



STATE OF NEW JERSEY

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

In the Matter of Daniel Biel, *et al.*,
Carteret Borough

CSC Docket Nos. 2019-3564
2019-3332
2020-11

Classification Appeals

ISSUED: October 29, 2019 (RE)

Daniel Biel, Nathaniel Reynolds, and Brendan Rhodes appeal the decisions of the Division of Agency Services (Agency Services) which found that their positions with Carteret Borough are properly classified as Fire Lieutenant. They seek Fire Captain job classifications in these proceedings.

The appellants were regularly appointed as Fire Lieutenants on July 19, 2013. In July 2018, the appellants requested classification reviews of their positions as they believed they were working in the capacity of Fire Captain. After classification reviews of the positions, and decisions dated August 11, 2019, Agency Services determined that the proper classifications of their positions were Fire Lieutenant. Each of the appellants are supervised by the Fire Chief, and each has supervisory responsibility over several Fire Fighters.

It is noted for the record that an Active Employee Listing of the Fire Department from the County And Municipal Personnel System (CAMPS), dated December 17, 2018, indicated there were 19 employees in the title series, including one Fire Chief, seven Fire Lieutenants, and 11 Firefighters.¹ Although the Fire Captain title exists in the chain of command, there were no incumbents. After leave time is scheduled, a shift or tour often consists of three to five individuals, including one or more Fire Lieutenants. According to its website, the department is described as having one fire station and a substation, with four engines, a foam tender, one

¹ No organizational chart was provided, only a chain of command which was given to Agency Services when asked for an organizational chart.

aerial ladder truck, one department vehicle, one fire boat, and four ambulances. This department has an engine response area of four square miles, intersected by a New Jersey Turnpike overpass bridge.

In appeals by Biels, postmarked June 6, 2019, Reynolds, postmarked May 4, 2019, and Rhodes, date stamped received June 17, 2019, the appellants explain that the Fire Chief works Monday through Thursday from 7 to 4, and that tour commanders are in charge of their shifts on a rotating 24-hour basis, all year. The appellants contend that they are Incident Commanders at fire scenes without any assistance from the Fire Chief, and in so doing, may supervise higher-ranking officers from mutual aid fire companies. They state that they have the same responsibilities as the Fire Chief when he is off duty, including daily operations, shift coverages, training and documentation, and house duties. They provide the Fire Chief with information on the status of training new fire fighters, and review EMS patient charts, providing the Fire Chief with reports at his request. The appellants further argue that a Fire Lieutenant may be put in charge when the Fire Chief goes on leave, may be an Incident Commander for a multiple alarm fire, may be required to manage repairs to equipment, staff the fire boat, track personnel attendance, and is responsible for surveying ambulances daily. Rhodes argues that he has prepared performance reports for the Battalion Fire Chief,² disciplined individuals including relieving them from duty and sending them home, and forwarding formal charges. Reynolds states that he organized training on motor vehicle extrication for each shift of the volunteer division, and wrote evaluations for two new Firefighters. He submits emails from the Fire Chief which required tour commanders to ensure all run reports are complete and accurate, and to place training pages in the training books.

The appointing authority, represented by Robert Bergen, Esq., states that the appeals of Biel and Rhodes are untimely, and the tasks performed by all three appellants are consistent with Fire Lieutenant. In this regard, it states that Biel's appeal is dated June 2, 2019 and Rhodes is date stamped, apparently by this agency, on June 17, 2019. As such, the appointing authority maintains that the appeals of Biel and Rhodes be dismissed as untimely. Regarding the merits of their appeals, the appointing authority states that the appellants function directly as first level supervisors on their respective duty shift, referred to as a "tour," and they do not function on any supervisory or administrative level beyond their immediate working shift. Rather, the Fire Chief functions as the next, or second-level supervisor and general administrator for this rather small department. The Fire Chief works in the Borough five days a week, often up to, and more than, ten hours a day. He is often in the Borough on weekends for Borough events and the like, whenever a larger public presence or gathering is anticipated, and for projected, potential emergency situations, such as weather emergencies. The appointing

² The current Fire Chief is serving provisionally in that title but has underlying permanent status as a Battalion Fire Chief.

authority states that the Fire Chief regularly responds to emergent and mundane phone calls at all hours of the day or night. In contrast, the appellants work one 24-hour day followed by three 24-hour days off. Thus, they only work two days in a week, not including scheduled time off and/or sick time.

The appointing authority indicates that when two Fire Lieutenants are on the same shift, the senior Lieutenant is not the direct supervisor of the less senior Lieutenant. Rather, the senior Lieutenant on the shift functions at the discretion of the Fire Chief, as all the Fire Lieutenants could be assigned interchangeably. This ensures that there is always a first line supervisor on each daily shift. When called to an incident, one person drives an engine, one the ladder truck, and one the Fire Department vehicle, and the most senior person in the highest title would be Incident Commander at the scene. The other Fire Lieutenant(s) would perform regular firefighting duties. Nevertheless, the senior Lieutenant does not have authority to hire and fire personnel, prepare performance evaluations, or implement disciplinary actions, as those duties are performed by the Fire Chief. They may observe the conduct of Firefighters and report it to the Fire Chief so that he may implement disciplinary actions.

The appointing authority maintains that the second level supervisory position as encompassing more than one "platoon" with each "platoon" of firefighters being supervised by a Fire Lieutenant. As its Fire Department is small, the appointing authority states that it is revising its operating structure to eliminate the title of Fire Captain. It maintains that the Fire Chief has taken most of the administrative duties previously performed by Fire Captains that may have involved the exercise of some "discretionary" administrative tasks on their daily shifts. Under the current structure, the Fire Chief manages payroll, makes assignments to duty tours, sets schedules, and determines minimum staffing levels for both normal and emergency operations. Conversely, the Fire Lieutenant position records attendance or hours, and makes phone calls from a pre-established list to fill an assigned slot on a given shift when a temporary vacancy occurs. The Fire Chief is the officer who interfaces with the Borough administration on budgeting and other administrative matters, including disciplinary, contractual and policy matters, who most regularly coordinates with outside agencies, and who determines and directs needed equipment purchases and repairs. He reviews and evaluates the work and performance of all department employees, and gives directions and orders to rectify any deficiencies. As to recommending the hiring of employees, the appointing authority asserts that the Fire Chief asked the appellants for a comprehensive review of the training given to two new Firefighters, but they did not approve the hiring of these employees.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

N.J.S.A. 11A:3-1(c), states that the Commission shall ensure the grouping in a single title of positions with similar qualifications, authority and responsibility.

The definition section of the job specification for Fire Lieutenant states:

Under direction of a Fire Captain, has charge of a fire department company or platoon intended to assist in the extinguishing of fires.

The definition section of the job specification for Fire Captain states:

Under direction, has charge of a fire department company intended to assist in the extinguishing of fires; does other related duties.

Initially, it is noted that the Agency Services' determinations in these matters were dated April 11, 2019. Biel's and Reynold's appeals were postmarked on June 6, 2019 and May 4, 2019, and Rhodes appeal is date stamped as received June 17, 2019. *N.J.A.C.* 4A:3-3.9(e) states, in pertinent part, that appeals from the decision of the Commission representative to the Civil Service Commission shall be submitted in writing within 20 days of receipt of the decision letter.

With regard to time limits, it is noted that unlike appeals of adverse actions specified in *N.J.S.A.* 11A: 2-15, there are no jurisdictional statutory time limit within which an appellant is required to appeal a classification determination. As noted above, a classification appeal shall be submitted within 20 days of receipt of the determination letter. *N.J.A.C.* 4A:1-1.2(e) provides that a rule may be relaxed for good cause. The record does not indicate any basis to extend or to relax the timeframe to accept Biel's and Rhodes' appeals. In this regard, neither appellant has provided the Commission with any information to consider whether the delay in asserting their appeal rights were reasonable and excusable. Thus, the appeals of Beil and Rhodes are dismissed as untimely.

Reynolds argues that being the highest level supervisor on tour establishes that the position is a second level supervisor. He also contends that the Fire Lieutenants fill in for the regular supervisor, the Fire Chief, in his absence. However, final decision-making authority over an incident is not the sole breadth and scope of supervisory duties for purposes of command fire officer position

classification. Supervision includes responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed, and make employee evaluations based on their own judgment. They have the authority to recommend hiring, firing, and disciplining employees. *See In the Matter of Julie Petix* (MSB, decided January 12, 2005). *See also, In the Matter of Susan Simon and William Gardiner* (Commissioner of Personnel, decided September 10, 1997). In this regard, the Commission has determined that the *essential component* of supervision is the responsibility for the administration of performance evaluations for subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 16, 2001). Since the appellants do not have the responsibility for the preparation of performance evaluations for the other Fire Lieutenants, “supervision” of Fire Lieutenants in a tour is not considered formal supervision for the purposes of position classification.

The appellants are not performing necessary and daily supervisory duties with respect to the other Fire Lieutenants. Moreover, the overwhelming majority of the duties performed on tour fall within the Fire Lieutenant job specification. Finally, the Commission does not necessarily find it inappropriate to have two Fire Lieutenants on the same shift, with one considered as “in charge,” so long as the duties performed by both fall predominantly within their job classification. The classification of a position is determined based on the duties and responsibilities assigned to a position at the time the request for reclassification is received by Agency Services as verified by audit or other formal study. The outcome of position classification is not to provide a career path to the incumbents, but rather is to ensure that the position is classified in the most appropriate title available within the State’s classification plan. *See In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff’d on reconsideration* (MSB, decided November 22, 2005). The appellants are clearly line supervisors, and the majority of their responsibilities relate to direct supervision of Firefighters in their respective tours and are directly responsible for maintaining apparatus and equipment at the firehouse. Based on the information presented in the record, it is clear that the appellants’ positions are properly classified, and the appellants have not provided any information on appeal which would change this outcome.

Nevertheless, at this point the unique use of the title of Fire Captain needs to be addressed. This is the only title in the classification system which is used to address two supervisory positions, first level and second level. As a comparison, the Police series has Police Sergeant, Police Lieutenant, and Police Captain. The Fire series has Fire Lieutenant, Fire Captain, and Battalion Fire Chief. The Fire

Captain title has one job specification, but has been used to denote first level supervisors, on par with Fire Lieutenants, and second level supervisors which supervise Fire Lieutenants. The difference has not been a classification issue, but has depended on the use of the title in the local jurisdictions. Those jurisdictions with Fire Lieutenants may also have Fire Captains who supervise those Fire Lieutenants. Others without Fire Lieutenants have Fire Captains performing the same functions as Fire Lieutenants. In *In the Matter of Thomas Nicolette, Township of Nutley* (CSC, decided November 2, 2011), the Commission found that its jurisdiction included whether there were improper reporting relationships or misclassifications, although how the department was organized, or reorganized, was not reviewable. The appointing authority has the right to determine the organizational structure of its operation.

The Battalion Fire Chief is also a fire command supervisory title, and as noted in the definition, an incumbent in the position must supervise a group of fire companies. This would involve supervision of more than one first level supervisor as a group of fire companies would generally consist of companies from more than one station. See *In the Matter of Henry Robinson* (Commissioner of Personnel, decided November 1, 2000) (Operations Fire Captain who supervised a platoon of four companies and reports to the Deputy Fire Chief would be properly classified as Battalion Fire Chief, regardless of the fact that the appointing authority did not currently utilize the Battalion Fire Chief classification). See *In the Matter of Fire Captain, Township of South Orange Village* (Commissioner of Personnel, decided July 2, 2002) (Administrative duties can be performed at various levels of supervisory or administrative titles and although job specifications for Deputy Fire Chief, Battalion Fire Chief, and Fire Captain contain similarities, Fire Captains who do not assist the Fire Chief in the management of the entire fire department and who only supervise three Firefighters and a Fire Lieutenant did not warrant a Battalion Fire Chief classification). Thus, a jurisdiction must employ an adequate number of firefighting staff to necessitate the appropriation of higher-level supervisory duties to the appropriate level supervising title within the classification plan.

The definition in the Fire Captain title indicates that the incumbent has charge of a fire department company intended to assist in the extinguishing of fires. In this appeal, the appellant defines “company” one way, and the appointing authority defines it another way. Traditionally, a first level supervisor would supervise three firefighters on an apparatus such as an engine or a ladder truck. As the definition is written, it pertains to the first level supervisor as it does not have a reference to supervisory duties. The only distinguishing factor between the definitions is in that the Fire Lieutenant is supervised by a Fire Captain. In Carteret, the Fire Lieutenants are supervised by a Fire Chief, as it has no Battalion Fire Chief, and declines to use the title of Fire Captain. Indeed, its current organizational structure does not require it to utilize Fire Captain as a second level

supervisory title. If it did, the structure would require that the Fire Captain supervise at least a company of at least one Fire Lieutenant and three Firefighters on a tour. Carteret does not have the staff to support a second level supervisor on a tour. Usually, the Fire Captain title supervises multiple firehouses, with several Fire Captains and Fire Lieutenants under his command. Organizationally, the current classification of the appellants' positions does not indicate that their positions are misclassified as Fire Lieutenant. As noted earlier, the appellant's submissions do not support that he supervises first level supervisors. Additionally, duties such as training program responsibilities, maintaining files, filling overtime, writing incident reports, conducting company drills, being incident commander at the fire scene until a more senior officer takes command, scheduling, instructing, building maintenance, and ordering supplies are all in-title activities for a first level supervisory officer.

Therefore, it is clear that the definition portion of the job specifications for Fire Lieutenant and Fire Captain are inaccurate regarding actual use of the titles by this and other various small jurisdictions. In a small jurisdiction such as Carteret, the Fire Lieutenants report to a Fire Chief, not a Fire Captain, or in another small jurisdiction they could report to a Deputy Fire Chief. Additionally, for the job specification for Fire Captain, in the definition section, the wording pertains to a first level supervisor, but the experience section reads, "One (1) year of supervisory fire experience involving the extinguishing of fires." This experience requirement is applicable for a second level supervisor.

Among the other problems with the unique use of one title for two supervisory positions, is that one must know whether the jurisdiction uses the Fire Lieutenant title to ascertain if the Fire Captain title is a first or second level supervisor. This information is not centrally located, but lies with each jurisdiction. In the Police title series, the Police Captain can be a third level supervisor, with responsibility for supervising both Police Lieutenants and Police Sergeants. In this context, the use of the Fire Captain as a first level supervisor is unfitting. Classification of positions should rely on *N.J.S.A. 11A:3-1(c)*, which states that the Commission shall ensure the grouping in a single title of positions with similar qualifications, authority and responsibility, and not on the use of the title by a given jurisdiction. In this case, there is a grouping of positions with dissimilar authority and responsibility in the same single title, Fire Captain. With respect to test development, a job analysis is performed for each level of Fire Captain, and the first level Fire Captain is tested with the Fire Lieutenants. The second-level Fire Captain has different testing requirements such as additional subtests, or different test content, for the higher-level responsibilities of this position. By parallel example, the title series of Fire Officer was created in 2000 for the North Hudson Regional Fire and Rescue Service, and is currently used there and in Jersey City, two large jurisdictions. The title of Fire Officer 1 was created in lieu of both Fire Lieutenant and Fire Captain, and the job definition for that title is clear and

unequivocal. A job definition of the same caliber is due for Fire Lieutenant and Fire Captain so that smaller jurisdictions can have equivalent unambiguity in classification determinations. As such, for the sake of clarity, steps should be taken toward bifurcating the Fire Captain job specification in order to distinguish between the levels of supervision.³

The preponderance of the evidence does not establish that the primary focus of Reynold's position as reviewed by Agency Services involves Fire Captain duties. Accordingly, a thorough review of the entire record establishes that the proper classification of Nathaniel Reynolds is Fire Lieutenant.

ORDER

Therefore, it is ordered that the appeals of Biel and Rhodes be dismissed as untimely. Additionally, the position of Nathaniel Reynolds is properly classified as Fire Lieutenant. Agency Services should review the job specifications for the Fire Fighter title series and make any changes that it deems necessary.

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 23rd DAY OF OCTOBER, 2019



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³ For example, the titles Fire Captain 1 and Fire Captain 2 could be created, or the titles Fire Supervisor 1 and 2 could be created, or the Fire Captain title could be used solely as a second level supervisor, or all the titles be aligned with the Fire Officer title series.

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