



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Robert Weeks, North
Brunswick Township

Administrative Appeal

CSC Docket No. 2016-4557

ISSUED: AUG 18 2017 (SLD)

Robert Weeks, a part-time Plumbing Subcode Official,¹ North Brunswick Township, appeals the denial of his request for pro-rated sick and vacation leave.

By way of background, the appellant received a regular appointment (full-time) to the title of Building Inspector effective January 12, 2004. Thereafter, he also received a regular appointment (part-time) to the title of Plumbing Subcode Official effective March 31, 2005. On March 1, 2010, the appellant was laid off from his title of Building Inspector and placed on a special reemployment list for this title. However, he continued to serve part-time in the title of Plumbing Subcode Official. The appellant appealed the good faith of his layoff to the Civil Service Commission (Commission), which was settled by the parties. In *In the Matter of Robert Weeks* (CSC, decided April 6, 2011), the Commission acknowledged the settlement of the parties which, in part, increased the appellant's hours as a Plumbing Subcode Official from 22 ½ hours to 29 ½ hours per week and deemed the appellant "ineligible for health benefits."

On appeal, the appellant asserts that when he went from full-time to part-time employment in 2010, he was told by the appointing authority that any employee working under 30 hours per week was not entitled to any benefits, including no entitlement to sick or vacation leave. He notes that he was asked to

¹ The appellant received an appointment (part-time) from the special reemployment list for Building Inspector, effective January 1, 2017.

work a fifth day, increasing his hours, at which time he was informed that he would still not be entitled to any sick or vacation leave.

The appointing authority, maintains that upon the appellant's reduction from full-time to part-time, he was no longer eligible to receive benefits pursuant to its ordinance §37-1 which provides that:

Part-time employees, defined as payroll employees working regularly scheduled hours less than 30, shall not be entitled to receive any benefits, which shall include but not be limited to health, dental, major medical, hospitalization and prescription, except those mandated by State statutes.

The appointing authority maintains that such benefits also include the provision of vacation, sick and personal time and as such, no permanent part-time employee receives such benefits. Moreover, it notes that the settlement agreement specifically provides that his "benefits" would be terminated. The appointing authority indicates that the appellant was allowed to keep and use his previously earned time. With regard to its request that he work an additional day, it notes that the request was for him to temporarily work an extra day. However, the appellant is no longer needed to work the additional day and thus, his working extra hours are irrelevant. Finally, the appointing authority argues that its actions were consistent with municipal regulations, past practices and agreed upon communications, and therefore, the appellant is not entitled to any leave time.

CONCLUSION

N.J.S.A. 11A:6-3 and *N.J.A.C.* 4A:6-1.2(b) provide that after the first year of employment, full-time local employees shall be entitled to vacation leave no less than as follows:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;
2. After 10 years of service and up to 20 years of continuous service, 15 working days; and
3. After 20 years of continuous service, 20 working days.

N.J.S.A. 11A:6-5 and *N.J.A.C.* 4A:6-1.3(a)1 provide, in part, that after the first year of employment, full-time local employees shall be entitled to 15 days of sick leave. *N.J.S.A.* 11A:6-7 provides that part-time employees shall receive proportionate vacation, sick and administrative leave. *N.J.A.C.* 4A:6-1.2(e) and *N.J.A.C.* 4A:6-1.3(b) state that part-time and 10-month employees shall be entitled to a proportionate amount of paid sick and vacation leave. Further, *N.J.A.C.* 4A:1-1.3 provides that part-time employee means an employee whose regular hours of

duty are less than the regular and normal workweek for that job title or agency. It has been well established in prior decisions of the Merit System Board and the Civil Service Commission (Commission), that permanent part-time and 10-month local employees are entitled to be proportionally credited with the mandated minimum vacation and sick leave allotments. *See e.g., In the Matter of Vacation and Sick Leave Entitlement, Rockaway Township Library* (MSB, decided April 21, 2004); *In the Matter of Berkeley Township Aides Association* (CSC, decided June 21, 1983), *aff'd on reopening* (September 20, 1983).

In the instant matter, although the appointing authority asserts that its ordinance and the settlement agreement noted above prohibits the appellant from being entitled to sick and vacation leave, the Commission does not agree. The referenced ordinance specifically indicates that part-time employees shall not be entitled to receive benefits . . . except those mandated by State statutes (emphasis added). In this regard, *N.J.S.A. 11A:6-7* provides that part-time employees shall receive proportionate vacation, sick and administrative leave. Additionally, *N.J.A.C. 4A:6-1.2(e)* and *N.J.A.C. 4A:6-1.3(b)* states that part-time and 10-month employees shall be entitled to a proportionate amount of paid sick and vacation leave. With regard to the settlement, it is noted that there is nothing in the settlement that is specific to sick or vacation leave allotments. Rather, it simply references that the appellant was not "eligible for any health benefits." Accordingly, the appellant was entitled to receive a prorated amount of sick and vacation leave.

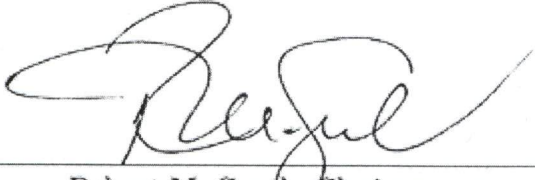
The appointing authority notes that none of its part-time employees receive a proportionate amount of sick or vacation leave. However, as noted above, those employees are entitled to the same. Therefore, as of January 1, 2017, all part-time employees employed by the appointing authority, including the appellant, shall receive the requisite proportionate amounts of sick and vacation leave.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant and all part-time employees employed by the appointing authority be provided with the proportional amount of sick and vacation leave, effective January 1, 2017.

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 16TH DAY OF AUGUST, 2017



Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Robert Weeks
Kathryn Monzo
Kelly Glenn
Records Unit