KENNETH J. GROOME,  
Petitioner,  

v.  
NEW JERSEY STATE EMPLOYEES' AWARD COMMITTEE,  
Respondent.  

Decided August 13, 1981  

Initial Decision  

SYNOPSIS  

Kenneth J. Groome, an employee of the State Division of Taxation, submitted two suggestions to the New Jersey State Employees' Awards Committee with respect to improved procedures he proposed for the Division of Taxation. The Department of Treasury State Employees' Award Committee recommended that both awards be rejected and that Groome not be considered eligible for an award for these suggestions under the State Employees' Awards Program. As a result, a hearing was held before an administrative law judge. 

The administrative law judge noted that the respondent urged two grounds for Groome's ineligibility for an award: 1) under N.J.S.A. 11:2C-1 et seq., only suggestions which reduce costs to the State are eligible for an award—suggestions which enhance the realization of revenues are not; 2) Groome's job included responsibility for considering ways to enhance the collection of revenues from the taxes with which his unit dealt. 

The administrative law judge found that Groome's two suggestions do not simply involve raising revenues, but, rather involve structural improvements in the procedures and methods of the Division of Taxation. Additionally, after a review of Groome's job description, the judge found that Groome's position did not include responsibility for the correction of underpayments—the problem to which his suggestions were addressed.

Accordingly, the administrative law judge concluded that Groome's suggestions qualified for the State Employees' Awards Program and ordered that an award of $8,600 be paid to Groome. 

Kenneth J. Groome, Pro Se  
Michael L. Diller, Deputy Attorney General for Respondent, (Judith Yaskin, Acting Attorney General of New Jersey, Attorney)
SULLIVAN, ALJ:

On March 22, 1978, Kenneth J. Groome submitted a suggestion to the New Jersey State Employees' Awards Committee respecting certain improvements which he proposed be implemented in the Division of Taxation, where he was employed as an Auditor II, Taxation, in charge of the Business and Personal Property Tax Unit within the Adjustment Section of the then Bureau of Collection and Enforcement. This suggestion had to do with assessing penalties and interest against certain licensees who did not file a Motor Fuels Tax Report, and it was numbered by the Committee as Suggestion 78-188.

In early 1979, Groome, now employed as an Auditor I, Taxation, submitted another suggestion respecting the collection of the cigarette tax. This suggestion was numbered by the Committee as 79-17.

Following lengthy correspondence, in the course of which the Department of the Treasury State Employees' Awards Committee recommended the rejection of both suggestions, the State Employees' Awards Committee, at its meeting of August 21, 1980, determined that a hearing be conducted to determine whether Groome was the originator of the suggestions, whether he was eligible to make the suggestions under the regulations governing the awards program, whether the suggestions were implemented and, if so, what savings resulted.

On December 4, 1980, on behalf of the Committee, the Acting Chief Examiner and Secretary referred the matter to the Office of Administrative Law.

I note at the outset the following facts, all of which were either uncontraverted or specifically stipulated to at the hearing:

1. Groome was the originator of suggestions 78-188 and 79-17.
2. Both suggestions were implemented by the Division of Taxation.
3. The implementation of Suggestion 78-188 resulted in the realization of $36,000 in increased revenues by the Division in the year following its implementation.
4. The implementation of Suggestion 79-17 resulted in the realization of more than $50,000 in increased revenues by the Division in the year following its implementation.

I further note that the respondent urges two grounds for Groome's ineligibility for an award, namely:

1. Under N.J.S.A. 11:2C-1 et seq, only suggestions which reduce costs to the State are eligible for an award; suggestions which enhance the realization of revenues are not.
2. By virtue of his position in charge of the Business and Personal Property Tax Unit and his various titles of Auditor I and II,
Taxation, Groome’s job included responsibility for considering ways to enhance the collection of revenues from the taxes with which his unit dealt.

SUGGESTION 78-188

In early 1978, Groome was an Auditor II, Taxation, in charge of the Business and Personal Property Tax Unit, which reviewed business and personal property tax returns for timeliness, arithmetic correctness and general conformity to the regulations which dictated the preparation of the return. Based on these preliminary activities, penalties and interest were assessed, if appropriate, and collection was then pursued by other units. When Groome first assumed responsibility for the units, the motor fuel tax was processed by a separate unit consisting of a single employee of the Division of Taxation who retired in early 1978. Upon this employee’s retirement, the processing of the motor fuels tax was added to the responsibilities of the more generalized unit which Groome headed.

Upon being assigned these responsibilities, Groome discovered that motor fuel tax returns were received by an administrative employee of the Revenue and Finance Section who noted the receipt of the return on a file card prepared for each appropriate licensee. The returns were forwarded to Groome’s unit which, as stated, made a preliminary determination of penalty and interest. However, Groome noted that while Revenue and Finance recorded late filings, there was no mechanism within the Division to note non-filings of required returns. This led Groome to surmise that tax revenues due the State were not being collected since the Division had no means of apprising itself of the non-existence of a return. Considering this problem, Groome devised a methodology whereby each licensee’s record card was assigned blocks in which either the date of the return or the nonsubmission of a return were noted. Penalties and interest were, therefore, assessed against nonpaying and well as late-paying licensees.

Groome approached the Chief of the Bureau of Collection and Enforcement Mr. Culliton, with his suggestion and received Culliton’s enthusiastic approval for its implementation in early 1978. The suggestion was put into effect, with the result that it substantially increased motor fuels tax revenues received by the State.

Culliton was so enthusiastic about the suggestion that he encouraged Groome to submit it to the Awards Committee, which he did on March 22, 1980.
Consistent with the awards program, the suggestion was forwarded to the Department of Treasury Employees’ Awards Committee, of which James Vandervort serves as Executive Secretary. Consistent with that committee’s practice, Vandervort forwarded the suggestion to Jay Brown of the Division of Taxation for his analysis and evaluation. Brown spoke to Glenn Holland, Groome’s immediate supervisor and, in Brown’s testimony, was told that Groome was ineligible for the award because, as part of his job duties as a unit supervisor, he was responsible for bringing problems such as non-collection of taxes to the attention of his superiors. Following a brief delay, not germane to the question here, Brown told Vandervort of his disapproval of Groome’s suggestion, and Vandervort’s committee endorsed Brown’s disapproval and communicated it to the State Employees’ Awards Committee.

Brown indicated that he had spoken to a number of individuals in Collection and Enforcement, but that most of his attention was directed to the statements of Glenn Holland. Indeed, Brown did not recall the identities of the other individuals to whom he had spoken. Brown conceded that he did not review either the specification of Groome’s title of Auditor II, Taxation, or the more detailed job description reflected in Groome’s Employee Performance Evaluation and Improvement System (EPEIS) evaluation. The records reflect that neither of these documents requires him to seek out new methods of collecting revenues, but rather they suggest supervision of a unit which carries out existing programs for revenue collection.

With respect to suggestion 78-188, Brown quoted Holland for the proposition that Groome was generally responsible for the motor fuel area. In his own testimony, Holland denied having indicated this to Brown, apart from Groome’s conceded responsibility for assessing penalties for late filed reports. Brown conceded that there were no minutes of his discussions with Holland. Brown went on to indicate that he recommended disapproval of the suggestion because of his conclusion that Groome had a responsibility to bring problems to his supervisor’s attention. Furthermore, Brown indicated that the procedures for the assessment of penalty and interest were identical, regardless of whether the reports were filed late or not filed.

Groome’s EPEIS job descriptions for the period from November 1976 through October 1978, while he served as an Auditor II, Taxation, indicate consistently that he is “responsible for the billing of underpayments of tax, penalty, and/or interest for the taxes handled.” Nevertheless, the heading of these reports indicates as part of the job description: “responsible includes the adjustment section
functions relating to business and personal property tax, retail gross receipt tax, motor fuels tax, beverage tax, and cigarette tax” (emphasis added). Based on this description, it is clear that Groome’s responsibilities extended only to those functions then assigned to the adjustment section. Since it is clear that the assessment of penalties for nonfiled reports was not “an adjustment section function,” it is difficult, if not impossible, to assign to Groome responsibility for such underpayments.

SUGGESTION 79-17

On July 15, 1978, Groome was promoted to the title of Auditor I, Taxation. His assignment continued, however, as head of the Business and Personal Property Tax Unit. On January 9, 1979, Groome submitted Suggestion 79-17, which was to assess a penalty or interest if a distributor of cigarettes did not pay for cigarette tax stamps within 30 days of their purchase. Groome suggested this improvement in December 1978, and it is conceded that this suggestion was put into immediate effect. As noted on the suggestion form itself, Groome disavowed authority for late payments of cigarette tax stamp purchases, noting that he was responsible only for late-filed cigarette reports. Kathy Sziszzeri Chamberlain, Principal Audit Account Clerk in Revenues and Finance, testified that her section, which sends cigarette tax stamps to distributors, formerly experienced 20 delinquent payors at any given time. Since the implementation of Groome’s suggestion, the section now deals with only three to four delinquent accounts at a time. Ms. Chamberlain indicated that her 1979 salary was approximately $10,000 a year, and that the dunning of delinquent accounts represented 15% of her time in 1978, but now represents 5 percent.

Patrick Quigley, an employee of the Business and Personal Property Tax unit, testified that, prior to 1979, the Unit had no involvement with tax stamps.

As with the earlier suggestion, Suggestion 79-17 was reviewed by Jay Brown who recommended disapproval based on Groome’s responsibilities to recommend procedural improvements in the collection of taxes which his unit administered. Brown testified that the scope of Groome’s responsibility was augmented by his promotion to the title of Auditor I, Taxation.

Frank Vuono testified that he was assigned the responsibility in March 1978 to look at Revenue and Finance procedures and to suggest improvements. Vuono confirmed Chamberlain’s testimony as to the previous delinquency problems. Vuono also testified that he had
told his superiors of Chamberlain's thoughts on the desirability of doing something about delinquent accounts. However, he indicated that he was told that there was no need for a response.

A certain amount of confusion surrounds the submission of EPEIS job descriptions for Groome's position after October 1978. Groome offered in evidence a number of memoranda which he sent to Holland, dated from January 10, through March 16, 1979, asking for a job description of his new title. On March 11, 1981, following the hearing, the respondent proffered a document purported to be an EPEIS job description for Mr. Groome in the Auditor I, Taxation title. However, as Groome pointed out in his letter of March 15, 1981, the document is undated, does not show an evaluation period, and bears neither the signature or initials of the supervisor nor of Groome, who represents that he had never seen this document before. In light of the disputed authenticity of the document and the fact that it is without initials or date, I am disinclined to allow it the status of evidence of Groome's responsibilities for the period from November 1978 through October 1979. Evidence includes an EPEIS job description for the period November 1, 1979, through October 31, 1980, which includes, among the duties, "recommends procedural changes for the unit based on knowledge of the functions of the unit and taxes processed by the unit." Nevertheless, there is no documentary evidence indicating that this job description was in effect in January 1979, when this suggestion was submitted. Indeed, the voluminous correspondence among Groome, the staff of the State Awards Committee and officials of the Department of the Treasury clearly indicates that by November 1979, the respective positions of the litigants had been established, and in no way strains credulity to speculate that the Department of the Treasury drafted the above-quoted language with the view to forestalling further suggestions by Groome. For this reason, in the absence of a credible EPEIS for the period in which Suggestion 79-17 was submitted, the analysis of Groome's responsibilities must rest on the Auditor I, Taxation, Civil Service job description. This document was supplied after the hearing by respondent, and while it broadly suggests expanded managerial responsibilities, it does not clearly purport to render the employee responsible for making suggestions beyond the scope of the unit to which he is assigned.

Accordingly, in light of the foregoing, I make the following FINDINGS OF FACT:

1. The uncontroverted or stipulated facts previously set forth in this opinion are found as if fully recited herein.
3. On March 22, 1978, Groome was an Auditor II, Taxation, in charge of the Business and Property Tax Unit within the Adjustment Section.
4. On March 22, 1978, Groome's unit was responsible for the assessment of interest and penalties on certain late-filed motor fuel tax reports.
5. On March 22, 1978, Business and Personal Property Tax Unit had no functions with respect to non-filed motor fuel tax reports.
6. Suggestion 79-17 was submitted on January 9, 1979.
7. On January 9, 1979, Kenneth Groome was an Auditor I, Taxation, still in charge of the Business and Personal Property Tax Unit within the Adjustment Section.
8. At the time in question, the Business and Personal Property Tax Unit had no function with respect to the assessment of penalties and interest to delinquent cigarette tax stamps purchasers.
9. The Division of Taxation employed Frank M. Vuono with the primary responsibility of reviewing procedures of the Revenue and Finance Section and suggesting improvements.
10. As a result of the implementation of Suggestion 79-17, the Division of Taxation realized a savings of ten percent in the worktime of Kathy Sziszeri Chamberlain, for a net savings of $1,000.1
11. Groome's EPEIS ratings were outstanding.

The respondent argues, "this case brings into focus the issue of whether the State as an employer can expect reasonable initiative from its employees, and particularly its supervisors, to perceive problems in areas related to their own duties and responsibilities and to formulate ideas, methods, and procedures to remedy these problems, whether the State has created the Suggestion Award program as a substitute for this expectation."

---

1This finding is made based on the possibility that the New Jersey State Employees' Awards Committee might disagree with the hearer with respect to the awardability of suggestions which enhance revenues due and owing to the State, in which case Groome might still be entitled to an award for Suggestion 79-17 because of the savings in efficiency of Ms. Chamberlain's operation.
Respondent does not cite any statute or rule through which the State articulates its expectation of initiative, apart from the job descriptions entered into the record.

The issue which the respondent raises is the intention of the Legislature in enacting N.J.S.A. 11:2C-1 et seq. The language of the statute does not indicate a specific expectation on the part of the Legislature with respect to this issue. Further, while the statute authorizes the Committee to adopt and promulgate rules and regulations for the conduct and operation of the awards program, N.J.S.A. 11.2C-8, the statute is silent as to the interplay between these regulations and the job specifications of the suggester.

One need not be privy to the internal affairs of the Civil Service Commission to take notice of the fact that the public employment laws of this State have been widely criticized with respect to their inability to reward initiative.

To exemplify this point, notice is taken see, N.J.S.A. 52:14B-10(b) of the report of the Merit System Review Project, undertaken by the New Jersey Civil Service Commission in 1977. As the Report with Recommendations on the Improvement of Personnel Management (popularly referred to as the "Lutz Report") notes:

Considerable dissatisfaction was evidenced by respondents to the user survey in the areas of classification and compensation. In general, the responses can be summarized in a few words - excessive delays in processing classification changes, and rigidity in and over centralization of classification and compensation administration. (Lutz Report at 30.)

The report further notes:

The State does not really have a "merit" salary plan. Salary advances within range have become almost automatic for all employees. (Lutz Report at 41.)

Clearly, these comments were made some time after the adoption of N.J.S.A. 11:2C-1 et seq. Nevertheless, turning to the specifics of the regulations, we find that the committee has circumscribed an exception for those employees who may otherwise be eligible for awards under Civil Service Personnel Manual (CSPM) (state service) 221.103(f)(1), which provides:

No award shall be paid to any employee for any suggestion which represents a part of the duties of his/her position and which he/she has the authority to change or the responsibility for bringing the existing state or improvement to the attention of his/her supervisor.

This regulation limits the exclusion from eligibility to those employees whose duties include responsibility for bringing the existing state
of affairs or improvement to the attention of his/her supervisor. A review of Groome’s job description does not indicate either authority to change or responsibility to suggest improvements in the methodologies in the Revenue and Finance Section, which lies not only outside his unit, but outside his bureau as well.

The State contends, and Groome does not contradict, that the civil service job description does not exhaustively catalogue all duties which the incumbent is expected to carry out in the course of his work day. This conclusion seems to be supported by the Civil Service Commission itself, which, in addition to promulgating job descriptions, has also created the Employee Performance Evaluation and Improvements Systems (EPEIS). Groome correctly quotes the printed instruction on the EPEIS form, which directs the supervisor to “develop with your subordinate from the job specification, if possible, a complete listing of the actions and the responsibilities that are actually done by the subordinate during the forthcoming evaluation” (emphasis added). Groome correctly argues that the EPEIS forms for the positions he held at the time the suggestions were made do not touch upon a responsibility for suggesting improvements in the procedures of other sections.

Furthermore, even taking the State’s position to its logical extreme, namely that Groome was responsible for suggesting procedural improvements with respect to the collection of revenues, the testimony of Frank Vuono then can only be interpreted as to create an anomaly in the record. Vuono testified without contradiction that he was given the responsibility of reviewing the collections of the motor fuel tax. This would suggest that, at least in the contemplation of the Division of Taxation in 1978, the responsibility for reviewing procedures was not being properly executed by Groome and that the proper execution of this responsibility required the services of Vuono. Assuming for the moment that it was Groome’s responsibility to suggest improvements and that Vuono was given this responsibility because of some failure on Groome’s part to execute it, it is anomalous that Groome should have been given an outstanding EPEIS rating for the period of time under consideration. Thus it would appear that the position of the Division of Taxation when the suggestion was submitted was that recommending improvements in procedures was not a duty of Groome’s.

Lastly, the respondent contends that Groome is ineligible for an award based on enhanced revenues since the statute prohibits the granting of awards for suggestions which generate revenues and,
instead, limits awards to suggest which reduce costs. It may be noted that, on an economic analysis, the benefit to the State is identical, regardless of whether the benefit appears on the debit or credit side of the balance sheet. As to the law, the statute does not address this issue directly, but, instead, grants the Committee discretion, under the direction of the President of the Civil Service Commission, to administer plans for the awards program (N.J.S.A. 11:2C-6) and to formulate regulations governing (N.J.S.A. 11:2C-8).

The Committee has addressed this issue by the promulgation of CSPM 22-1.103f8, which reads:

No award shall be paid to an employee for any suggestion which simply involves instituting or raising fees or taxes levied by the State. (emphasis added) It would appear that the Committee has excluded from the awards program suggestions that the State institute new taxes or raise fees. An analysis of the evidence suggests that Groome's two suggestions do not involve simply raising fees, but, rather, structural improvements in the procedures and methods of the Division of Taxation. Furthermore, the Committee addressed this specific question in an exchange of correspondence with Richard B. Standiford, Deputy Director of the Division of Budget and Accounting, who, on March 30, 1978, proposed a modification of the regulations to exclude from the awards program any suggestion to recoup "funds legally due the State under any tax statute of the State of New Jersey." The minutes of the State Employees' Awards Committee meeting of May 16, 1978, show that Standiford's suggestion was rejected "because to [so modify the regulations] would shut off many legitimate suggestions which result in economies or efficiencies which would otherwise be lost to the State." For this reason, it would appear that the Committee has construed its regulations in a manner inconsistent with that advanced by the respondent.

Accordingly, for the reasons set forth above, I CONCLUDE that Suggestions 78-188 and 79-17 both qualify under the State Employees' Awards Program and I ORDER that an award of $8,600 be made to Kenneth J. Groome under the usual procedures of the State Employees' Awards Committee.²

²The amount reflects an award of $3,600 for suggestions 78-188 (CSPM 22-1.103d4); the $5,000 award is for Suggestion 79-17 (CSPM 22-1.103d2). The New Jersey State Employees' Awards Committee approves suggestion #78-188 and orders an award of $3,600 on that suggestion, and further approves suggestion #79-17 and orders an award of $5,000 on that suggestion.
After reviewing this Initial Decision the
New Jersey State Employees' Awards Committee on
August 13, 1981 issued the following Final
Decision:

Having considered the administrative law judge's initial decision thereon, and based upon the record herein, and having made an independent evaluation of same, the New Jersey State Employees' Awards Committee, at its meeting of July 16, 1981, accepts and adopts the findings and recommendation as contained in the administrative law judge's initial decision.