



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Newark
School District

CSC Docket No. 2018-279

Order of Compliance

ISSUED: **AUG 17** 2017 (DASV)

The Division of Agency Services (Agency Services) requests an order of compliance due to the failure of the Newark School District to record the appointments of employees.

By way of background, the Newark School District has informed Agency Services that approximately 485 individuals have been appointed in "unaffiliated titles" who have not been recorded in the County and Municipal Personnel System (CAMPS). Since the beginning of 2017, Agency Services has attempted to resolve the issue with the appointing authority and its legal representative, but it maintains that the Newark School District has failed to cooperate in these efforts.

By letter dated August 3, 2017, staff of the Division of Appeals and Regulatory Affairs (DARA) advised the appointing authority that Agency Services referred the matter of its failure to record the appointments of 485 employees to the Civil Service Commission (Commission) for an order of compliance and provided it with the opportunity to respond to this request.

In response, the appointing authority, represented by Stephen Edelstein, Esq., indicates that it has "advocated that the [Commission] follow a policy-based approach, as it has done previously, by allowing the District to maintain all unclassified positions without the need for litigation, and, in fact, to expand those positions further if needed." Thus, it urges the Commission not to issue an order of compliance at this time so that it will have the opportunity to work with Agency Services to resolve the matter.

CONCLUSION

N.J.A.C. 4A:4-1.10(a) states that “[a]ll initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified, or senior executive service are subject to the review and approval of the Chairperson [of the Commission] or designee.” It is settled that an appointment is not valid or final until it is approved by this agency. See *Thomas v. McGrath*, 145 *N.J. Super.* 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev’d based on dissent*, 75 *N.J.* 372 (1978); *Adams v. Goldner*, 79 *N.J.* 78 (1979); *In the Matter of Donald Gates* (MSB, decided June 6, 2007). Additionally, *N.J.A.C.* 4A:10-1.1(a) provides that no person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, New Jersey Administrative Code. Further, *N.J.A.C.* 4A:1-2.1 states that “[a]ppointing authorities shall provide [Commission] representatives free access to their premises and to requested records and information.” Similarly, *N.J.A.C.* 4A:10-1.1(f) provides that appointing authorities shall timely supply all information, documents and other materials requested by the Commission or an appropriate representative of the Commission for the purpose of efficiently and accurately administering the merit system. The Commission may audit State payrolls and the payrolls of political subdivisions to determine compliance with this title. The Commission may order and enforce immediate compliance as necessary. See *N.J.S.A.* 11A:3-8. This may include disapproving and ordering the payment stopped of the salary of any person employed in violation of Title 11A, New Jersey Statutes, or Title 4A, New Jersey Administrative Code. See *N.J.S.A.* 11A:10-1 and *N.J.A.C.* 4A:10-3.1.

In the present case, there is no dispute that the Newark School District operates under the provisions of the Civil Service Act, Title 11A of the New Jersey Statutes. Therefore, it is subject to Civil Service law and rules governing employee classification, selection and appointment, leaves, veterans’ preference, and layoffs. The Newark School District has informed Agency Services that approximately 485 employees have not been recorded in CAMPS and claims that this agency has allowed it “to maintain all unclassified positions without the need for litigation, and, in fact, to expand those positions further if needed.” However, regardless of whether the appointing authority desires to expand the use of unclassified titles or appoints unaffiliated, non-union represented employees, the appointments of the employees encumbering those positions must be recorded for review and approval by this agency. See *N.J.A.C.* 4A:4-1.10(a). It is noted that each position in the career and unclassified services shall be assigned by the Commission to a job title. See *N.J.A.C.* 4A:3-3.1(a). No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. See *N.J.A.C.* 4A:3-3.4. Thus, the Commission has exclusive jurisdiction to determine the proper classification of positions governed under the Civil Service Act, which necessarily includes a determination as to whether the position should be

designated in the career or unclassified service and if testing is required. The appointing authority's failure in recording appointments adversely effects the Commission's mandate.

Moreover, there is no provision in Civil Service law or rules which allows an appointing authority to refuse to allow this agency to take necessary steps to administer the Civil Service system. Rather, as set forth in the statutory provisions above, the Commission is empowered to audit payrolls of local appointing authorities and disapprove salaries of any person employed in violation of Title 11A, New Jersey Statutes, or Title 4A, New Jersey Administrative Code. See *N.J.S.A. 11A:3-8*, *N.J.S.A. 11A:10-1*, and *N.J.A.C. 4A:10-3.1*. The Commission emphasizes that accurate personnel records are essential to provide a fair and efficient human resource delivery system. Inaccurate personnel records of this magnitude cannot be ignored or tolerated. Every facet of an employee's employment is affected by the accuracy of his or her personnel records, namely, whether the employee possesses career service tenure rights, is serving in the correct title, has advancement opportunities, or is entitled to protection under Civil Service law and rules, such as having the right to appeal major discipline or a layoff. Additionally, a person on a special reemployment list may be entitled to displace an employee whose position is not recorded. To highlight the importance of having accurate personnel records, *In the Matter of Johanna Rios, Newark School District*, A-0802-15T2 (February 23, 2017), is instructive. In *Rios, supra*, the Superior Court of New Jersey, Appellate Division, reversed a Commission decision denying Rios' appeal of her title rights determination that resulted in her layoff. Rios had argued that she should not have been subjected to layoff since her title was actually a Teacher's Aide, not Community Aide. The court ordered an evidentiary hearing to determine if her title should be a Teacher's Aide or Community Aide. Thus, to not properly record an appointment of an individual in the correct title may have far reaching implications and consequences.

The appointing authority urges the Commission not to issue an order of compliance at this time. However, it is clear that the appointing authority and Agency Services have reached an impasse, and this matter cannot be resolved without Commission intervention. Based on the circumstances of this matter, negotiations are nevertheless futile when the appointing authority is in violation of *N.J.A.C. 4A:4-1.10(a)*.

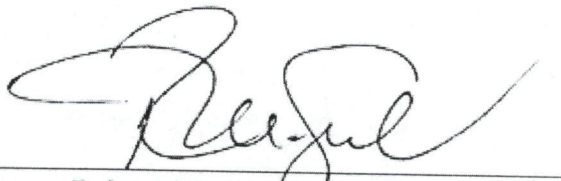
Therefore, the Commission orders that the appointing authority, within 30 days of issuance of this decision, properly record any appointments of individuals not previously recorded in CAMPS, which shall include, but not limited to, the dates of appointment, the title to which the employees are employed, and the rates of their compensation.

ORDER

Therefore, it is ordered that the Newark School District immediately record the appointments of all individuals it employs in accordance with this decision. If the appointing authority does not adhere to the 30-day timeframe for proper recording, it may be subject to fines up to a maximum of \$10,000. *See N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-2.1.* Salaries of individuals employed in violation of this decision may also be disapproved. *See N.J.S.A. 11A:10-1 and N.J.A.C. 4A:10-3.1.* Agency Services is directed to advise the Commission in the event of the appointing authority's noncompliance.

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



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