Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

"Testimony from invited guests on new rules proposed by the Civil Service Commission concerning a job banding program"

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: June 19, 2013
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Robert M. Gordon, Chair
Senator Raymond J. Lesniak
Senator Linda R. Greenstein
Senator Thomas H. Kean Jr.

ALSO PRESENT:

Michael R. Molimock
Office of Legislative Services
Committee Aide

Francisco Maldonado
Senate Majority
Committee Aide

Frank Dominguez
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
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COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE

FROM: SENATOR ROBERT M. GORDON, CHAIRMAN

SUBJECT: COMMITTEE MEETING - JUNE 19, 2013

The public may address comments and questions to Michael R. Molimock, Committee Aide, or make bill status and scheduling inquiries to Sherri M. Hanlon, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSLO@nileg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Legislative Oversight Committee will meet on Wednesday, June 19, 2013 at 11:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The committee will meet to take testimony from invited guests on new rules proposed by the Civil Service Commission concerning a job banding program.

Issued 6/13/13

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SENNATOR ROBERT M. GORDON (Chair): Good morning, everyone.

I call the Senate Legislative Oversight Committee to order.
May I have a roll call, please?

MR. MOLIMOCK (Committee Aide): Senator Greenstein.

SENNATOR GREENSTEIN: Here.

MR. MOLIMOCK: Senator Lesniak.

SENNATOR LESNIAK: Here.

MR. MOLIMOCK: Chairman Gordon.

SENNATOR GORDON: Here.

Welcome. Today we are hearing about an important issue related to the Civil Service Commission and recent proposals of theirs.

On February 28, 2013, the Civil Service Commission -- the CSC -- proposed amendments to its administrative rules and proposed new rules creating a *job banding program*, which would merge groups of titles -- or titles series -- into a number of broadbandings consisting of title levels with similar duties, responsibilities, and qualifications. These proposals represent a fundamental change to our current Civil Service system; arguably, the most drastic since its inception. For example, objective testing requirements for promotion to a higher title would be waived in many, if not most, cases. Managers and administrators would have an unprecedented level of discretion when advancing employees, potentially opening the door to favoritism and patronage.

The proposal also substantially changes disciplinary and appeals procedures. Employees are currently able to file appeals directly with the CSC, whereas the proposal would transform this practice into an in-house
grievance practice, potentially creating a situation in which the very
department or person that is the subject of the grievance is the one
adjudicating that grievance.

Most alarming among these proposed changes is the effective
elimination of veterans’ preference. I find it very troubling that our
government would consider denying veterans this very small token of
gratitude.

This Committee has been convened not only to examine the
substance of these proposed changes, but the manner in which they are
being undertaken. The CSC is attempting to overhaul the current structure
through the administrative rules process. It argues that a lack of definitions
of key terms in the statute make changes to those terms the subject of
regulatory -- not statutory -- provisions, and that they are thereby alterable
through the rulemaking process.

While our laws may arguably allow for changes this sweeping to
be made through rulemaking, I have to believe that such wide-ranging
changes affecting so many people’s livelihoods would be better carried out
through the legislative process which is heavily based on good faith
negotiations and compromise by the various parties and stakeholders
involved.

In that vein, I would like to point out that the substantial
reforms to the Civil Service process that have been achieved through the
discussions on Senate Bill 2 -- bipartisan legislation developed by Senators
Sweeney and Kyrillos to promote shared services-- That bill contains job
banding provisions that would take effect in a limited fashion when towns
consolidate. Under the bill -- in a municipal consolidation where Civil
Service plays a part -- the parties can request that the CSC relax certain Civil Service provisions regarding layoff, tenure, and bumping rights so that the parties may instead employ a stratified layoff process. The stratified layoff process would limit the bumping and tenure rights of Civil Service employees to prevent a dominoes situation -- where top-level employees bump those below, and each employee below bumps the next employee down until the bottom employee is laid off. The bill does this while also preserving the rights of Civil Service employees to appeal employment decisions such as layoffs or transfers. Likewise, any processes for appeal of employment decisions set forth in applicable collective bargaining agreements would still apply under that bill.

S-2 is an example of how positive reform can be reached through thoughtful and open negotiations with invested parties. By making changes through the legislative process the key issues can be openly debated in a number of public hearings, providing the public ample opportunity to weigh in with their thoughts and concerns. It is my understanding that there has been very little discussion between the CSC and the stakeholders on the proposals before us today. In fact, only one public hearing was held by the CSC to discuss the proposals, with little consideration given to public accessibility or convenience. It is my hope that this hearing will bring about better transparency and openness on the part of the CSC to this very important reform process.

With that, I'm going to turn to our witnesses; and I should say at the outset that this Committee extended an invitation to the Civil Service Commission, and they formally declined to appear -- which is disappointing.
I would, first, like to call on Senator Lesniak to offer a statement.

Senator.

SENATOR LESNIAK: Thank you, Mr. Chairman, members of the Committee.

I have submitted for the record an op-ed editorial that was published in the Star-Ledger on June 13, 2013, on this issue. And with regard to that, first of all I want to note that it's been argued that the Judiciary has such a similar broadband scheme as the Civil Service Commission has proposed. However, number one, that was negotiated with the parties and, number two, the Judiciary is not involved by law -- by Constitution -- in the politics. Therefore, the protections that the current Civil Service system gives, and the immunization from political patronage involved in the hiring, promotions, and assignment process is not -- does not present the problem that is one of the reasons why the Civil Service system was installed in the first place; and the problem that we see that is rampant, for instance, at the Elizabeth Board of Education, where employees are intimidated to work on campaigns, contribute hundreds of thousands of dollars, and where their promotions and assignments and, indeed, actually even job positions are based on their political involvement.

There is no doubt that broadbanding can be beneficial for some efficiencies. But there is no doubt that broadbanding done without negotiations will-- Those efficiencies will be eclipsed and erased by the politics that will be injected into a system unless these issues are negotiated with the parties -- the very same politics that Civil Service was designed to keep out of our public employment system.
As you mentioned, Mr. Chairman, as a veteran myself, I am personally offended by what this does to the veterans’ preferences. We have veterans’ preference because men and women have sacrificed a lot to serve our country, to defend our country, and to protect the freedoms that we enjoy. This proposal by the Civil Service Commission is nothing more than an end run around veterans’ preferences, and it should be defeated either by reversal by the Civil Service Commission or by a joint resolution of both houses for that issue alone; in addition to the fact that it will just open up to all Civil Service workers the similar types of political interference in doing their jobs that we see so rampant at the Elizabeth Board of Education. That’s why I particularly have an interest here, because I see it firsthand.

This is a very, very dangerous proposal that must be defeated.

Thank you, Mr. Chairman.

SENATOR GORDON: Thank you, Senator. I certainly share your views.

Senator Greenstein, do you have a statement?

SENATOR GREENSTEIN: Yes, thank you, Mr. Chairman.

As you stated so well, the Civil Service Commission was created more than 100 years ago to ensure that State workers are not at the whims of the spoil system, and that hiring, firing, and promotion decisions are made on merit and fitness of the employee. And here’s what’s most important: Our current system works very well. We have a system of fair promotions based on evaluated performance rather than patronage. There is now a promotional list and a fair testing process, and qualified veterans cannot be passed over.
Under the new broadbanding proposal, bands of Civil Service title classifications are created and replace objective promotions with what they call *advancement through the band*. Within these bands, management at all levels of government would be able to group job titles and make job decisions based solely on their assessment of competency without objective testing. And this would also eliminate veterans' preferences.

This new approach will clearly lead to political patronage and favoritism -- as you said, Senator, the very thing that we were trying to stop with the Civil Service system. Another problem is that under the current--Well, under the current system, appeal of a denial of promotion has to be made to an objective third party. But under these new rules, the department that made the original decision can review appeals, which is the fox guarding the henhouse.

This proposal eliminates the one objective measure of a worker's ability: the Civil Service exam. It’s in the public interest for public employers to have to explain their decisions. The very process by which this rule change was done -- with one public hearing -- is clearly a defective process. This is a large, large change that’s being proposed; I would prefer it be done legislatively with lots of discussion and lots of hearings, and really be looked at seriously. But if it’s going to be done by rules, there has to be a much more extensive process. So I’m unhappy with the change itself; I'm also unhappy with the process. But I am interested in hearing more.

Thank you.

SENATOR GORDON: Thank you, Senator.
We've had a number of people who have signed up to speak. I should say at the outset that Beth Schroeder of the NJEA is opposed to these new rules but has no need to testify.

We would like to hear from Hetty Rosenstein, the State Director of the CWA.

Hetty.

**Hetty Rosenstein:** Thank you so much, Senator Gordon, for holding this hearing. Thanks very much to Senator Greenstein and Senator Lesniak. You've been stalwart in your support for open government and good government, and that is really what we're talking about today.

This is the third time that I've testified about these regulations. And I've testified once before the -- somebody with a tape recorder at the Civil Service Commission. Not before the Commission -- there wasn't anybody there. And I testified at the Assembly hearing, and now here. There have been no evening meetings that members can come to. We have, in the past, been able-- There have been representatives from disability rights groups, from advocacy groups, from veterans' groups that have come out, but it's increasingly difficulty to ask folks to be able to speak in the middle of the day, in the middle of the week, and only in Trenton. And that really gets to the heart of what the problem is in terms of this process.

There is so much wrong with these regulations -- with these proposals -- that I could start today and finish tomorrow. And I submitted 20 pages of comments which I have copies of here for members of the Committee and for any members of the press. It is my understanding that there were hundreds of pages of comments -- maybe more -- submitted. I
have no confidence that they’ll be read and considered. There is just nothing about this process that can give anybody any confidence that this is deliberative -- complicated and slightly challenging, which is what rules are, that has somehow been recast into inefficient, annoying, and bad. But government, and employment of several hundred thousand workers, and the production of services for 8 million people is not simple. And our lives and our government are bigger and more important than a sound byte and a few bullet points.

The Administration has and is successfully using the fact that it takes an hour or so to understand what they’re doing to camouflage the impact of what they’re doing. They’re counting on the fact that many people don’t want to wade through rules and regulations and look at hypothetical impact. And what they’re doing is they’re sliding through breathtaking and far-reaching changes to public employment. They are dismantling the Civil Service system and its purpose by regulation.

And I want to talk today about how difficult it has been to get any information from the Commission on the impact of these regulations, on workers, on testing, on veterans.

So as you know, the Administration denies that their regulations will impact veterans’ preference -- and that is just a lie. It is a lie. And they are ignoring the fact that there is a constitutional requirement that State jobs have to be awarded based upon competitive testing, where practicable. And they have refused to supply information that would demonstrate conclusively the impact of the rules. I requested, at a meeting with the Commissioner, information. I was told, “Submit your questions in your comments.” I then called the Civil Service liaison, whose job it is to
provide information to the unions -- that's what they do. I called and I said, "I want some information about what tests have been given and what veterans' preference has been utilized in the last several years." He told me he would get back to me. He then called me and said, "I can't give you the information. You have to OPRA it."

I then submitted an OPRA request, where I asked for lists of the examinations that have been given -- promotional examinations -- and where veterans' preference had been exercised. Civil Service then denied my OPRA request claiming that they did not have the lists. They have the data, but they would have to print it out for it to be a list. So they denied my OPRA request.

So then I asked our lawyer, "Do me a favor, please. You write the OPRA request for me in a way that they cannot deny it." So he submitted the OPRA request asking for the information. And now they come back and they say, "We'll give it to you, but we can't give it to you before July 2," which just happens to be after the next Civil Service Commission hearing where, perhaps, they will decide to pass the rules.

There isn't any way to responsibly write these rules that will eliminate up to 90 percent of the competitive examinations for non-uniform promotions and not have put together some of this information. I mean, you don't know what the impact will be? Well, that might be worse than you're just not going to tell us. They are trying not to answer this question. They are eliminating open competitive testing as well for entry-level jobs by moving jobs into the non-competitive division -- we have asked for the list of the jobs that they are moving to non-competitive -- and by suspending open competitive testing. And then they're using these regulations to
eliminate nearly every promotional examination. And that dismantles a good system of appointment and promotion that has been in existence for, I don't know, a hundred years, without answering questions about it. They're not even answering any questions about it.

When the press asks they say, "Veterans will still have preference in open competitive and promotional examinations." But they fail to mention that they will have virtually no open competitive examinations and they're eliminating almost all promotional examinations. So the fact that technically people will have some kind of a preference when those conditions for the preference aren't available is deceptive. This is not an accident. That is deceptive.

SENATOR LESNIAK: Disingenuous.

MS. ROSENSTEIN: Disingenuous.

And then they just are going to ignore facts. This is a corrupt State -- whether we like it or not, the Governor as well as county and municipal bosses will have the right to hire their friends and their allies to do public jobs. And these rule changes will make it easier for them to do so. And every effort must be made to reveal the perfidy of these proposals.

But there is more. The rules say that once an appointing authority decides about a job band, all they have to do is inform the Civil Service Commission. And then the Commission after that is only a record keeper. They no longer have oversight over any of these promotions or over any of these titles. They have eliminated the oversight for local government in all areas.

So county governments, large city governments, municipal governments currently under the auspices of Civil Service will be allowed to
make their own decision about what is a job responsibility, what is the
criteria for a job, what the job will be paid, who will be hired, who will be
promoted through it. And there is no oversight. And this is New Jersey.

The regulations do away with the appeals to the Civil Service
Commission as was mentioned. And the same very county, city,
municipality gets to make a decision in the first place -- no oversight.

Every effort has to be made to question each and every claim
being made by the Civil Service spokespeople, who aren’t talking, and by
the Governor’s Office that mostly just is nasty and aggressive in reply. And
that shouldn’t be mistaken for righteousness. It’s really a diversionary
tactic. Careful questioning of eliminating the entire personnel system for
the State is really appropriate. And these proposals are terrible -- they will
harm services, they will result in discrimination, they will make it harder for
everyday people to do their job and get ahead. Every advancement will be
based upon favoritism, and in the case of the State, they are illegal and
violate the Constitution. The criteria will be the lowest common
denominator instead of merit and fitness. And if you read it, that is what it
says. They will decide what the criteria is; whoever is eligible for that
criteria is now eligible for the advancement. You are specifically saying that
you are going to have mediocrity instead of merit and fitness.

And at the risk of seeming alarmist, I really want to point out
that it’s not only a workers’ rights issue; how government hires and whether
or not it’s responsive and open and transparent, and whether or not
everyday people have equal access to government resources including
employment, is a democracy issue. And when people don’t have equal
access to government -- when jobs and contracts and services and resources
are based upon politics and favoritism, we don’t have a democracy; we have a banana republic. And that is really what these rules do.

I would answer any questions anybody has. I don’t have that many answers. But I would certainly answer any from what I can.

SENATOR GORDON: Ms. Rosenstein, here’s a question I think you can answer.

There have been changes to the Civil Service system in the past. What kind of process was used?

MS. ROSENSTEIN: It has never been like this. In fact, before the regulations would be published, even in administrations where the unions might have significant disagreements, we were called into meetings. There was a labor advisory board. There was a discussion about what was being considered and why it was being considered. And there would be a discussion even before there was any publication of anything in the New Jersey Register for consideration.

After the publication there would be a series of public hearings in all parts of the state -- in the evening as well as during the day. We almost always had a hearing in Essex County, in Paramus, in Mercer County, in Camden County, in Burlington; we would have anywhere from -- three to five public hearings would be held.

But aside from that, we would have discussions. You would have discussions with the Commissioner, with the staff. They answered questions. It’s not as if we agreed. Lots of times we were having big disagreements. But they would answer questions and they would be responsive. And they would say things to you like, “Well, that is a good point. We hadn’t thought of that.”
And when I had a discussion, the only thing they would talk to us about was layoffs, because the regulations say that you have to consider the union if it’s a layoff matter. So they would talk to us a little bit about layoffs. When I pointed out that they didn’t understand what they were doing to -- in job banding, what they were doing to titles that have variance, you couldn’t engage with them because they wouldn’t admit that maybe they didn’t know, or anything. They just had no interest.

So it’s been very, very different in that way. There has not been a meeting of the Labor Advisory Board called since the Christie Administration came in. The Commissioner has the authority to do that, and has not and has no interest, obviously. And not just the Labor Advisory Board -- there is supposed to be stakeholders from all different groups who are called to consult with the Civil Service Commission, none of which has happened.

SENATOR GORDON: Senator Greenstein.

SENATOR GREENSTEIN: Thank you.

I wanted to find out, have the changes in the past ever been as extensive as this? Or is job banding a more extensive process than has ever been done?

MS. ROSENSTEIN: This is the most-- This is really very far reaching. And it’s far reaching in two ways. Job banding has been proposed before, and we’ve had real discussions about job banding. And each time it’s been abandoned because it’s really too large to do it with this kind of a system. And we have talked to them in other years about trying to band-- Look at the clerical titles, for example. We have lots and lots of clerical titles. There may be an area where you would generalize and create job
bands, right? We’ve talked to them about job banding and the places to do it. But there’s never been something that has a big, giant open door that says, “Job banding, where you want to do it, with no explanation of how many titles, whether or not it’s title series. Nothing like this has been proposed. And the other thing is, I don’t know that-- I’ve never seen rules that propose doing this with promotional exams -- ever.

SENATOR GREENSTEIN: Where does the idea of job banding come from? And do any other states do it?

MS. ROSENSTEIN: Yes, there are lots of places that do it. It’s been around. You will find it-- Where it’s done, it’s generally-- It’s done in two places: places where you don’t have a lot of titles and people do similar kinds of work, or you’re trying to combine what was done in terms of Judiciary -- you’re trying to combine many counties or something like that. And it’s also done as a direct attack on Civil Service regulations. So it’s mixed. It’s not by itself -- job banding doesn’t have to be a terrible thing. There could be places where job banding is appropriate, as was said. The idea of doing job banding inside of title series in order to limit some bumping might be something that would make sense. We wouldn’t automatically oppose that. But this is just a huge gigantic hole that goes way beyond that.

SENATOR GREENSTEIN: And I guess the last question I would have -- and this is really almost more a question for someone on the other side of the issue, but I am wondering about your opinion: How have they defined -- no one on the other side of the issue is going to come out and say, “We want to destroy Civil Service.”

MS. ROSENSTEIN: Close.
SENATOR GREENSTEIN: Well, I don’t know, maybe they have. (laughter)

But I want to know how they’ve defined the problem that they’re solving. Because I’m not sure I see the problem here.

MS. ROSENSTEIN: They don’t. They don’t define the problem that they’re solving except, if you look in their statement, they say it will provide for greater discretion for management in determining advancement and that— And they try to claim that it provides for other kinds of competition. But really the words— If English is at all meaningful, then the words are that we don’t figure out who is most meritorious. We just figure out the basic competency and pick from there. So they could say one thing as to what their purpose is, but if you read the words -- and English has any meaning -- you can see that it’s not. It is really the opposite of that.

SENATOR GREENSTEIN: I see your point that they’re really not going to get the best of the best. They’re going to get the people with the basic knowledge -- which is the opposite of the--

SENATOR LESNIAK: And who contribute to most of their campaigns. (laughter)

SENATOR GREENSTEIN: Right, right.

Thank you.

SENATOR GORDON: Any other questions for this witness?

(no response)

Seeing none, thank you very much, Ms. Rosenstein. We’ll hear next from Eric Richard of the AFL-CIO.
ERIC RICHARD: Chairman Gordon and members of the Committee, good morning. Thank you very much for this opportunity to speak with you.

My name is Eric Richard, representing the AFL-CIO. And, again, we'd just like to thank you for holding this hearing. As Hetty Rosenstein had mentioned, this is the third hearing of its kind in which, to date, we have still yet to have any presence from any of the members of the Civil Service Commission to address any of the concerns -- not only of employee representatives such as ourselves, but from elected officials such as you. I find it ironic that we have an Administration that prides itself on transparency. And here we have our third public hearing, and we cannot get a single representative from the Civil Service Commission to answer your questions. I understand that they view organized labor, perhaps, as a thorn in their side when it comes to these regulations. But you are our elected representatives. You have chosen to explore this issue and ask for answers from the Administration. And the silence is deafening. It is disrespectful not just to our members, but to you as our elected representatives. And I feel as if this Committee should send a strong statement to the Civil Service Commission, to this Administration, that this type of behavior is not only shameful, but it's bad government. This isn't the type of process that we should be engaged in with the enormity of the issue that is before you today.

The AFL-CIO obviously has significant concerns with the proposed regulation. In our opinion, the proposed rule gives management wide latitude in determining which public employees get promoted, and eliminates test-based promotions and undermines veteran preferences due
to changes in the ranking system. Furthermore, as Senator Lesniak mentioned, we take exception to the categorization in this proposal that because banding is being performed in Judiciary, that it makes sense to be broadly implemented for all State and local government workers. It must be understood that the Judiciary bands were implemented through bargaining, where employee representatives had a seat at the table to negotiate a program that was in the best interest of all parties involved. The proposal before you today is, indeed, not being negotiated. It is being railroaded.

We would also like to bring to the Commission's attention, as Hetty Rosenstein also mentioned, that by law the publication of this type of rule requires a previous meeting of the Labor Advisory Board. That meeting has never occurred.

Furthermore, the proposed rule ignores important information detailing what type of criteria is going to be used to develop these bands. The rule only speaks to this in the broadest of terms, and it is unclear how these bands will be developed.

Furthermore, we need certain questions answered, such as how many examinations there would be in particular appointing authorities, and how this would be impacted if the titles are broadbanded. What type of impact this would have on employees is an important issue that the Civil Service Commission simply refuses to answer. In fact, this is the third public hearing of its kind and, again, a representative of the Commission has not been present at any of them.

We have received -- our organization, the AFL-CIO -- has received an outpouring of opposition from our members to this proposal, as
have other affiliated and nonaffiliated unions that are present here before you today. Our office, in particular, has been contacted by 781 individuals objecting to this rule and petitioning the Civil Service Commission to hold more hearings on its impact. Copies of those letters were submitted to the Civil Service Commission during the common period and at the first public hearing.

In closing, it's our opinion that the responsibility of the Civil Service Commission is to administrate a system that ensures a balance -- a balance between the needs of management and the protection of employees' rights. This proposed rule, in the simplest of terms, dismisses this balance system completely in favor of management. The rule needs to be tabled, and we ask for your help in trying to achieve that.

Thank you very much.

SENATOR GORDON: Thank you, Mr. Richard.
Members of the Committee -- any questions? (no response)
MR. RICHARD: Thank you.
SENATOR GORDON: Thank you very much.
We'll here next from Rex Reid of AFSCME.

R E X  R E I D: Good morning to the Committee, and I thank you for holding this hearing. It is definitely needed.

The Civil Service Commission has stonewalled anybody who has asked them questions. They have thumbed their nose; they didn't even have-- At their own hearing they had a hearing officer and not a member of the Commission -- which is dreadful in the thought that they are going to put this rule through and speak to nobody about it.
My name is Rex Reid and I’m a Legislative Representative for the American Federation of State--

SENATOR GORDON: Mr. Reid, is your microphone on? (referring to PA microphone)

MR. REID: I thought it was on.

SENATOR GORDON: Okay.

MR. REID: My name is Rex Reid and I’m the Legislative Representative for the American Federation of State, County, and Municipal Employees -- AFSCME -- New Jersey, Council 1; Sherryl Gordon, Executive Director.

We strongly oppose the amendments to the New Jersey Administrative Action Code Title 4A. The functions currently performed by the Civil Service system take on a significant necessity of objective information and classification, and decisions unaltered by labor or management pressures. Protection of the rights of the represented and the unrepresented employees in public service, and as an independent body which can hear employees’ appeals in an impartial manner are all vital to the efficient and economic operation of State, county, and municipal government.

The system protects the public by ensuring the workforce is comprised of qualified individuals appointed on the basis of relative ability, knowledge, and skills, after a fair and open competition which ensures that all receive equal opportunity to garner the best applicant for the job. The merit and fitness principles of the current Civil Service system are significant to ensure equal opportunity rights at all levels of public service.
Civil Service ensures that applicants and employees alike receive fair and equitable treatment in all aspects of personnel and management processes without regard to political affiliation, race, color, religion, national origin, sex, sexual preference, marital status, age, handicap condition -- and all with proper regard for their privacy and constitutional rights.

The Civil Service system provides for the public good, and the hiring and promoting of employees on the basis of ability, with open competition and initial appointments providing fair compensation on the basis of equal pay for equal work -- with equal being determined by job duties within title, not a series of titles; retaining employees on the basis of performance, correcting the inadequacies of performances, and separating those whose inadequate performance cannot or will not be corrected to meet the required standard; training employees, as needed, for high quality performance and standards of integrity and concern for the public good; assuring fair treatment of applicants and employees at all aspects of personnel administration without regard to race, color, religion, sex, national origination, age, disability, sexual orientation, marital status, and with proper regard for their privacy and constitutional rights as citizens; protecting employees against political coercion and prohibiting use of official position to effect an election or nomination for office -- as was stated earlier.

Without a merit-based Civil Service system there will be little to no consistency among departments, divisions, and agencies, with managers making personnel decisions based on subjective criteria like favoritism, racism, and politics -- with its spoil system that hired, fired, and
promoted and gave pay increases based on who won the election and whose campaign you worked on.

Broadbanding positions under the proposed changes would allow appointing authorities to create new job bands with new titles and title series that allow for them to select who would advance in the job band. This opens the door to patronages, favoritism, and all other Civil Service violations the system currently protects against.

Banding allows for duties under banded titles to be comingled -- making their salary ranges within the broadbanding called into question: equal pay and equal work. Under the proposed changes, the working test period would go to six months with no probationary report or corrective action at a given interval, at the end of which an employee could be let go without right to appeal.

Hiring has always been management’s right. But advancement in the Civil Service system was based on an employee’s relative knowledge, skill, and ability in a competitive testing situation. Broadbanding of titles takes that away and places an employee’s career ladder solely in management’s subjective hands by linking performance reviews -- PARS -- to competencies for advancement void of objective, measurable criteria.

This proposed rule change will return us to an era void of diversity in the workplace, where people of color, women, the handicapped, and the veterans are all barred entry to government employment. Broadbanding changes, as proposed in these rules, undermines the legislative intent and the statutory mandate. Therefore, AFSCME New Jersey opposes these new regulations.

Thank you.
SENATOR GORDON: Thank you, Mr. Reid.

Any questions from the Committee? (no response)

Thank you very much.

We will hear next from Adam Liebtag, CWA Local 1036.

ADAM LIEBTAG: Thank you, and good morning.

I have two handouts here for the Committee -- one is a copy of my written testimony for this morning, and the other one is the public comment document that Local 1036 submitted to the Civil Service Commission. We submitted these comments pursuant to the public comment period, and the comments to the Civil Service Commission are more detailed than the testimony I'll provide today. And I would ask that you pay attention to both of them.

My name is Adam Liebtag. I'm the President of CWA Local 1036. We represent about 7,400 public employees around the State of New Jersey. Our Local is affected by this rule proposal in every aspect. We represent State executive branch employees, we represent Judiciary employees. And part of my testimony today will focus on the inaccurate comparisons and false reliance on the Judiciary's job banding system.

We also represent thousands of county and municipal employees who are affected by this job banding proposal. And I want to highlight, during sections of my testimony, the impact on local government titles -- which would be easy to push aside and only focus on the State Executive Branch. But I want to make sure that the members of this Committee fully appreciate the damaging impact of these rules on county and municipal government.
So first, a couple of brief overall comments. The pilot program that was used by the Civil Service Commission was deeply, deeply flawed. They converted a couple of titles in the Civil Service Commission itself and the Department of Treasury to a job banding system. They did this pilot program over a matter of months. They did not invite public comment from the unions on this type of approach. They’ve banded together these certain titles in the Commission and the Department of Treasury -- these titles do not have representation rights or collective bargaining rights. So they essentially banded together a small number of their own employees.

By my estimation, there are 170 individuals in that pilot program -- 170. There are 70,000 State executive branch employees. So they conducted a pilot on 0.25 percent of the State employee population and then called it a raging success. When you consider the thousands of public employees in county and municipal government who are also in the Civil Service system, the sample population shrinks further. So if any other agency came into the Legislature or proposed a rule amendment to one of its internal rules and said, “Don’t worry. We conducted a sample of 0.25 percent of the affected population and everything went well; we self-certified it as a success,” I think the Legislature would have every right to call them in and hold them accountable, and make them prove that their rule really would be a success on a larger sample population. So right off the bat, their pilot program was a sham.

They talk about the Judiciary system as a basis to say that banding works. Well, we represent thousands of Judiciary employees. So let me give you a little bit of insight into that system. First of all, as mentioned previously, that system was negotiated into multiple collective
bargaining agreements over a decade ago. It was negotiated not only by CWA, but by other unions -- AFSCME, OPEIU, IFPTE, Teamsters. And that system was negotiated into existence because the statewide court system was unified. They were unclassified at the time; they were outside the Civil Service system, and we needed to come up with a classification, job duty and compensation system that made sense and could be applied across the board to all the different county courthouses.

So a number of unions and the Judiciary Administration at the time sat down and bargained a job banded system. It is far from perfect. We have plenty of issues with that system, including work compression, title compression, and the frustration of having people hired in from the outside and put in at a higher level within the band than existing employees. So we have plenty of concerns about the Judiciary system.

But I want to highlight a couple of very important difference that the Civil Service is conveniently ignoring. First, the Judiciary also uses the existing Civil Service rules. Not all Judiciary employees are unclassified and are in job bands. Some Judiciary employees retained and still are in the Civil Service system. So the Judiciary itself recognizes and uses the Civil Service rules for some of its employees. And the CSC conveniently washes that fact aside.

Second, and also importantly, we, as part of the Judiciary job banding system, had negotiated a neutral oversight board called the Classification Review Board. This entity has equal members from labor and management, and employs an outside neutral third party to reach decisions. This Classification Review Board has oversight over classification disputes. So if an employee believes that he or she is working out of title, as doing the
duties of a different title, and is seeking a promotional advancement, they file their claim and ultimately any dispute goes before this neutral body. So again, it is neutral -- it has equal labor/management participation and an outside expert in the field.

The Civil Service Commission is not making that change as part of its rule proposal. The Civil Service Commission wants to retain and, in fact, expand its oversight authority. That Commission is wholly comprised of political appointees. There are five seats: Currently one is vacant; one is the Chair of the Commission, Robert Czech; and the other three are appointed by the Governor. One of them is in the private sector and runs a financial services company and has no involvement in public employment or Civil Service. I don’t know what qualifies him to be on that Board, to be quite frank.

But, again, this rule proposal wants to retain all decisions of classification disputes at that Commission level and, as you noted, Senator Gordon, wants to take responsibility for grievances. So now a dispute of a Civil Service Commission decision would be handled through a “grievance” and be decided unilaterally by that Commission based on its review of whether there’s any merit to the complaint. They won’t even hear the complaint; they’ll just decide if the complaint has merit and then possibly dismiss it.

So it’s very different system -- a very different system in the Judiciary. And although it has its problems, it does have some benefits of a neutral oversight board to resolve disputes, and again, the fact that the Judiciary itself does use Civil Service.
On a legal basis, we believe that this rule proposal conflicts with legislative intent. There are clear parameters, clear definitions, clear language usage in Title 11A and the New Jersey Constitution where it talks about merit and fitness appointments. It talks about the public policy of testing and examinations for hiring and promotions. And everywhere in Title 11A it specifically talks about titles -- not job bands, not groups of titles. It uses the word titles. The very first couple of lines in the Civil Service Commission's rule proposal say that it will replace the word title with job band throughout the Civil Service regulations. So right there it's a direct conflict with Title 11A and the other statutory governing principles. The legislative intent was clear. If you wanted to say group of titles or occupational group or band of titles, you would have said it. You didn't. And the Constitution doesn't say that. So they are trying to bypass legislative intent, bypass existing statute, and change it unilaterally through rulemaking.

A couple of other points and then I'd be happy to take any questions, especially on the Judiciary system -- if you're interested.

The rule proposal -- aside from the problems with the pilot project or the pilot program, aside from opening up the door to patronage, favoritism, and discrimination as we know that it will -- it's really incontrovertible that creating this banding system will actually make it more difficult for local government managers to run their towns and their counties. And what do I mean by that? Also part of the rule proposal is that certain titles would be selected for banding. There is no criteria in the rule proposal that establishes what would be reviewed, what would be considered to convert a competitive title to a banded title. So there really is
no way of knowing which titles or how many titles would be banded together. But this presupposes that some titles will not be banded and will remain under the current system. So now, as a local government manager, I not only have to worry about the Civil Service system and following all of those rules, but there will be a back door system, a second system, a parallel system to administer. That will be extremely difficult for management to effectively manage, and operate, and administer their towns and their workforce. So the CSC really is not making things easier; they’re just creating a parallel system that we know will lose a lot of the safeguards that the current system has.

We don’t know which titles would be banded. They won’t answer those questions. We don’t know what the criteria would be to determine if a title is banded. They won’t answer those questions. We believe that this second system is, essentially, trying to open a back door for greater management discretion, patronage, favoritism, and we ask you to strongly oppose it. We don’t believe it’s the right thing for New Jersey’s State Executive Branch, and we don’t believe it’s the right thing for municipal or county government. And based on our own local experience with the Judiciary, we know that this proposal will be very different in practice from what we have negotiated in the Judiciary.

Thank you.

SENATOR GORDON: Thank you very much. Any members of the Committee with a question? Senator Greenstein.

SENATOR GREENSTEIN: Thank you.
To what extent are you having discussion? To what extent are you able to have contact with the Administration on this, and are they cutting off discussions in any way?

MR. LIEBTAG: I can tell you that-- Well, a couple of things. First, Hetty Rosenstein has been the main point of contact with the Administration, with the Commission; and as a CWA New Jersey representative, I believe, is a member of the Labor Advisory Board. So I would rely and defer to her answers about being stonewalled at that level.

On my level, at the sole public hearing on this issue, at the Commission, CWA collected over 2,600 letters -- individual letters -- requesting an additional public hearing. And when you combine that with what Eric Richard from the AFL-CIO delivered -- another 600 or 700 -- you're well over 3,000 individuals who asked for additional public comment, additional deliberations, and additional discussions. And all of those 3,000-plus letters have not been responded to individually -- number one. And number two, as Eric said, the silence is deafening. So we know that they're denying the ability for any public hearings. The public comment period closed. There's been no further communication, to my knowledge, to those requests. But again, if this was any other agency -- be it Community Affairs, DEP -- trying to make a rampant and widespread rule change, and you had 3,000 citizens saying, "We have problems with this; let's have some additional conversation," you know, I think it would behoove the Administration to acknowledge that.

SENATOR GREENSTEIN: One of my thoughts, Mr. Chairman -- and I don't know if this is something under consideration -- I believe-- I'm not a regular member of this Committee, but I believe the
Committee has subpoena power. Can we try to subpoena people from the Administration, the Civil Service Commission in a further hearing? Because certainly it would be good to hear from the other side and to try to bring this out in any way possible. I just don’t know what solutions are being considered.

SENATOR GORDON: To answer your question, this Committee does have subpoena power. I don’t know the last time it was exercised, if at all. But that’s certainly something we should consider. I’m very disappointed and, in fact, offended that we did not get any kind of response or presentation from the Civil Service Commission to refute or confirm what we’ve been hearing today.

SENATOR GREENSTEIN: Mr. Chairman, I also wanted to ask -- and I don’t know if this is something that can be discussed by CWA and other unions at this time -- but are lawsuits or other approaches being considered? Has anything like that been done at this point? I’m thinking what’s being looked at from a solution point of view. And with your indulgence, I don’t know, perhaps Ms. Rosenstein would like to be up here as well.

SENATOR GORDON: Ms. Rosenstein, can you answer that question?

MS. ROSENSTEIN: Certainly, sure.

We’re certainly considering our legal options and we submitted to the Civil Service Commission a legal memo from our attorneys regarding the fact that they believe these rules to be unconstitutional and why. So we’re absolutely looking at that and considering that.
I would just mention that we made three separate requests -- official requests for additional hearings and for discussion -- or just a meeting. And we were refused in terms of those additional meetings and hearings, separate from the 3,000 citizens who made the request.

SENATOR GREENSTEIN: But one last question. Other than-- I know there a couple of bills to call on the Administration to do something here. What would you like to see us do, as a Legislature?

MS. ROSENSTEIN: Well, I think in addition to calling on the Administration and doing what you’re doing, I think that we’re actually assembling a lot of our questions that we’ve asked in terms of OPRA and following up. And we’ll ask for the Legislature to follow up with that.

But one of the things that occurs to me that-- I’m not sure I understand why you can end up having a public hearing for the Civil Service Commission and not have anyone participate and come. And since they don’t seem to think that they need to come to their own public hearing or to any legislative public hearing, it seems to me they should be required to. And I don’t know if that’s another legislative way of addressing this, legislatively. We would-- If we are looking into legal action, we will be reaching out also to the entire Legislature to assist us with that, and I think as amicus, in helping us. I think that it really does defy all legislative intent -- these rules.

SENATOR GREENSTEIN: You know they don’t always come to Budget hearings when we have those? They stay away when they want to.

MR. ROSENSTEIN: These are their own hearings they didn’t come to.
SENATOR GREENSTEIN: Thank you.

SENATOR GORDON: Senator Lesniak.

SENATOR LESNIAK: Mr. Chairman, does this Committee and the Legislature have the power over regulations by joint resolution?

SENATOR GORDON: My memory of the rules is that if each house passes a concurrent resolution, we can overturn regulations that we feel are not in keeping with legislative intent.

SENATOR LESNIAK: Correct.

SENATOR GORDON: And that was-- I think when this Committee was established, I think -- may have been considered during the Whitman Administration when some educational legislation was enacted that -- I think Senator Matheussen felt that the rules were not in keeping with legislative intent.

SENATOR LESNIAK: Well, I happen to be around long enough to remember when Senator Zane passed the constitutional amendment to allow us to do that.

SENATOR KEAN: The 1947 Constitution -- right? Is that what that is? (laughter)

SENATOR LESNIAK: It was the year after I was born. (laughter)

That certainly, I would think, would be the best avenue, and something that we can and should do.

MR. LIEBTAG: May I make one more suggestion in response to Senator Greenstein's question?

With the pension and benefits reform legislation, there was this plan design committee which was created to have joint oversight and
authority over the State Health Benefits plan. Perhaps this would be another area to create a joint labor/management oversight committee, over Civil Service reforms. That you could do legislatively -- create that committee, and invest in it the authority that any sort of Civil Service regulatory changes would have to be vetted and approved by that joint committee. So at least with that sort of step you’d have input from all sides. You could have municipal and county input, State input, certainly stakeholder input from the represented organized labor membership, and you could have a more full-throated discussion of the issues. We have ideas on how to reform Civil Service as well, and that might be a good way to have some mutual discussion and benefit. So I offer that also as a legislative suggestion.

SENATOR GORDON: Sounds like a very productive exercise. That’s something we will certainly investigate.

Any other questions for these witnesses? (no response)

Seeing none, we will now hear from Darnell Hardwick of Camden NAACP.

DARNELL HARDWICK: Good afternoon, Senator Gordon and members of the Oversight Committee.

The NAACP would like to thank you for having this special meeting in regards to Governor Christie’s and the Civil Service Commission’s attempt to turn back the hands of time by proposing this new initiative called job banding.

My name is Darnell Hardwick. I am the Vice Chair of the New Jersey State Conference of the NAACP branches Labor and Industry Committee. I am also a 32-year employee at the Department of

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Transportation, and a Shop Steward for CWA Local 1032. I have personally experienced and witnessed this Administration's attack on basic workers' rights, civil rights, and fundamental due process.

Before I go into my statement, on a personal note: I have experienced how difficult it is to advance with scoring high on Civil Service lists. I have never in my 32-year career at the NJDOT received a provisional title -- which is a title from management before we get into the test. I had to score on the test to be appointed. In 1999, I finally complained, and retaliatory actions began. I was not given interviews on illegitimate 30 percent interview rules. When I scored high on the exam I was bypassed by the "rule of three." Internally, political influence denied my appeals. I had to go to the Federal EEOC; they agreed that I was denied promotions based on my race, and retaliated against based on those issues.

Eventually, I settled out of court in 2005. Make no mistake that if this rule was passed, advancement by Shop Stewards, minorities, whistleblowers, and older workers would be next to impossible.

I'd like to go on with my statement.

SENATOR GORDON: Proceed.

MR. HARDWICK: The NAACP rejects all attacks on the Civil Service system. It is a terrible idea to create generic titles and opens it up to a system of enormous abuse in a number of ways. I'm going to discuss some of the ways the system could be subject to that abuse. But first, I want to relate some facts and statistics I found in the State's own 2011 Workforce Profile, and give an analysis on how I think those facts relate to the proposed rules.
We know that in 2010 this Administration started their title consolidation project, during which they have consolidated hundreds of titles and placed dozens of titles more into the noncompetitive division. That is a non-exam part of the Civil Service. Out of the total of 67,302 people in the Executive Branch of the State government, only 48,633 were in competitive titles. Page 9 of the 2011 State Government Work Profile is the page where you find that information. So already about 19,000 positions out of the 67,000 are potentially fully subject to political patronage.

We also know that under this Administration it expanded its own positions in the Governor’s Office by 18 percent -- which is on page 4 -- over what it was in that office under Jon Corzine, at the same time that the workforce was decreased by 5 percent and that new hiring in State government decreased by 13 percent. And so the State Government Workforce Profile shows us that even before the Governor began his wholesale attack on Civil Service system and its competitive titles, that there is a preference by this Administration for patronage positions and they will use them whenever possible.

This is what politicians do; we know that. That was the reason for Civil Service in the first place. Moreover, we know that this Governor, from his history, will choose individuals with suspect qualifications for the purpose of exerting influence, rather than selecting individuals based upon merit. And we have seen in that the nominations to the Supreme Court, to the Public Employment Relations Commission, and to the Civil Service Commission and elsewhere. We also know this type of abuse exists elsewhere in the State, and at the local government and at the county level.
And hardly a week goes by where we don’t hear stories about people in power selecting members of their good old boy clubs for positions and bypassing the regular citizenry. This is also seen in the Governor’s Cabinet, where many of the members are associated with the U.S. Attorney’s Office of New Jersey, the Governor’s former employer.

The New Jersey NAACP got a firsthand look at numerous abuses in the recent union busting, job banding, and waiving of Civil Service rights of the Camden City Police Department. In our effort to evaluate, investigate, and inform the public of this important public safety issue, we discovered great difficulty and roadblocks. The City of Camden and the County of Camden would not divulge information, and there were no transparencies, in our estimation, to thwart any legal challenges. The County asserted that the one-year Civil Service waiver was to expedite hiring and promotions.

In approving the waivers, the Civil Service Commission decision cited job banding as a legitimate selection process. There was great concern from the unions that potential candidates could be influenced by “machine” politics. The CSC shrugged those concerns off and asserted that the steps included “in the pilot program are essentially no different than what would have occurred if open competitive lists were issued to fill these positions,” which isn’t true. Regrettably, the Civil Service Commission approved a pilot program to waive the very rules that they are vested to protect, and which we believe are unconstitutional.

This proposed new rule appears to be a change for the convenience of the appointing authorities and the CSC, and not a change for efficiencies. Problems with Civil Service will not be solved by merely
freeing management from rules and limits. Appointing authorities, given the flexibility, will not automatically do what is right. It is important to keep in the forefront the principles of the Civil Service that provide crucial protections for employees from arbitrary and discriminatory treatment. This rule would not protect the public from patronage, cronyism, racism, sexism, retaliation, discrimination, and promoting fairness; or create a professional and stable workplace.

The Civil Service system has been a gateway to the middle class for women and minorities, and the employment statistics show that women and minorities have great representation in the public sector. Any attack on the employment rights of public workers therefore disproportionately impact women and minorities. The New Jersey State Chapter of the NAACP is also deeply concerned with the lack of affirmative action/workforce development plans at State agencies, per New Jersey S.A. 11A:7-8, under this Administration. State agencies have not submitted a plan since 2008, which were filed in 2009. We learned through Open Public Records requests that the State agencies were advised by the Division of Equal Opportunity/Affirmative Action in October 2010 to stop all work on the plans until further notice -- and they have not received any further instructions. Those plans document yearly hiring and promotion data for State agencies. So how are they going to promote and influence things with affirmative action/equal opportunity when there's no plan in place?

In closing, we allege that the mechanism in place to protect employees from abuse of job advancements are not adequate. Currently we allege that filing complaints with the internal Civil Rights units, grievance
procedures, merit system board, and the PERC are fruitless due to that same political influence. This new proposal of job banding needs to be halted for the protection of the public and the Civil Service Act.

Thank you.

SENATOR GORDON: Thank you very much.

Any questions from the Committee? (no response)

Thank you very much.

I'd like to bring up the last two witnesses; I'd like to bring them up together: Alan Hardy and Anil Desai, CWA Local 1032.

Mr. Desai.

ANIL DESAI: Thank you, Mr. Chairman, and Committee members.

This hearing is so important to my heart, and to the work I do and the way I should be rewarded. I'm going to read my written testimony so that I cannot miss any of the points that I will try to make here.

My name is Anil Desai, Civil Engineer by profession. I work for the New Jersey Department of Transportation as a Project Engineer.

Today, I'm testifying as the President of Branch 5 of Communications Workers of America Local 1032, representing NJDOT employees.

I am honored and thankful for the opportunity to testify in front of this Committee regarding the proposed job banding program by the Civil Service Commission and the adverse effect it will have, if implemented, on the finest employees of the NJDOT and other agencies.

Let me tell you about myself a little bit. In 1981 I immigrated to this great country of ours from India. I joined NJDOT in 1983. Throughout my employment I have served the people of New Jersey with
the utmost professionalism. In my humble opinion, my excellent work ethic and engineering skill have helped me to contribute to make our highways and bridges safe and efficient. I have received numerous letters from the people of New Jersey thanking me for my work.

I was able to be rewarded with job promotions because of the current Civil Service examination system in place.

Back when I started, it was rare for an Asian American to get a provisional promotional appointment. These provisional appointments were completely at the discretion of the local management. So we took advantage of Civil Service examination system in order to move up on the professional ladder through Civil Service lists and permanent promotions.

This proposed job banding program, with its elimination of Civil Service exams for most promotions, will make it tough to advance for the employee like me and will demoralize the finest employees. We should continue to utilize the talent of our employees and reward them, and in turn make our State system more efficient to serve our citizens.

I strongly urge you to preserve and embrace the current fair system of job promotion. The present Civil Service regulations should not be replaced with the job banding program, as it will cause a devastating impact on the government workforce and the efficiency with which they serve New Jersey.

The proposal will result in cronyism, nepotism, and favoritism. Also, it will result in underutilization of the talent -- and that's the worst part of it. The Civil Service Commission was set up in 1908 to curtail cronyism. They should not depart from their core principles and do exactly the opposite.
There may be some obvious problem with the current system which needs to be tweaked or improved upon. That does not mean we should eliminate the system completely. You do not kill someone who has a bad knee or, in other words, don’t send a nice car to the junkyard for having a wiper problem.

I call upon you intelligent people to do the right thing by exerting pressure on the Civil Service Commission not to implement this ill-advised reform. And, by the way, these are not reforms; in my opinion, it is a giant leap backward.

Let us use the best pool no matter what kind of accent they have. And, you know, we should utilize them. That’s the American tradition and that must be New Jersey’s tradition to keep this one great State.

Thank you again for listening.

SENATOR GORDON: Thank you very much.

Mr. Hardy.

ALAN HARDY: I thank the Committee for holding this hearing and for hearing our testimony.

My name is Alan Hardy. Today I’m testifying as an Executive Board Member and Shop Steward of Communications Workers of America Local 1032. I’ve been a State employee for 32 years. Currently I’m a supervising Software Development Specialist 3 at the New Jersey Office of Information Technology -- OIT.

For a number of years, the primary route to promotion at OIT has been the classification appeal. In the last year alone, there were over
100 hundred appeals in an agency of just over 700 -- over half of these appeals were successful.

Under the current classification appeals system, when the classification appeal is filed by the union or by an individual, the determination of the appropriate classification is made by a classification reviewer at the Civil Service Commission. This review by a classification expert not employed by the agency employing by the appellant ensures that the appeal process is both fair and accurate.

The reason that so many classification appeals have been initiated by the union or individuals recently at OIT is that OIT has been unable to obtain permission from the Treasurer to promote significant numbers of people. Many managers at OIT have advised their direct reports that a classification appeal is the only way in which they will be able to gain a promotion.

The job banding proposal before the Civil Service Commission would end these appeals for most titles. On page 15 of the proposal it is explicitly stated that “recodified paragraph c(7) would be amended to provide that Commission-level classification appeals in State service shall not apply to an employee’s title level within a job band.” On page 15 it also states that “appeals shall be under the Civil Service grievance regulations, rather than under the contractually required classification appeal procedure.”

The proposed rule also makes clear that the decision of the agency will, in almost all cases, be the final resolution. On page 14 of the proposal it states that, and I quote, “appeals pertaining to an employee’s title level within a job band are governed by N.J.A.C. 4A:3-3.9(c)4 and 5.”
On page 9 of the proposal, in explaining the new grievance appeal procedure, it states that the Civil Service Commission “may dismiss the matter without further review of the merits of the appeal where issues of general applicability are not fully presented.”

In short, for most current promotional opportunities, classification appeals will no longer exist. Instead, there will be a so-called grievance procedure without an adequate and fair means of resolution that has not been negotiated with the union. No independent classification expert will be involved.

Since over the years there have been constant pressures from the Treasury not to promote employees when the promotion is at the discretion of the department management, the classification appeal has been the only method by which deserving employees can be promoted to the title appropriate to their duties.

We believe that the elimination of classification appeals will greatly increase the number of people who are misclassified. The unfairness of the situation in which employees will not be properly compensated for the level of work performed is obvious.

However, misclassification also has serious negative consequences for productivity. If, for instance, a person’s classification requires them to only perform the simplest tasks when they are capable of much more, there will be an understandable reluctance by many supervisors and managers to assign the more advanced tasks that the person is capable of performing if the person is not being properly compensated.

Thank you very much.

SENATOR GORDON: Thank you, Mr. Hardy.
Any questions from the Committee?
Senator Greenstein, Senator Kean? (no response)
Well, thank you very much.
We haven’t received any other slips. Does anyone else wish to testify? (no response)

Seeing none, let me just close with a couple of comments.

I have no doubt that there are opportunities to improve the efficiency of the Civil Service system. But I am personally concerned about the impact of these wholesale changes to a system that has served us reasonably well since 1908. And I’m concerned that if we simply throw these out the window, there is the potential to return to the spoil system of the 19th century. And so I hope the Legislature will consider its options. We talked about concurrent resolutions to overturn this effort by the Executive Branch once the rules are released. We may consider our subpoena powers as well. I certainly think that there have been major problems with the process -- clearly something that has such an impact should have been discussed more openly and more extensively. And I hope this Committee, at least, has helped in airing some of these issues.

And I want to thank everyone for appearing here. I want to thank my colleagues for their participation. And we will be pursuing the issues raised here today.

Thank you very much.

(MEETING CONCLUDED)