



**STATE OF NEW JERSEY**

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

In the Matter of C.L.C., Public  
Employment Relations Commission

Discrimination Appeal

CSC Docket No. 2020-1026

**ISSUED: JUNE 5, 2020 (SLD)**

C.L.C., General Counsel, Public Employment Relations Commission (PERC), appeals the determination of the Director, Division of Equal Employment/Affirmative Action (EEO/AA) which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a female, filed a complaint with this agency alleging that she was being underpaid in violation of *N.J.S.A. 10:5-12(t)*, the Diane B. Allen. Equal Pay Act (EPA), as several male employees were receiving higher salaries than her. Specifically, she asserted that D.H., a male “Deputy General Counsel,”<sup>1</sup> was receiving a higher salary than her, effective February 2, 2019. Moreover, she maintained that, effective September 30, 2018, C.L., a male “Director of Administration”<sup>2</sup> and J.K., a male “Director of Technology,”<sup>3</sup> both received higher salaries. The appellant argued that it was “undisputed” that the position of General Counsel requires a higher level of skill, effort and responsibility than the positions held by those employees. Moreover, the appellant argued that historically, the

<sup>1</sup> Agency records reveals, in part, that D.H. was appointed to the title of Deputy Executive Director, effective February 6, 2016, and he had served in his prior title of Deputy General Counsel, Employee Relations, since February 18, 1984.

<sup>2</sup> Agency records indicate that C.L. was appointed to the title of Chief Regulatory Officer, effective September 7, 2013, and he continues to serve in that title.

<sup>3</sup> Agency records indicate that J.K. was appointed to the title of Public Employment Relations Specialist 1, effective August 24, 2013, and he continues to serve in that title.

position of General Counsel earned at least \$14,000 more than those positions. The appellant asserted that although she was told that she would receive a pay increase, effective December 7, 2019, her concerns regarding the EPA were not addressed.

In response, the matter was referred to the EEO/AA to conduct an investigation which included an analysis of relevant documentation and personnel records. The EEO/AA noted that *N.J.S.A. 10:5-12(t)* permits differences in the rate of compensation only if the employer demonstrates that the differential is made pursuant to a seniority system, a merit system or all five factors listed below:

- (1) That the differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production;
- (2) That the factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class;
- (3) That each of the factors is applied reasonably;
- (4) That one or more of the factors account for the entire wage differential; and
- (5) That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

The EEO/AA noted that for employees in State government, the Civil Service Act established a personnel system that functions as a hybrid between a seniority system and a merit system. It further noted that Salary Regulation FY 2019 Section 1 - Management Issued (Management Salary Program), provides in pertinent part:

- A. Employees Covered** – The purpose of this salary regulation is to address the issue of compression in the managerial ranks and applies to employees in titles assigned to Employee Relations Group MB, MD, M, X and members of the Senior Executive Services.

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- C. Performance Awards** – Increase to base salary will be effective PP 4/19 (February 2, 2019) for employees covered under this program.

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2. The amount of increase for each individual manager and exempted staffer cannot exceed 15% of their January 4, 2019 salary. No individual is eligible for the management performance award until he/she has served one full year in the current position. Anyone who has not yet served one year in the current position will have the performance increase delayed until 12 months from the date of appointment to that position.
3. Managerial Performance awards must be supported, if available, by final ePAR ratings on file as of the date of the award or other methods designated by the Civil Service Commission. The following scale shall apply to calculate the percentage of the increase:

<b>Final 2018 ePAR rating</b>	<b>% Increase</b>
5 (5 level scale) or 3 (3 level scale)	15
4 (5 level scale)	13
3 (3 level scale) or 2 (3 level scale)	11

\* \* \*

8. Separate documentation and justification for salaries exceeding \$150,000 will be required and carefully reviewed on a case-by-case basis prior to authorization.

**D. Additional Compression Awards** – Additional compression is defined as a situation where a subordinate has a higher salary than the managerial employee after the Management Performance Award is applied. In the event that the Management Performance Award does not sufficiently address compression, departments and agencies may request an additional compression award for those employees. The additional compression award may not exceed \$3,000.

1. Appointing authorities must base compression remedies on subordinate salaries as of February 2, 2019. Compression will be applied by comparing the closest subordinate to the manager's salary.
2. Compression by a subordinate in an "X" bargaining unit will be reviewed for compression remedy eligibility on a case-by-case basis.

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With regard to the appellant's complaint that she earns less than D.H., a male Deputy Executive Director who performs substantially similar work to her as he reports to her, the EEO/AA noted that it reviewed the relevant personnel records. Specifically, it noted that prior to the appellant's appointment effective December 8, 2018 to the title of General Counsel (salary range X98), she served in the title of Public Employment Relations Specialist 1 (salary range Y34). The appellant's starting salary in that title was \$89,167.52 which increased incrementally to \$117,701.21, effective March 31, 2018.<sup>4</sup> On September 29, 2018, the appellant's salary was increased to \$134,808.65, as a result of the salary realignment that was implemented to align certain confidential employees whose titles were assigned, in part, to Employee Relations Group (ERG) Y, with the corresponding represented ERG. Thereafter, the appellant was appointed to the title of General Counsel, with no increase in salary, effective December 8, 2018. The EEO/AA noted that the State initiated the Management Salary Program to address issues of compression in the managerial ranks. However, one of the requirements of the program was that an individual was not eligible for the program until he/she had served one full year in the current position, and that those individuals would have their performance awards delayed until 12 months from the date of appointment to that position. EEO/AA noted that consequently, as the appellant was appointed to the title of General Counsel (salary range X98) on December 8, 2018, she was not eligible for participation in the program until the pay period beginning December 7, 2019.<sup>5</sup>

With regard to D.H., the EEO/AA noted that D.H. had served in the title of Deputy General Counsel, Public Employee Relations (salary range X36) from February 18, 1984 to February 5, 2016, and was then appointed to the title of Deputy Executive Director with a salary of \$129,765.85 (salary range M98), effective February 6, 2016. The EEO/AA noted that D.H.'s salary did not increase, until he received an 11% performance award pursuant to the Management Salary Program, increasing his salary to \$144,040.09, effective February 2, 2019. The EEO/AA determined that D.H. received the increase as he had met the requirement of one year of service in a title in an eligible ERG. The appellant did not meet that one year of service in an eligible ERG, and therefore, her failure to receive a salary increase under the Management Salary Program was not based on her sex. It further noted that the Management Salary Program provided that after she had served one year in the title, if after the increase, D.H. still earned more than her, she may be eligible for an additional compression award, up to \$3,000. Therefore, the EEO/AA determined that since the Management Salary Program was based on both seniority and merit based metrics, the appellant's failure to receive the

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<sup>4</sup> Agency records indicate that during this time, the appellant received salary step increments, based upon her anniversary date, and she also received a salary adjustment award (SAC) which awarded her an additional salary step, effective May 18, 2013.

<sup>5</sup> Agency records indicate that the appellant received a 15% award (\$20,221.29), the highest award under the Management Salary Program, effective December 7, 2019.

increase in February 2019 did not violate either the State Policy or the Diane B. Allen Equal Pay Act, as she had not met the required one year in an eligible title to receive the award in February 2019. Rather, she was required to complete the full one year in an eligible title.

The EEO/AA reviewed the appellant's claims that two male directors received higher salaries than her, effective September 30, 2018, despite her higher level of skill, effort and responsibilities. The EEO/AA noted that the appellant also alleged that the position of General Counsel had historically earned at least \$14,000 more than the Directors of Administration and Technology. Initially, the EEO/AA noted that there was no support for the appellant's argument that the position of General Counsel had historically earned at least \$14,000 more than the Directors of Administration and Technology. However, even if true, the EEO/AA stated that those positions were not comparable as they require different skills, effort and responsibilities. Moreover, the EEO/AA noted that recently the State had implemented the salary realignment program and the Management Salary Program, which had not been implemented since FY 2008.

The EEO/AA also reiterated that the appellant had received the salary increase, effective September 29, 2018, which was to align certain confidential employees serving in titles assigned to ERGs V, W, and Y with their counterparts in ERGs A, P, R and S, while she was serving as a Public Employment Relations Specialist 1 (salary range Y34). This increase was approximately 14.5% and increased the appellant's salary from \$117,701.27 (salary range Y34, step 9) to \$134,808.65 (salary range Y34, step 9). The EEO/AA indicated that both C.L. and J.K. were also serving in titles assigned to a Y ERG and therefore also received the salary increase. However, as C.L. and J.K.'s salaries were higher than the appellant's salary, as J.K. was serving on a step higher than the appellant in the same salary range, and C.L. was serving in a title with a higher salary range, C.L. and J.K.'s salary remained higher after the salary realignment. Specifically, C.L. was serving in the title of Chief Regulatory Officer, Public Employment Commission on step 9 of salary range Y35 and therefore, his salary went from \$123,377.44 to \$141,309.92. J.K. was serving in the title of Public Employment Relations Specialist 1 on step 10 of salary range Y34 and therefore, J.K.'s salary went from \$121,177.52 to \$139,477.36. Moreover, as both C.L. and J.K. continue to serve in the same titles, they would not be eligible for the Management Salary Program.<sup>6</sup> Finally, the EEO/AA found that as there was a female serving in a comparable title who earns a higher salary than both C.L. and J.K., there did not appear to be a nexus between sex and the salary calculations. Accordingly, the EEO/AA determined that based on foregoing, there was insufficient evidence to substantiate

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<sup>6</sup> However, C.L. did receive an anniversary date increment, placing him on step 10 of salary range Y35 (\$146,207.70), effective March 2, 2019 and an across-the-board increase (\$149,131.89), effective October 12, 2019. J.K. also received the across-the-board increase (\$142,266.87), effective October 12, 2019.

that the pay disparity between the appellant and the three male employees was based on the appellant's sex in violation of the State Policy.

On appeal, appellant argues that the EEO/AA inappropriately determined that the pay disparity was because she was not eligible for the Management Salary Program until she had been serving in the position of General Counsel for a year. Rather, the appellant argues that the salary compression issue faced by managers, was caused by the September 2018 salary realignment which granted the across-the-board increases to certain groups of employees, without a requirement that those individuals be serving in those positions for at least one year. The appellant asserts that although she was appointed to the title of General Counsel, effective December 8, 2018, it is "undisputed" that she started performing the duties of General Counsel in May 2018. The appellant maintains that her agreeing to perform the duties in May was critical to allow PERC to function seamlessly during the transition of administrations. The appellant argues that it was the inaction of C.L., in not filing the paperwork for her appointment with the Governor's Office until July 2018 and then by not submitting the paperwork for her promotion to this agency until November 20, 2018, even though the Governor's Office approved her appointment in August 2018, which caused a delay in her appointment. In support, she submits a November 19, 2018 memorandum from the Chairman, PERC, to this agency, which requested retroactive appointments for three individuals,<sup>7</sup> including the appellant. Specifically, the Chairman noted that all three appointments were under consideration in June 2018, when the hiring and promotional freeze was enacted. Once the freeze was lifted, the requests to appoint the three individuals was sent to the Governor's Office and was approved on July 12, 2018. However, due to the failure of the Chief Regulatory Officer, the requests were not forwarded to this agency until November 16, 2018. The Chairman asked that due to those circumstances, that the appellant be appointed to the "earliest possible time this fiscal year," and that the other two individuals be retroactively appointed to the time of the Governor's approval of the appointments. The appellant asserts that this delay is a "further illustration of the glaring inequity of delaying rectifying" the pay disparity with the three male employees she named in her complaint, which is magnified by the fact that C.L., who caused the delay in her appointment, was one of the male employees who was being paid a higher salary. The appellant argues that based on the foregoing, relying on her December 8, 2018 appointment date is "highly inequitable (and illegal . . .)" as a basis to delay rectifying the pay disparity.

The appellant also objects to the EEO/AA's suggestion that because the civil service system functions as a hybrid between a merit system and a seniority system, the exceptions to the EPA are applicable. The appellant argues that the Equal Employment Opportunity Commission (EEOC) has provided guidance on

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<sup>7</sup> The two other individuals, both males, were to be appointed to the title of Public Employment Relations Specialist 1 (salary range Y34). Agency records indicate that the appellant and both male employees, were appointed to their respective title, effective December 8, 2018.

what a *bona fide* merit or seniority system is when equal pay is concerned in the application of federal law. For example, she cites EEOC Directives Transmittal 915 003 Section 10-IV(F)(I) (Dec. 5, 2000), which provides in pertinent part, that a *bona fide* merit system rewards employees for exceptional job performance; and a *bona fide* seniority system rewards employees according to their length of employment. Moreover, the appellant disputes that the three male employees she named are being paid more because they may have a longer length of service with the State or because their job performance is superior to her performance. Instead, she argues that “there is no question” she has much higher and broader levels of responsibilities and accountability, has superior job performance, and produces more work. The appellant asserts that any attempt to link the pay disparity to the merit system or seniority system exception in the EPA is disingenuous. Therefore, the requirement in the Management Salary Program that an employee must serve in the position for one year before a pay disparity issue will be fixed does not withstand the scrutiny of the EPA.

In response, the EEO/AA reiterates that its investigation did not substantiate the appellant’s allegations. It explains that although the appellant alleged that the pay disparity was a violation of the EPA, the complaint was reviewed pursuant to the State Policy. The EEO/AA asserts that the appellant failed to establish a sufficient nexus between her membership in a protected category and the pay differential between herself and the three male employees she names. Furthermore, it notes that the appellant’s argument for pay discrepancy is somewhat disingenuous, as she neglects to note that there is a female director whose salary is higher than the three male employee’s the appellant named in support of her arguments.

The EEO/ AA also assert that, its finding that the appellant’s salary was not in violation of the State Policy was not based solely on the Management Salary Program. In this regard, the EEO/AA notes that although the Management Salary Program’s requirement that an individual must serve 12 months in an eligible ERG was a factor in the pay differential, it was not the sole reason for the disparity. Rather, the named individuals’ seniority and the September 2018 salary realignment for certain ERGs also contributed to the differences in their salaries. The EEO/AA also notes that although the appellant blames the salary realignment for the management salary compression issues, she fails to acknowledge that she also benefited from the salary realignment. Specifically, the appellant served in the title of Public Employment Relations Specialist 1 (salary range Y34) from November 5, 2011 until her appointment to General Counsel, effective December 8, 2018. The starting salary as a Public Employment Relations Specialist 1 was \$89,167.52 (salary range Y34, step 2), which incrementally increased to \$117,701.27 (salary range Y34, step 9) effective March 31, 2018. As a result of the salary realignment, her salary was increased to \$134,808.65, effective September 29, 2018. Thereafter, the appellant was appointed to the title of General Counsel (salary range X98, a no-

range title), effective December 8, 2018, with no requested increase in salary. The Management Salary Program was initiated to address the issue of salary compression for individuals assigned to ERGs MB, MD, M and X as well as those in the Senior Executive Service. However, the program required individuals in those ERGs to have served one year in the affected title, prior to being eligible for the salary increase. This requirement of one year of service in the title, applied to all individuals in ERGs MB, MD, M and X and therefore, the requirement that the appellant serve one year was not based on her sex and did not violate the State Policy. In this regard, the EEO/AA notes that D.H. also had to serve one year in his title before he was eligible for the Management Salary Program, and if the appellant was allowed to not serve the one-year due to her sex, that could be discriminatory towards D.H. on the basis of his sex under the State Policy. With regard to C.L. and J.K., the EEO/AA notes that prior to the salary realignment, their salaries were higher than the appellant's salary as one was serving in a title with a higher salary range, and the other was on a higher step in the same salary range. Therefore, their salaries remained higher after the salary realignment.

The EEO/AA also asserts that although the appellant maintains that seniority was not a factor in the pay differential, it found that the seniority of the individuals was objectively a factor in the pay differential. In this regard, the EEO/AA notes that D.H., C.L. and J.K. all have more seniority than the appellant. The additional seniority equates to more anniversary date salary increases, which contributed to the fact that each earned a higher salary than the appellant prior to September 2018, the date the appellant claims the pay disparity began. Specifically, the EEO/AA notes that D.H. began his employment on August 4, 1975; C.L. began employment on October 3, 1988; J.K. began employment on July 14, 2001 and the appellant began employment on September 2, 2003.

Furthermore, the EEO/AA reiterates that there is no support for the appellant's assertion that the position of General Counsel has historically been paid \$14,000 more than the positions held by the C.L. and J.K. Initially, it notes that PERC utilizes functional titles for Director of Administration and Technology. However, it did review salary and title information for the last individual who functioned as the Director of Administration, and it found that when the prior Director of Administration left PERC in 2012, his salary was \$127,653.68 and the salary of the General Counsel at that time was \$134,750, which was a difference of \$7,096.32. It also noted that there was no way for it to determine who had previously served as the Director of Technology. The EEO/AA further noted that the two individuals who served as General Counsel, prior to the appellant, earned \$134,750, and the appellant, whose salary prior to her appointment to the position was \$134,808.65, was appointed to the title of General Counsel with no change to her salary. Consequently, the EEO/AA maintains that the appellant's salary was historically consistent with prior individuals appointed to General Counsel. The EEO/AA acknowledges that the 2018 salary realignment raised the salaries for



some individuals above \$134,750; however, it notes that the Management Salary Program was enacted to address this issue and the appellant would be eligible for the program in the pay period beginning December 7, 2019, after completing one year of service in a title subject to the program. The EEO/AA also notes that the appellant was not the only individual who experienced salary compression as a result of the salary realignment. In this regard, it notes that after the salary realignment, the Chairman, a male, was also receiving a lower salary than C.L. and J.K. However, as the Chairman does not receive a Performance Assessment Review (PAR), he was not eligible for the Management Salary Program and had to wait more than a year for his salary compression issue to be addressed.<sup>8</sup>

Finally, the EEO/AA notes that with regard to the appellant's claim that her appointment date was inappropriately delayed, that this was a new complaint. However, the EEO/AA reviewed that complaint, and finds that it does not change its original finding that the appellant's salary was not in violation of the State Policy. In this regard, the appellant was serving in an "acting" capacity, prior to her December 8, 2018 appointment to General Counsel. However, such service does not guarantee that an individual will receive a regular appointment to that title, nor does it guarantee that the individual will be entitled to either backpay and/or a retroactive date of appointment, if they do receive a regular appointment. Moreover, the EEO/AA notes that that November 2018 memorandum the appellant submits in support, does not establish that C.L. delayed in submitting the paperwork to the Governor's Office. In this regard, it notes that the Chairman, explained that although the appellant's appointment was being considered in June 2018, a promotional and hiring freeze was in place, and therefore, the paperwork was not submitted to the Governor's Office until July 2018, when the promotional and hiring freeze was lifted. The Chairman also noted that the appellant's and two male employees' promotion requests were submitted to the Governor's Office for approval at the same time. The EEO/AA also notes that although the Chairman indicated that C.L. delayed in submitting the paperwork to this agency, and misrepresented the status of the paperwork,<sup>9</sup> there was nothing in the record to establish that the delay was due to the appellant's sex. In this regard, the EEO/AA notes that the delay also effected the two male employees whose promotions were also delayed. The EEO/AA asserts, that unlike the appellant, whose salary was not changing upon her appointment to the title of General Counsel, the two male employees were entitled to an increase in salary as they were being promoted, pursuant to *N.J.A.C. 4A:3-4.9*. Furthermore, the EEO/AA maintains that despite the appellant's assertion to the contrary, the memorandum does not request back

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<sup>8</sup> Agency records indicate that J.W. was appointed to the unclassified title of Chairman, PERC effective March 27, 2018, with a salary of \$136,755 (salary range X98). He received a salary adjustment, effective August 17, 2019, which increased his salary to \$157,268.25.

<sup>9</sup> It was also noted that PERC was considering appropriate administrative action to address C.L.'s misconduct.

pay for her, nor would she have been entitled to any as her salary was not increasing.

In response, the appellant disputes the EEO/AA's conclusion that the difference in her salary and the three male employees she names was, in part, due to seniority. Specifically, she maintains that the salary realignment increase received by C.L. and J.K. was not based on their seniority. Moreover, she asserts that the increase D.H. received was not due to seniority, as it was due to the Management Salary Programs. In this regard, she argues that none of the increases to their salary were based on their length of service, which is the definition of seniority that the EEOC uses. The appellant also reiterates that historically, the General Counsel earned approximately \$14,000 more than the Director of Administration and Director of Technology. Specifically, she maintains that prior to the salary realignment in September 2018, C.L. and J.K. were earning \$123,377.44 and \$121,177.82, respectively, and that prior to receiving the Management Salary Program increase in December 7, 2019, she was earning \$134,808.65. As such, she maintains that there was approximately a \$11,000 and \$13,000 difference in the salaries. Furthermore, the appellant disputes that back pay was not requested in the memorandum to this agency. In this regard, she maintains that as the memorandum had requested a retroactive appointment date, she would have obviously been entitled to backpay as a result. The appellant also maintains that it was inappropriate for the EEO/AA to compare the impact of the delay in promotion of her and the two male employees also referenced in the memorandum.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)3* provides that it is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C. 4A:7-3.1(a)3* further provides that the policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development. *N.J.A.C. 4A:7-3.2(m)4* provides that the burden of proof in State Policy appeals lies with the appellant.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that an adequate investigation was conducted, and that the investigation failed to establish that the appellant was discriminated

against due to her sex in violation of the State Policy. The EEO/AA appropriately analyzed the available documents in investigating the appellant's complaint and concluded that there was no violation of the State Policy.

The appellant argues that the EEO/AA incorrectly determined that her salary was less than three male coworkers due to seniority, and the requirements of the Management Salary Program, rather than due to her sex. Specifically, she disputes that, with regard to salaries, the Civil Service system is a blended seniority and merit system. In this regard, she notes that the salary realignment was not based on seniority, and therefore, it supports her contention that she is receiving less money due to her sex. Although the appellant is correct that the salary realignment was not based on seniority, in that employees had to have served a set amount of time in the affected titles in order to be eligible for the increase, it was an across-the-board action which increased the entire affected salary ranges proportionately. The salary realignment was enacted as the affected ERGs had not had an across-the-board increase since 2008 and were no longer in alignment with the comparable ERGs that were covered by a union contract. However, as noted by the EEO/AA, C.L. and J.K. both had more seniority than the appellant and C.L. was in a title with a higher salary range. At the time of the salary realignment, both J.K. and the appellant were serving in the title of Public Employment Relations Specialist 1 (salary range Y34) and C.L. was serving in the title of Chief Regulatory Officer, Public Employment Commission (salary range Y35). However, the appellant was on step 9,<sup>10</sup> and J.K. and C.L. were both on step 10 in their respective ranges.<sup>11</sup> After the salary realignment, all three, including the appellant, remained in the same salary range and on the same step, but received the proportional salary realignment, based on their salary range and step. Consequently, J.K. and C.L. continued to earn more money than the appellant for those reasons. Upon the appellant's appointment to General Counsel, she was appointed with no increase to her salary, and thus, C.L. and J.K. continued to have higher salaries.

The appellant also argues that the position of General Counsel historically earned \$14,000 more than the positions of Director of Administration and the Director of Technology. The EEO/AA could not confirm that assertion and on appeal, the appellant merely cites her salary as of December 2019, prior to receiving the management salary increase and C.L. and J.K.'s salary prior to the salary realignment to support her assertion. However, the appellant's assertion does not take into consideration that, if salary range Y had been receiving across-the-board

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<sup>10</sup> Agency records indicate the appellant should have been on step 8, based on her length of service. However, she was awarded an extra step on May 18, 2013, as a salary adjustment award, or SAC.

<sup>11</sup> Pursuant to *N.J.A.C.* 4A:3-4.5, employees are eligible for a salary increase, if warranted by performance and placement in the salary range, on their anniversary date. This anniversary date is based upon their appointment date to that title and the employees time in pay status. See *N.J.A.C.* 4A:3-4.5 and *N.J.A.C.* 4A:3-4.6.

increases since 2008, like the comparable covered ERGs, then utilizing the salary prior to the salary realignment gives a false view of the historical differences in salary. In this regard, the compensation system of the Civil Service is complex, and for non-management positions, similar positions in covered and non-covered<sup>12</sup> ERGs have historically had similar salary ranges and would receive the same across-the-board increases. As such, the across-the-board increases in the covered ERGs and the 2018 salary realignment for the non-covered ERGs caused the salary compression issues with the management titles, which had not received any increases since 2007, the year of the last Management Salary Program. Moreover, as noted by the EEO/AA, although the appellant's salary did not increase upon her appointment to General Counsel, she did receive a higher salary than the last two General Counsels, one of whom was a man. Therefore, the fact that C.L. and J.K. were receiving higher salaries than the appellant was not due to her sex, but rather due to C.L. and J.K.'s greater seniority, and C.L.'s appointment to a title with a higher salary range, and the overall salary compression issues that affected **all** management and SES titles, and not just the appellant's position of General Counsel.

As a result of the salary compression issues, the State implemented the Management Salary Program in FY 2019 to address that issue. This program was based upon seniority and merit as, in order to be eligible for the program, individuals had to have served at least one year in a listed title, and based on their PAR rating, would receive an increase of 11 to 15%. As the appellant was appointed in December 2018, she did not possess the one year of service to be initially eligible. However, she did receive the increase upon completing the one year of service in December 2019. Although the appellant complains that D.H. received a higher salary than her, the EEO/AA noted that D.H. had been appointed to the title of Deputy Executive Director, a title eligible for the Management Salary Program, effective February 6, 2016, and therefore, as he had served in the title for at least one year, he was immediately eligible for the Management Salary Program increase. Consequently, D.H.'s salary was, until the appellant had completed one year of service in the title of General Counsel, higher than the appellant's salary. However, as noted by the EEO/AA, there is no indication in the record that she received a lower salary due to her sex.

With regard to the appellant's complaint concerning her appointment date to the title of General Counsel, the EEO/AA noted that the delay was caused, in part, by the promotional and hiring freeze that was in effect until July 2018, when the request for her promotion was sent to the Governor's Officer. Moreover, the appellant claims that the EEO/AA improperly considered the fact that two male employee's promotions were also delayed by C.L. as evidence that her appointment was not discriminatorily delayed. However, the EEO/AA correctly noted that other

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<sup>12</sup> Covered ERGs are those that are covered by a union and non-covered ERGs are those positions that are not covered by a union.

than the appellant's assertion, she has presented no evidence that her appointment was delayed due to her sex in violation of the contrary. In support, the EEO/AA noted that C.L.'s delay in forwarding the appointments affected not only the appellant's promotion, but those of two male employees. Furthermore, the EEO/AA correctly noted that the Chairman did not request back pay for the appellant. Rather, he only requested a retroactive appointment date for the appellant and the two male employees. Although the appellant argues that back pay was obviously requested since she would have been entitled to back pay upon a retroactive appointment date, the Commission notes that under Civil Service law and rules, retroactive appointment dates are normally provided for "record purposes only." Therefore, a request for a retroactive appointment date is not also considered a request for back pay, as they are determined separately. Additionally, even if the request for a retroactive appointment date had been granted, the appellant would not have received the salary realignment in September 2018. Moreover, as the title of General Counsel is a single range title, there is no guarantee that upon her appointment to that title, that her salary would have been more than \$134,808.65. As noted by the EEO/AA, the salaries of the two individuals who had previously served as General Counsel were less than what the appellant received upon her appointment.<sup>13</sup> Finally, as noted by the EEO/AA, even if the appellant was serving in the title of General Counsel on an "acting" basis, there is no such designation as an "acting" appointment under Civil Service rules. *N.J.S.A. 11A:4-13* and *N.J.A.C. 4A:4-1 et seq.* provide for regular, conditional, provisional, interim, temporary and emergency appointments. *See In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Accordingly, the investigation was thorough and impartial, and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>13</sup> Although, given that such appointments were made in the past, it appears reasonable that those salaries were less than the appellant's salary. Regardless, she has not demonstrated that her starting salary in that position was in violation of the State Policy.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE DAY 3<sup>RD</sup> OF JUNE, 2020

*Deirdre L. Webster Cobb*

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Deirdre L. Webster Cobb  
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