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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5138-13T3

IN THE MATTER OF
JOSEPH INVERSO,
STATE PAROLE BOARD

Argued December 20, 2016 – Decided April 11, 2017

Before Judges Ostrer and Leone.

On appeal from the New Jersey Civil Service
Commission, Docket No. 2014-1210.

Melvin M. Wright, Jr., argued the cause for
appellant Joseph Inverso.

Pamela N. Ullman, Deputy Attorney General,
argued the cause for respondent New Jersey
Civil Service Commission (Christopher S.
Porrino, Attorney General, attorney; Melissa
H. Raksa, Assistant Attorney General, of
counsel; Todd A. Wigder, Deputy Attorney
General, on the brief).

PER CURIAM

Joseph Inverso appeals from the Civil Service Commission's
April 29, 2014 final decision, denying his request for relief from
the September 26, 2013 decision terminating him from a provisional
appointment with the New Jersey State Parole Board. We affirm.

After holding other positions with the Board, Inverso was promoted to the Hearing Officer II title in February 2000. Three years later, he was demoted and provisionally appointed to the position of Senior Management Assistant. The demotion followed the Personnel Department's¹ determination that Inverso did not satisfy the Hearing Officer II position's college degree educational requirement.² Two other hearing officers were demoted for the same reason at that time, but five similarly unqualified officers were allowed to retain their title because they held the job over ten years. In a memorandum dated August 18, 2003, the Board's executive director informed Inverso that he qualified for the Senior Management Assistant title, but his appointment would be "pending open competitive examination."

Inverso's union filed a grievance with the Board on behalf of the three demoted officers, contending it acted arbitrarily in

¹ Effective June 30, 2008, the Commission assumed the responsibilities of the former Department of Personnel. See Silviera-Francisco v. Bd. of Educ. of Elizabeth, 224 N.J. 126, 138 n.5 (2016).

² The "college graduate" box was checked off on the form the Board originally submitted to the Personnel Department in 2000, which sought approval of Inverso's appointment to the Hearing Officer II position. In an August 23, 2013 letter to the Commission, which we discuss below, the Board's chairman at the time, James T. Plousis, stated that Inverso had earned a county college associate's degree, but he did not say when it was earned. In any event, apparently a bachelor's degree was required.

demoting some, but grandfathering other hearing officers. On July 19, 2004, the union, the Board and the three former hearing officers — including Inverso — entered into a settlement agreement.³ It stated that Inverso, "who has the necessary experience to hold the title of Hearing Officer II[,] will remain in the classified service title of Senior Management Assistant. This action will be backdated to September 6, 2003."

In an apparent reference to the educational requirements of the Hearing Officer II title, the agreement stated, "Upon completion of the degree requirement the grievants shall be considered for promotion to the title of Hearing Officer II at the New Jersey State Parole Board."

Another paragraph pertaining to education was stricken by line-throughs and accompanied by a handwritten annotation, "Not Required." The modification was also initialed in the margin. Inverso argues the initials were inscribed by a Commission representative, Arthur Finkel.⁴ The stricken paragraph states, "The grievants shall be given five (5) years to complete the educational requirement of a bachelor's degree from an accredited

³ The parties signed the agreement on various dates, the latest being July 19, 2004.

⁴ The initials are difficult to discern and could easily be read as "AJC." Inverso's argument that Finkel initialed the document is unsupported by a certification or any other competent evidence.

college or university. The five (5) year window shall commence on the date that this agreement is signed by all parties."

The agreement added that if the grievants were reinstated to the Hearing Officer II title, all their prior service in the title would be "bridged" in calculating seniority for layoff purposes. The only signatories of the agreement were the three grievants, their union representative, and the Board's employee relations and training administrator, Hank Fichter. The agreement stated that "[a]uthorization has been given by the New Jersey State Parole Board to agree to this settlement." Notwithstanding the initials attributed to Finkel, the Commission was not a stated party to the agreement, nor did a Commission representative sign the agreement.⁵

Inverso still held the Senior Management Assistant title in September 2007, when the Commission informed the Board that Inverso was required to test for the Senior Management Assistant title and

⁵ In his August 23, 2013 letter, Plousis contended, based on Board records, that Fichter, the Board's representative, had sent a draft of the agreement to the Personnel Department. Based on Plousis's interpretation of a post-it note in Fichter's handwriting – which is not in the record – Plousis alleged that Finkel provided "verbal input" into the agreement. Plousis also noted that the fax routing slip to the Commission stated that one Bill Johnson, who worked at the Office of Employee Relations within the Governor's Office, "finalized" the agreement. We may take notice that Plousis was the U.S. Marshal of New Jersey when the agreement was negotiated and therefore had no personal involvement in it. See History of District of New Jersey (March 28, 2017), <https://www.usmarshals.gov/district/nj/general/history.htm>.

meet its college degree requirement.⁶ Inverso apparently failed to do so. Accordingly, when the Commission certified an open competitive list for the position in September 2010, it omitted Inverso. As a result, the Commissioner then instructed the Board to lay off Inverso.

According to Plousis, Inverso "[was] unaware that [he] had to monitor the CSC's website to apply for the examination"⁷ Inverso appealed the Commission's instruction and was permitted to file for and take the next test. But he did not pass, and his name did not appear on the next eligible list promulgated on April 18, 2013, expiring April 17, 2016.⁸ The Board was again instructed to lay off Inverso.

In his August 2013 letter, Plousis asked the Commission to permit the Board either to retain Inverso in his position as Senior Management Assistant or place him in an unclassified position.

⁶ The Commission's directive is not included in the record. We rely in part on Plousis's recitation of the background of the case in his August 2013 letter.

⁷ Plousis's statement is unsupported by a certification from Inverso.

⁸ Initially, Inverso was not permitted to take a make-up examination because he was found by the Division of State and Local Operations (SLO) to be performing the duties of a Technical Assistant 3 instead of Senior Management Assistant. Approximately six weeks later, SLO reversed its conclusion and found he did perform Senior Management Assistant duties.

Plousis referred to Inverso's experience and demonstrated fitness, his almost fifteen years of valuable and unblemished service, his attainment of a county college associate's degree, and notions of fundamental fairness.

The Commission reportedly responded to Plousis's request on September 25, 2013.⁹ As described in the Commission's 2014 decision, the letter rejected the Board's request to grandfather Inverso in the Senior Management Assistant title. But the Commission permitted the Board to move him into an unclassified position if the Board had one available and Inverso were "assigned duties commensurate with the unclassified title." The Commission rejected grandfathering Inverso because the Board itself had previously requested permission to eliminate the title as it was "no longer needed due to a restructuring of job duties and workflow

⁹ Neither party included the letter in the record. Furthermore, although the Commission refers to it at length in the decision on appeal, the Commission inexplicably omitted it from its Statement of Items Comprising the Record. See R. 2:5-4 ("Within 30 days of the service upon it of the notice of appeal the agency or officer from which the appeal is taken shall file in the appellate court a statement of the items comprising the record on appeal and shall serve a copy thereof on each party to the appeal."). We remind agencies of the importance of complying with the Rule, which is designed "[t]o ensure that the parties and the appellate court have a complete understanding of the record at the administrative level." Jeffrey S. Mandel, New Jersey Appellate Practice, § 22:1-2(e) at 445 (2016).

procedures."¹⁰ Also, the Board had requested reclassification of the Senior Management Assistant title, representing to the Commission that, once reclassified, incumbents in the Senior Management Assistant title would be terminated.

On September 26, 2013, the Board informed Inverso that the Commission had rejected Plousis's "request to grandfather [him] into [his] current provisional title of Senior Management Assistant," because "it would not be appropriate." It advised Inverso that his "position with the NJ State Parole Board [would] be terminated effective October 11, 2013." The Board's letter to Inverso did not address Plousis's alternative request for permission to place Inverso in another unclassified position in the agency, which the Commission conditionally approved.¹¹

In October 2013, Inverso's union representative appealed to the Commission the termination and refusal to grandfather him in the Senior Management Assistant position. The representative contended the termination violated the July 19, 2004 settlement

¹⁰ The Commission stated that it issued a decision November 7, 2013, approving the Board's request, entitled In the Matter of Senior Management Assistant (S0562P), Statewide, CSC 2014-445, Final Decision (November 7, 2013).

¹¹ Notably, by this time, Plousis had been succeeded by Yolette C. Ross as the Board's chair.

agreement. He also asked that Inverso be placed in another position with the Board.

In its April 29, 2014 final decision, the Commission denied Inverso's appeal. The Commission found that Inverso's reliance on the settlement agreement was misplaced, stating the agreement was neither "presented to nor acknowledged by the Commission." Further, the Commission held that it had "no role" in the agreement's creation, notwithstanding "the claim that agency staff members were involved." Consequently, the Commission was not bound by it.

The Commission determined that since Inverso undisputedly and knowingly held a provisional title, he lacked a property interest in the title and could be removed at will. The Commission found insufficient grounds to waive the testing requirement and "grandfather" him into the Senior Management Assistant title because the testing requirement was an integral aspect of the "process of selection and appointment." Also, the Commission noted he failed to pass the exam yet held the position for many years.

This appeal followed. Inverso contends the Commission should be "equitably estopped from reclassifying" his Senior Management Assistant position because he detrimentally relied on the July 19, 2004 settlement agreement. He also contends the decision not to

grandfather him as a hearing officer, while grandfathering five others in 2003, was arbitrary and capricious and violated his rights to equal protection. As a result, he argues he should be placed in the hearing officer position. We reject these arguments.

We exercise a limited scope of review. In re Williams, 443 N.J. Super. 532, 540 (App. Div. 2016). "[A] strong presumption of reasonableness attaches to the Commission's decision," and appellant bears the burden to justify reversal. Id. at 540-41 (internal quotation marks and citations omitted). "To that end, we will 'not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence.'" Id. at 541 (quoting In re Application of Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008)). On the other hand, we are not bound by the agency's legal determinations, including its statutory interpretation, Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973), and we will not merely "rubber stamp an agency's decision." Williams, supra, 443 N.J. Super. at 541 (internal quotation marks and citation omitted).

We are also guided by a fundamental principle: "The Civil Service Act . . . carries out the New Jersey constitutional purpose

that public service positions be filled according to individual merit and fitness, demonstrated as far as practicable through a competitive examination process." In re Tavani, 264 N.J. Super. 154, 159-60 (App. Div. 1993) (citing N.J. Const. art. VII, § I, ¶ 2). The Act itself and its implementing regulations expressly promote this aim. See N.J.S.A. 11A:1-2(a) (noting the Act is intended to "select and advance employees on the basis of their relative knowledge, skills and abilities"); N.J.S.A. 11A:4-1 (authorizing development of competitive examinations); N.J.A.C. 4A:4-2.2(a) (directing Commissioner to administer examinations for certain positions). Statutory provisions that grandfather employees and exempt them from examinations are at odds with this fundamental goal, and should be "construed restrictively." Tavani, supra, 264 N.J. Super. at 160. The same strict construction should apply to an agreement that poses a similar threat to statutory and constitutional goals of a competitive civil service.

A civil service employer makes regular appointments from lists of eligible candidates that the Commission establishes after examinations. See In re Foglio, 207 N.J. 38, 44 (2011). By contrast, provisional appointments may be made when there is no certified list from which to fill a vacancy. In re Chief Clerk, 282 N.J. Super. 530, 533-34 (App. Div.) (stating "a provisional

appointee holds his or her 'employment in the competitive division of the career service pending the appointment of a person from an eligible list'" (quoting N.J.S.A. 4A:1-1.3)), certif. denied, 142 N.J. 573 (1995). A provisional appointee may be terminated at any time and has no right to appeal to the Commission. O'Malley v. Dep't of Energy, 109 N.J. 309, 314 (1987).

Inverso contends the 2004 agreement granted him a permanent appointment to the Senior Management Assistant title. Moreover, he argues the Commission should be equitably estopped from repudiating it because its employee, Arthur Finkel, allegedly was involved in its drafting. Yet he has presented insufficient evidence to bind the Commission to its terms or estop it from refusing to honor them.

Inverso relies on the provision that acknowledged he "has the necessary experience to hold the title of Hearing Officer II," but "will remain in the classified service title of Senior Management Assistant." He contends this provision granted him a permanent appointment without having to take the examination. We are unpersuaded. To the contrary, the plain language, strictly construed, says nothing about the examination requirement.

Inverso presents no competent evidence of the agreement's negotiating history or other extrinsic evidence to support his interpretation. See Conway v. 287 Corporate Ctr. Assocs., 187

N.J. 259, 268-69 (2006); Newark Publishers' Ass'n v. Newark Typographical Union, 22 N.J. 419, 427 (1956). In the context of Inverso's 2003 grievance, which ostensibly sought to undo his demotion and restore him to the Hearing Officer II title, the statement that he "will remain in the classified service title of Senior Management Assistant" apparently meant nothing more than he would stay put. Especially in light of the executive director's pre-agreement statement that his demotion to the Senior Management Assistant was made "pending open competitive examination," the absence of any explicit statement to the contrary in the agreement undermines Inverso's interpretation.

Notably, there is no evidence that when Inverso took the examination he protested that it violated the terms of the agreement. His apparent acquiescence also undermines his claim that the agreement exempted him from the requirement. See Michaels v. Brookchester, Inc., 26 N.J. 379, 388 (1958) ("Where ambiguity exists, the subsequent conduct of the parties in the performance of the agreement may serve to reveal their original understanding."); see also Restatement (Second) of Contracts § 202(4), comment g (1981) ("The parties to an agreement know best what they meant, and their action under it is often the strongest evidence of their meaning.").

In any event, the Commission was not a party to the settlement agreement. We reject Inverso's contention that the Commission should be bound because an employee named Arthur Finkel allegedly initialed the stricken paragraph about having five years to satisfy educational requirements, which we presume pertained to the Hearing Officer II position. There is no competent evidence the initials belonged to Arthur Finkel. Neither Inverso nor anyone who claims personal knowledge of the agreement has said he initialed it. Although Plousis referred to Finkel in his 2013 letter, he lacked personal knowledge of either the settlement negotiation or Finkel's role therein, if any. Even if Finkel initialed the striking through of a paragraph, he provided no written expression of approval of any other provision of the agreement, particularly the one stating Inverso would remain in the Senior Management Assistant title. Furthermore, neither he nor any other Commission representative signed the agreement, and the Board's signatory did not purport to act on behalf of the Commission.

Nor is there evidential support for equitably estopping the Board from refusing to honor the alleged agreement to exempt Inverso from the examination requirement. "The essential elements of equitable estoppel are a knowing and intentional misrepresentation by the party sought to be estopped under

circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment." O'Malley, supra, 109 N.J. at 317; see also Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 189 (2013). "In other words, equitable estoppel . . . requires detrimental reliance." Ibid. "Equitable estoppel is rarely invoked against a governmental entity, particularly when estoppel would interfere with essential government functions." O'Malley, supra, 109 N.J. at 316 (internal quotation marks and citations omitted). Instead, it is applied only in the most compelling circumstances, "to prevent manifest injustice." McDade v. Siazon, 208 N.J. 463, 480 (2011) (internal quotation marks and citation omitted); O'Malley, supra, 109 N.J. at 316.

Inverso provides no certification or other competent evidence to support his argument that he detrimentally relied on his subjective understanding that the agreement exempted him from the examination requirement. As noted, the fact that he sat for the examination belies this alleged understanding.

Inverso also places undue weight on his acceptance of the demotion to Senior Management Assistant. He suggests that his willingness to do so was based on the Commission's promise to provide a permanent position. But he did not meet the educational requirements of the Hearing Officer II position. There were

harsher remedies at the agency's disposal, including termination. He thus received other consideration for entering the agreement, including a provisional appointment to the Senior Management Assistant position and a promise of seniority if he ultimately met the qualifications for the Hearing Officer II position.

Also, there is no competent evidence in the record to support a claim that the Commission knowingly or intentionally misrepresented Inverso's rights. Even if Arthur Finkel endorsed a paragraph regarding educational requirements, that falls well short of proving he or the Commission assured Inverso that he could retain the Senior Management Assistant title without passing an examination.

We reject Inverso's argument that In re Johnson, 215 N.J. 366 (2013) compels application of equitable estoppel here. In that case, the Supreme Court held the Commission was barred from reclassifying a twenty-five-year incumbent of an unclassified prosecutor's agent position as a mere property clerk. The Court relied both on the Commission's misapprehension of the agent's duties, id. at 382-84, and the Commission's written assurances that its announced classification review would affect only recent hires. Id. at 386-87. By contrast, in this case, the Commission neither mistook Inverso's duties nor made such explicit representations.

Rather, the more apt precedent is O'Malley, where the Court declined to apply equitable estoppel to enable a provisional appointee to retain his supervisory position when the Commission failed to give a timely examination. O'Malley, supra, 109 N.J. at 316-18. The Court noted the lack of proof of a misrepresentation by the Commission. Id. at 317. In addition, the Court stated it was "reluctant to permit employees to retain by estoppel their provisional appointments." Id. at 318. So are we in this case.

Finally, we reject Inverso's argument that he is entitled to the Hearing Officer II position. It is too late for Inverso to complain in 2013 that he was treated arbitrarily and unfairly ten years earlier. See N.J.A.C. 4A:2-1.1(b) (stating appeal must be filed within twenty days after actual or constructive notice). Inverso entered into the 2004 settlement agreement resolving that claim, and leaving him in a different position. In any event, the disparate treatment of Inverso and the five hearing officers who were not demoted was not arbitrary, as the five had considerably more experience in the position at that time.

Inverso also misplaces reliance on L. 2005, c. 344, § 1, which moved hearing officers to the classified service, amending


N.J.S.A. 30:4-123.48.¹² The new law affected only those persons who had been employed as hearing officers "at least one year prior to the effective date" of the amendment. L. 2005, c. 344, § 1; N.J.S.A. 30:4-123.48(c). Ibid. The effective date was January 12, 2006. Id. at § 2. As Inverso did not meet this requirement, the statute is of no moment.

To the extent not addressed, Inverso's remaining arguments lack sufficient merit to warrant discussion in a written opinion.

R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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¹² Inverso inappropriately raised this argument for the first time in his reply brief. See Bacon v. N.J. State Dep't of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015), certif. denied, 224 N.J. 281 (2016). We nonetheless choose to address it.