2-1.2(c)* for consideration in evaluating its request for a stay and to submit any argument and documentation by no later than the close of business on Tuesday, September 22, 2015. Although advised of the factors that needed to be addressed to consider its petition for a stay, the petitioner did not provide any additional argument or documentation for the Commission to review.

It is further noted that the July 28, 2015 attachment to the petitioner's August 27, 2015 petition for stay was received on July 29, 2015, *after* the Commission rendered its decision establishing the subject job banding program.

CONCLUSION

The following factors are provided by *N.J.A.C. 4A:2-1.2(c)* in evaluating petitions for stay or interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

N.J.A.C. 11A:3-1 states that the Commission shall assign and reassign titles among the career service, senior executive service and unclassified service. In this role, the Commission shall:

- a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions;
- b. Establish, consolidate and abolish titles;
- c. Ensure the grouping in a single title of positions with similar qualifications, authority and responsibility;
- d. Assign and reassign titles to appropriate positions; and
- e. Provide a specification for each title.

In accordance with this statutory authority, *N.J.A.C.* 4A:3-3.3(a)3 specifies that the Chairperson shall modify specifications for existing titles, series, or job bands, as the case may be, to ensure their accuracy. In order to carry out this mandate, it is necessary for this agency to rely on input from impacted appointing authorities to ensure that any modification to a job specification will provide the most effective use of human resources to carry out the duties the Legislature has delegated to it. Thus, *N.J.A.C.* 4A:3-3.3(f)4 requires appointing authorities in State service to provide notice to affected and potentially affected negotiations representatives upon submission of job specification modification requests to ensure that all potentially impacted parties are apprised of the potential modifications. However, while *N.J.A.C.* 4A:3-3.3(f)4 requires notice to affected and potentially affected negotiations representative, it does not indicate that written comments may be submitted for consideration by this party prior to the making of a determination if the job specification modifications should be implemented. This is consistent with the broad authority granted by the Legislature solely to the Commission when it mandated that it administer, amend, continuously review, and provide a specification for each title. The only required information is that which is provided by an appointing authority regarding the duties of the position it wishes the Commission consider for such things as title creation or job specification modification. Indeed, had it been intended that the Commission consider written comments prior to modifying a job specification, similar to *N.J.A.C.* 4A:3-1.2(e) (the

rule governing reallocation of competitive titles to the non-competitive division), the rules requiring notice to the affected bargaining unit would have specified that written comments may be considered. However, this is specifically not the case as it pertains to either job specification modification requests by an appointing authority or any change in the State classification plan. *See N.J.A.C. 4A:3-3.3(a)4*. Thus, even assuming the Commission received the petitioner's arguments opposing job banding the subject titles well before making its determination, there is no requirement in Civil Service law or rule mandating that they be considered prior to taking action on the job specification modification request.

Nevertheless, a stay is not warranted. Initially, although specifically provided the opportunity to address the factors specified in *N.J.A.C. 4A:2-1.2(c)* concerning its request for a stay, the petitioner did not provide any additional argument or documentation for the Commission to consider. Rather, the petitioner apparently relied on its July 28, 2015 submission that argued that the program was null and void based on the Legislature's passing of several resolutions, that many OIT employees in the subject titles were subjected to traditional examination methods utilized by this agency in the past, and that the CWA and staff from this agency were working together attempting to develop another examination method that included the use of selective certifications. Based on these arguments, it appears that the CWA takes the position that it will succeed on the merits of its appeal to the Appellate Division because of the Legislature's resolutions declaring that the job banding regulation (*N.J.A.C. 4A:3-3.2A*) is contrary to legislative intent.

The petitioner has not demonstrated a clear likelihood of success on the merits as the job banding regulations are consistent with the obligations of this agency as mandated by the he New Jersey Constitution, Article VII, sec. 1, par. 2, which provides that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to *merit and fitness* to be ascertained *as far as practicable* by examination, which, as far as practicable, *shall be competitive*; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law (emphasis added).

The constitutional requirement to make appointments based on merit and fitness in competitive examinations, as far as practicable, has never imposed a mandate on this agency to conduct traditional "assembled" examinations, such as a multiple-choice test, for every promotional opportunity available in public service. Indeed, *N.J.S.A. 11A:4-1* specifically provides for a number of examination methodologies, such as written, oral, performance and evaluation of education and experience. As

noted in the Office of Legislative Services' (OLS) Audit Report for the period of July 1, 2012 to May 31, 2014, in Fiscal Year 2013, 3,100 non-public safety title eligible lists were produced by this agency in accordance with the testing methodologies authorized by the Legislature in *N.J.S.A. 11A:4-1*.¹ However, as observed by OLS, 73% (2,263) of those eligible lists were generated solely as a result of an evaluation of education and experience and only 22% were conducted utilizing the traditional, or "assembled" methodology. Moreover, as is often the case, if the pool of eligibles satisfies the long-standing criteria for utilizing a "qualifying unassembled examination," each eligible is simply awarded the same base score and the only real distinguishing factor to rank the candidates is their accumulated seniority. Thus, for many years, the majority of promotional lists that were generated have been based on an individual's title history and seniority.

As expressed by a number of appointing authorities in OLS's audit findings, even on the few occasions when the assembled examination process was utilized, the resultant lists and corresponding Civil Service law and rules required appointing authorities to hire candidates who were not best suited for the position. As such, given the fiscal constraints on this agency, it is clear that the prior long relied on solutions (*i.e.*, unassembled examinations) are not the best means to advance the constitutional requirement to make appointments based on merit and fitness or, in reality, provide a meaningful basis to distinguish if one candidate is superior to another in a competitive situation. In turn, this seriously undermines the Legislature's expressed policy when it adopted *N.J.S.A. 11A:1-2* in 1986 to select and advance employees on the basis of their relative knowledge, skills and abilities; provide public officials with appropriate appointment, supervisory and other personnel authority to execute properly their constitutional and statutory responsibilities; or encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance.

The rules set forth in *N.J.A.C. 4A:3-3.2A* satisfy the constitutional mandate to make appointments based on merit and fitness in competitive examinations as well as put into effect the declared public policy stated by the 1986 Legislature in *N.J.S.A. 11A:1-2*. First, similar to the eligibility screening process utilized in the traditional promotional announcement, all potential employees within the job band must demonstrate that they meet established requirements (competencies) in order to even be eligible to compete for advancement. However, unlike a non-banded title, the competencies established by the appointing authority and approved by this agency focus on the needs of a particular agency or division utilizing the banded title. Under the traditional promotional method, even if an assembled examination

¹ See New Jersey Legislature website, Legislative Publications, Audit Reports, Department of Labor and Workforce Development, Civil Service Commission - issued August 7, 2014. <http://www.njleg.state.nj.us/legislativepub/Auditor/620813.pdf>.

were to be conducted, due to economic realities, the same test booklet would be utilized to examine candidates in several different unit scopes or even agencies at the same time. Thus, examinations are not geared to specific duties of particular positions or postings. Rather, the test content must fairly test all candidates who meet the requirements to be eligible to take the examination. *See In the Matter of Donald Cole*, Docket No. A-5499-02T2 (App. Div. January 7, 2004). This can result in a candidate being asked questions that do not necessarily pertain to his or her position or even work unit, but are required to be on the test because another candidate in a different work unit in the same title is being tested at the same time. Unlike the traditional promotional model, the methodology used to test candidates under job banding focuses on what is needed for particular positions within a particular work unit or agency. This is clearly consistent with the legislative mandate to select and advance employees on the basis of their relative knowledge, skills and abilities and provide public officials with appropriate appointment, supervisory and other personnel authority to properly execute their constitutional and statutory responsibilities.

Job banding also requires the utilization of a selection process that is first reviewed and approved by this agency. *See N.J.A.C. 4A:3-3.2A(d)3*. This selection process should be based on the various testing methodologies specifically provided for in *N.J.S.A. 11A:4-1* that first must be reviewed and approved by this agency, such as written, oral, performance and evaluation of education, training and experience. Given that the job banding rules ensure that all potential applicants are notified, that the selection process is reviewed and approved by this agency, and that veterans' rights are preserved, there is no doubt that job banding satisfies the constitutional and legislative mandates placed on this agency to ensure selection and advancement is based on an evaluation of merit and fitness in a competitive situation.

Moreover, notwithstanding the current Legislature's concurrent resolutions purportedly invalidating the job banding rules, the petitioner has not demonstrated a clear likelihood of success on the merits of its appeal to the Appellate Division since, as stated earlier, the current job banding rules are consistent with constitutional mandate that promotions in the Civil Service be based on merit and fitness, by examination, that are competitive. Further, New Jersey Constitution, Article 5, Section 4, paragraph 6, states, in pertinent part:

Upon a finding that an existing or proposed rule or regulation is not consistent with legislative intent, the Legislature shall transmit this finding in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation. The agency shall have 30 days to amend or withdraw the existing or proposed rule or regulation. If the agency does not amend or withdraw the existing or proposed rule or

regulation, the Legislature may invalidate that rule or regulation, in whole or in part, or may prohibit that proposed rule or regulation, in whole or in part, from taking effect by a vote of a majority of the authorized membership of each House in favor of a concurrent resolution providing for invalidation or prohibition, as the case may be, of the rule or regulation (emphasis added).

Here, the Civil Service Commission amended. The petitioner's submission merely assumes that the Legislature's concurrent resolutions conclusively establish that the job banding regulations are inconsistent with legislative intent. However, the establishment of legislative intent must be based on what was intended by the Legislature that enacted the statute, *not* the current Legislature reviewing a regulation. Further, it must be established if a regulation is not consistent with the intent of the Legislature as expressed in the language of the statute which the rule or regulation is intended to implement. Based on these factors, it is clear that the legislative intent of the Legislature that enacted an underlying statute on which a regulation is based is a judicial function based on expressed statutory language. In this case, the petitioners merely rely on the fact that the Legislature passed resolutions declaring the regulations invalid and discount the significant amendments made by the Commission in response to the Legislature's concerns. It has offered no argument as to how the job banding regulations are inconsistent with the underlying intent of the Legislature that enacted Title 11A in 1986. Thus, it is unlikely the petitioner will prevail on the merits of this appeal.

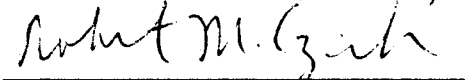
Even assuming, *arguendo*, that the job banding rules are invalidated by the court, a stay is not warranted as there is no danger of immediate or irreparable harm to any party. In this case, the interim appointees, who can be removed at any time and do not have a vested property interest in the provisional title or an automatic right or expectation of achieving permanent appointment to the position which they are occupying, will not be harmed by maintaining the interim appointments approved by the Commission to the new variant titles. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987). Further, these individuals could be tested utilizing the traditional examination methods and provided retroactive dates of permanent appointments should the petitioner be successful in its appeal to the Appellate Division. Further, N.J.A.C. 4A:3-3.2A(d) requires that employees achieve all of the competencies developed for the banded title, which are evaluated only two times a year. Thus, it is unlikely that any advancement could be made under this job banding program in the near future since it will likely take a significant period of time to ascertain whether the affected employees meet the competencies. Finally, granting a stay, in this case, would not advance the public interest since, as stated above, the job banding of these titles advances both the constitutional and legislative mandate to make appointments in public service based on relative merit in fitness through examinations that are competitive. Indeed, the public interest

has been well-served by job banding in other contexts, such as in the Judiciary, which has operated under a banding system since 1998.²

ORDER

Therefore, it is ordered that this request be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF OCTOBER, 2015



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Attachment

c: Annmarie Pinarksi, Esq.
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² The Classification and Compensation System for a Unified Judiciary, as approved by the Commissioner of Personnel Janice Mitchell Mintz, June 30, 1998. Job banding has also been successfully implemented in the Civil Service Commission and at the Department of Treasury. See *In the Matter of Job Banding for the Human Resource Consultant, Personnel and Labor Analyst, and Test Development Specialist Title Series* (CSC, decided June 4, 2014) and *In the Matter of Job Banding for the State Budget Specialist Title Series* (CSC, decided June 4, 2014).



STATE OF NEW JERSEY

In the Matter of Job Banding for	:	FINAL ADMINISTRATIVE ACTION
Software Development Specialist 1	:	OF THE
and 2, and Network Administrator 1	:	CIVIL SERVICE COMMISSION
and 2, Office of Information	:	
Technology	:	
	:	
CSC Docket No. 2016-561	:	Job Banding Request
	:	
	:	
	:	
	:	

ISSUED: **JUL 31 2015** (CSM)

The Division of Agency Services (Agency Services) requests that the Software Development Specialist 1, Software Development Specialist 2, Network Administrator 1, and Network Administrator 2 titles be approved for job banding in the Office of Information Technology in accordance with *N.J.A.C. 4A:3-3.2A(b)*.

By way of background, *In the Matter of Job Banding for Human Resource Consultant, Personnel and Labor Analyst, State Budget Specialist, and Test Development Specialist Title Series* (CSC, decided May 16, 2012), the Civil Service Commission (Commission) established a job banding pilot program for titles utilized exclusively by the Commission and the Department of the Treasury to facilitate advancement appointments of qualified employees to the next higher title level within a job band when a vacancy occurs. The pilot program, which ran from July 1, 2012 to June 30, 2013, is similar to the system that has been successfully used in the Judiciary for nearly 15 years.¹ As a result of the success of the Judiciary job banding model and the pilot program in the Executive Branch, the Commission promulgated rules to implement job banding procedures, where deemed appropriate, for titles utilized in State service. In adopting these rules, the Commission emphasized that the determination regarding the appropriateness of placing certain titles or title series in bands would be done on a case-by-case basis and proceed slowly and carefully. *See 46 N.J.R. 1342*. Therefore, in reviewing titles and title series in State service to determine whether they are appropriate for job

¹ The Classification and Compensation System for a Unified Judiciary, as approved by the Commissioner of Personnel Janice Mitchell Mintz, June 30 1998.

banding, *N.J.A.C.* 4A:3-3.2A(b)1 specifically requires that the determination be guided by whether a movement from one position to a higher level position may be achieved based on an evaluation of relative knowledge, skills and abilities (KSAs) without resorting to competitive examination procedures, while still satisfying the Constitutional and statutory mandate for merit and fitness in selection and appointments.

In the present matter, Agency Services requests that the Software Development Specialist 1, Software Development Specialist 2, Network Administrator 1, and Network Administrator 2 titles for positions only utilized in the Office of Information Technology be banded. Agency Services explains that the Office of Information Technology submitted a proposal to implement job banding for the above noted titles in order to streamline the appointment process with a more finely calibrated system which considers competencies and job performance. In its proposal, the Office of Information Technology indicated that in 2014, 281 employees participated in a voluntary, anonymous organizational climate survey. Significantly, more than half of the survey participants "strongly disagreed" or "disagreed" with the survey statement, "Civil Service rules and regulations are fair and relevant to OIT." A follow question asked, "What would you change about Civil Service rules and regulations to make them fairer and/or more relevant to OIT?" The Office of Information Technology states that the overwhelming majority of the 109 free-responses indicated:

[N]egative opinions of traditional Civil Service examination and selection procedures, with numerous suggestions calling for a more performance-based approach to selection.

With the results of this survey, as well as issues identified in a comprehensive administrative analysis and succession planning report, the Office of Information Technology developed a job banding proposal for the subject titles that ties advancement to relevant demonstrated skill and competencies. Accordingly, it proposed modified job specifications for the subject titles that include band summaries, definitions, tasks associated with each band level, competencies associated with each band level and minimum requirements.

In support of its request, Agency Services states that it has evaluated the relative KSAs as set forth in the job specifications and has determined that movement to a higher level within the band can be accomplished outside of competitive examination procedures while satisfying the mandate that appointments and promotions be based on merit and fitness. In this regard, its review of the job specifications for the varying levels within the series demonstrates that the key differences between each level relate to the complexity of work performed and the level of supervision received by the incumbent. Moreover, while written examinations may be useful to assess basic skills, such tests are less

effective at measuring the attributes and behaviors that are indicative of an employee's ability to perform more complex work under less supervision. Agency Services maintains that a direct assessment of these qualities via an evaluation of the employee's attainment of predetermined competencies and job performance is a better predictor of future performance and ability to function at a higher level within this title series. Those employees who attain the requisite predetermined competencies can then compete for higher level positions within the band when vacancies occur. Thus, the Constitutional and statutory requirement to determine relative merit and fitness for advancement, via competition, if practicable, is satisfied by job banding as it is based on the attainment of competencies and performance in the workplace. In this regard, Agency Services states that in accordance with *N.J.A.C. 4A:3-3.2A(b)* and *N.J.A.C. 4A:3-3.2A(d)3*, the Office of Information Technology's proposed competencies and advancement appointment selection process have been submitted to the Chairperson for review and approval. Therefore, given that this request is in substantial compliance with *N.J.A.C. 4A:3-3.2A(b)*, Agency Services recommends approval.

In order to implement banding of these titles at the Office of Information Technology only, Agency Services states that it is necessary to create an OIT-specific variant for the subject titles. Therefore, Agency Services has modified the subject job specifications so that positions only within the Office of Information Technology will be classified by the variant title. As soon as administratively feasible, the employees holding permanent status in the Software Development Specialist 1, Software Development Specialist 2, Network Administrator 1 and Network Administrator 2 titles will be cross-walked to the new OIT variant specific title codes. Finally, as there are currently 28 employees serving provisionally pending promotional examination procedures at the Office of Information Technology in the Software Development Specialist 2 title and 2 employees serving provisionally pending promotional examination procedures in the title of Network Administrator 2, Agency Services requests relaxation of *N.J.A.C. 4A:4-1.6(c)* so that these provisional appointments can be converted to interim appointments. Agency Services explains that while there is no closing or phasedown of a government operation, the fact that the Office of Information Technology's old classification and selection process for the subject titles will be phased out provides a basis to relax *N.J.A.C. 4A:4-1.6(c)*.

It is noted that the Office of Information Technology provided notice to the Communications Workers of America (CWA) in compliance with *N.J.A.C. 4A:3-3.3(f)* that it had requested a job specification modification of the subject titles. Additionally, Agency Services notified the CWA that it intended to update the job specifications for the variant specific titles requested. Finally, Agency Services provided notice to the CWA that it was requesting that the provisions of *N.J.A.C. 4A:4-1.6* be relaxed in order to permit interim appointments to the Software Development Specialist 2, OIT and Network Administrator 2, OIT titles.

N.J.A.C. 4A:3-3.2A(b) states:

The Civil Service Commission shall review titles and titles series in State service to determine whether they are appropriate for job banding.

(1) This determination shall be guided by whether a movement from one position to a higher level position may be achieved based on an evaluation of relative knowledge, skills, and abilities without resorting to competitive examination procedures, while still satisfying the State Constitutional and statutory mandate for merit and fitness in selections and appointments.

(2) The Chairperson or designee shall approve a specific number of competencies for each title level that an employee must attain to advance from a lower level title to the next higher level title.

The Office of Information Technology bases its request to band the subject titles on the inability of this agency to adequately test the KSAs required by the Software Development Specialist 1, Software Development Specialist 2, Network Administrator 1, and Network Administrator 2 titles. Indeed, the technical aspects of telecommunications, programming, networking and information titles within the State Classification Plan are so complex and/or change so rapidly that it has proven extremely difficult to develop a test to measure that technical knowledge. In fact, it is clear technology has moved ahead of the State classification plan making it difficult to maintain up-to-date job specifications for programming, networking and information technology titles. As a result, the job specifications become inadequate instruments for recruitment and announcement purposes because they are written too broadly to address the position specific needs for appointing authorities and this agency cannot react quickly enough to provide appointing authorities with lists in this highly competitive and rapidly changing market. As demonstrated below, this agency simply does not have the in-house expertise to develop tests to measure the requisite skills which make it impracticable to test programming, networking, and information technology titles.

This agency has sought alternate ways of addressing the issue over the years, including contracting the examination development function to a private firm that specialized in technology based examination development. However, this has not proven to be a solution. See *In the Matter of Software Development Specialist Promotional Examinations* (MSB, decided July 27, 2005). In *In the Matter of Joyce E. James, Software Development Specialist 2 (PS7470U), Office of Information*

Technology (CSC, decided August 19, 2009) (rescinding the eligible list for Software Development Specialist 2 since it was unclear if all of the candidates had an equal opportunity to demonstrate their relative merit and fitness).

Further, this agency has struggled to provide the appointing authority with lists that contained enough candidates to fill all of its available positions. After conducting multiple examinations and generating multiple eligible lists for Software Development Specialist 2, each list was exhausted prior to the appointing authority filling all of its promotional positions. See *In the Matter of Irina Eychis, et al., Software Development Specialist 2 (PS7470U), Office of Information Technology* (CSC, decided March 10, 2010) (finding that although provisional appointee served in the title for almost ten years and failed the promotional examination three times, since all of the lists were exhausted and the appointing authority still had positions to fill, the long-term provisional appointment was appropriate).

The difficulty of this agency's ability to conduct promotional examinations for programming, networking and information technology titles was also evidenced in *In the Matter of David Baldasari, et al., Supervisor, Information Technology (PS6403U), Office of Information Technology* (CSC, decided January 19, 2011). In that matter, since Selection Services did not have a test instrument developed within one year of the November 21, 2007 closing date, the examination, as well as subsequent promotional examination for the same title that was announced in December 2009 for the same provisional appointee, was cancelled in accordance N.J.A.C. 4A:4-2.1(d).

More recently, the Commission granted Agency Services' request on behalf of the Office of Information Technology for selective certification procedures to fill positions for Software Development Specialist 2 and Software Development Specialist 3 due to the number of and varying skillsets required for each position, and the rapid evolution on information technology. The Commission agreed that it would be impractical to expect that examination content development could maintain pace with the changes that can be expected to occur within the 32 skillsets." See *In the Matter of Software Development Specialist 2 and Software Development Specialist 3* (CSC, decided June 27, 2013). However, the assembled examinations utilized in the selective certification process reinforce the fact that this agency has difficulty testing programming, networking and information technology skill sets. Indeed, the assembled examinations that ultimately resulted in selective certification tested the general rather than the disparate technical knowledge for each symbol, as the job analysis conducted during the test development process identified 32 different programming language proficiencies required by incumbents the title series. See *In the Matter of Sangeeta Akolar, et al.* (CSC decided May 15, 2013).

Clearly, the rapid changes in information technology and the Office of Information Technology's inability to make permanent promotional appointments from lists produced by this agency, in conjunction with the survey results indicating employee concern with the examination and selection methods used by this agency, are evident in the examination record. Thus, it is obvious that it is necessary to utilize another selection methodology, which is consistent with the Constitutional mandate that promotions be made on the basis of merit and fitness.

As correctly identified by Agency Services, the job specifications for the varying levels within the subject titles demonstrate that the key differences between each level relate to the complexity of work performed and the level of supervision received by the incumbent. For example, the job specification for Software Development Specialist 1 indicates that an incumbent, under close supervision and monitoring, performs analysis, maintenance, programming and support work on modules of existing systems. Conversely, an incumbent in the Software Development Specialist 2 title indicates that an incumbent, under limited supervision, performs analysis, consulting, design, programming, maintenance, and/or support work on software for State or Local government Information Technology services. Stated differently, the only real difference between these levels is the level of complexity of the work performed.

N.J.A.C. 4A:4-1.6 provides in part that:

(b) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence;
2. Is on indefinite suspension;
3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the [Commission] on appeal; or
4. Has accepted an interim appointment.

(c) An interim appointment may be made where the position/title will be abolished at a future date pursuant to a closing or phasedown of a government operation. Such an interim appointment may be made only following official notification to the [Commission] by the applicable department head, in State service, or by the appointing authority, in local service, of the closing or phasedown.

N.J.A.C. 4A:1-1.2(c) provides that the Commission may relax rules for good cause in a particular situation in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Although the employees serving provisionally, pending promotional examination procedures as Software Development Specialist 2s and Network Administrator 2s are not holding the place of permanent employees nor will the positions be abolished at a future date pursuant to a closing or phasedown of a government operation, given that the Office of Information Technology's old classification and selection process will be phased out, good cause exists to relax the provisions of *N.J.A.C.* 4A:4-1.6 and permit those appointments to be converted to interim appointments in the variant counterparts.

Based on the above, the Commission approves the establishment of the variant titles effective immediately and finds that the Software Development Specialist 1, OIT, Software Development Specialist 2, OIT, Network Administrator 1, OIT, and Network Administrator 2, OIT titles are appropriate for job banding. Additionally, in accordance with *N.J.A.C.* 4A:3-3.2A(b)2, the Chairperson of the Commission or designee shall review and approve the competencies to be utilized to assess an employee's eligibility for advancement. Additionally, incumbents in the non-variant titles should be cross-walked to the variant titles as soon as is administratively feasible.

ORDER

Therefore, it is ordered that this request be granted and the Software Development Specialist 1, OIT, Software Development Specialist 2, OIT, Network Administrator 1, OIT, and Network Administrator 2, OIT titles shall be assigned to job bands.

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 29TH DAY OF JULY, 2015



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
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