

CSC
B-101



STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Umar Salahuddin,
Atlantic City

CSC Docket No. 2016-1365

Request for Back Pay and Counsel
Fees

ISSUED: DEC 17 2015 (SLK)

Umar Salahuddin, a retired Assistant Youth Opportunity Coordinator¹ with Atlantic City, represented by Richard L. Press, Esq., requests back pay and counsel fees in accordance with the attached Civil Service Commission (Commission) decision rendered on July 29, 2015.

By way of background, the petitioner was demoted in lieu of layoff from his permanent title of Assistant Youth Opportunity Coordinator to Community Service Aide effective May 27, 2010. The petitioner subsequently appealed the good faith of the layoff to the Commission, and the matter was referred for a hearing to the Office of Administrative Law. Following a hearing, the Administrative Law Judge (ALJ) concluded that the petitioner's layoff was done in bad faith and recommended that the demotion be reversed. Upon its review, the Commission determined that the layoff was justified and dismissed the petitioner's appeal. Subsequently, the petitioner appealed the Commission's decision to the Appellate Division, which reversed and remanded the matter for the purpose of reinstating the findings of the ALJ and awarding counsel fees. Thereafter, the Commission found the layoff of the petitioner was not justified and upheld the petitioner's appeal and awarded back pay, benefits and seniority in accordance with *N.J.A.C. 4A:2-1.5* for the period from May 27, 2010, the date of the petitioner's demotion until July 1, 2015, the date of his retirement, and counsel fees in accordance with *N.J.A.C. 4A:2-2.12*.

¹ Personnel records currently indicate that the petitioner's last permanent title was Community Service Aide.

The parties were unable to reach an agreement regarding the amount of back pay and counsel fees due. In support of his request for back pay, the petitioner provides an affidavit dated August 31, 2015 indicating that the gross pay differential between Assistant Youth Opportunity Coordinator and Community Service Aide was \$3,221.60 annually. Therefore, the petitioner calculates the gross amount of pay differential for five years and five weeks, May 27, 2010 to July 1, 2015, to equal \$16,409.76. The petitioner also represents that he would have received a 2% annual raise if he was not demoted and therefore the total amount of back pay he is requesting is \$16,737.95. The petitioner indicates that he did not earn any other income from employment of any kind other than his continued employment with the appointing authority. He is also requesting that the appointing authority submit additional pension contributions to the Public Employees' Retirement System (PERS) so that the pension amounts that he is now receiving as a retired employee can be recalculated by PERS based upon this award of back pay. Further, the petitioner requests that his personnel records reflect that he retired as an Assistant Youth Coordinator as of July 1, 2015.

With respect to the petitioner's request for counsel fees, his attorney submits an affidavit of services dated August 31, 2015, requesting \$44,550 for 222.25 hours of work at a rate of \$200 an hour. Mr. Press' affidavit provides an itemized statement for services he performed from October 21, 2010 to October 31, 2013. Mr. Press is not requesting any costs in this matter. Mr. Press is a partner in a law firm and he was admitted to the New Jersey Bar in 1978.

In response, the appointing authority, represented by John R. Dominy, Esq., indicates that it broadly objects to the totality of fees sought. Specifically, it presents that Mr. Press requested counsel fees in the amount of \$54,133.32 and costs in the amount of \$9,832.19 for the Appellate Division matter and the court reduced the counsel fee award to \$9,750 and the costs award to \$3,000. The appointing authority asserts that the Commission should reduce the petitioner's request for counsel fees in this administrative action in a similar manner.

In reply, the petitioner states that his attorney's affidavit outlines services performed for 14 separate trial dates before the ALJ as well as post-trial submissions. He reiterates that his request did not include the costs for transcripts, other related trial costs, clerical or administrative duties performed by his counsel, and other expenses such as travel. The petitioner presents that his attorney has over 38 years of experience specializing in labor and employment law and considerable experience in handling matters before ALJs and administrative agencies. He highlights that his counsel worked 222.25 hours over three years at a substantially reduced rate of \$200 per hour for an amount totaling \$44,500. The petitioner states that the amount of work was reasonable and that this request is completely separate from the work performed for the Appellate Division matter between November 11, 2013 and July 2015. The petitioner contends that the

Appellate Division did not explain its order and did not indicate that its decision was in any way binding in regard to any counsel fee awards by the Commission. He notes that the appointing authority has not objected to the calculation that his back pay differential is \$16,737.95, did not object to his request to be reinstated to his position as Assistant Youth Opportunity Coordinator as ordered by the Appellate Division, and did not object to his attorney's affidavit of services for work performed prior to the Appellate Division matter. Instead, the appointing authority simply states that his request for counsel fees should be reduced in a similar manner as done by the Appellate Division without any legal argument.

CONCLUSION

In reference to back pay, pursuant to *N.J.A.C. 4A:2-2.10(d)*, an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. *N.J.A.C. 4A:2-2.10(d)4* provides that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

In this matter, the petitioner has represented that total differential pay that he would have received from the time that he was improperly demoted, May 27, 2010, to the date of his retirement, July 1, 2015, is \$16,737.95. The appointing authority has not provided any evidence or made any arguments to dispute this amount. Therefore, the appointing authority shall pay the petitioner \$16,737.95 less the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld. Further, the appointing authority shall provide the petitioner with a full accounting of its deductions and pension contributions when it makes its payment to the petitioner. *See In the Matter of Ronald Dorn* (MSB, decided December 21, 2005). Additionally, the appointing authority shall update the petitioner's personnel records to reflect that he retired as an Assistant Youth Opportunity Coordinator as of July 1, 2015.

With respect to counsel fees, *N.J.A.C. 4A:2-2.12(c)* provides as follows: an associate in a law firm is to be awarded an hourly rate between \$100 and \$150; a partner in a law firm with fewer than 15 years of experience in the practice of law is to be awarded an hourly rate between \$150 and \$175; and a partner in a law firm with 15 or more years of experience practicing law, or notwithstanding the number of years of experience, with practice concentrated in employment or labor law, is to be awarded an hourly rate between \$175 and \$200. *N.J.A.C. 4A:2-2.12(e)* provides a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors shall be considered: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; the nature and length of the professional relationship

with the employee; and the experience, reputation and ability of the attorney performing the services. *N.J.A.C.* 4A:2-2.12(g) provides that reasonable out-of-pocket costs, such as costs associated with expert witnesses, subpoena fees and out-of-state travel, shall be awarded. However, costs associated with normal office overhead shall not be awarded. *N.J.A.C.* 4A:2-2.12(d) provides that, if an attorney has signed a specific fee agreement with the employee or the employee's negotiations representative, the fee ranges set forth above may be adjusted. *N.J.A.C.* 4A:2-2.12(e) provides that the fee amount or fee ranges may be adjusted based on the circumstances of the particular matter, and in consideration of the time and labor required, the customary fee in the locality for similar services, the nature or length of the relationship between the attorney and client and the experience, reputation and ability of the attorney.

In this matter, the petitioner requests \$44,500 for 222.25 hours of legal services rendered from October 21, 2010 through October 31, 2013. Although the appointing authority does not challenge or present any information regarding any specific itemized service performed by the petitioner's counsel, it does argue that his counsel fees should be reduced in a similar manner as the Appellate Division reduced fees and costs in that matter. However, the matters before the Commission and the Appellate Division are two separate issues and the Appellate Division's decision has no bearing on this matter. Nevertheless, on August 2, 2011, the petitioner requests fees for 2.5 hours for attendance at trial and for photocopying exhibits. The time spent photocopying is considered normal overhead and not reimbursable under *N.J.A.C.* 4A:2-2.12. The petitioner's counsel does not indicate how much time was spent at trial and how much time was spent photocopying. Therefore, the petitioner's request for counsel fees shall be reduced by 2.5 hours. With respect to the petitioner's counsel rate, Mr. Press is an experienced partner in a law firm that has a practice concentrated in employment and labor law. Further, the appointing authority has not made any objection or legal argument regarding his rate. As such, the Commission finds it appropriate to award the petitioner counsel fees based on \$200 per hour rate for Mr. Press' time or a total of \$43,950 ($219.75 * \200).

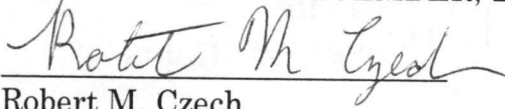
ORDER

Therefore, it is ordered that this appeal be granted in part and that the appointing authority pay the petitioner \$16,737.95 less the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld. Further, the appointing authority shall provide the petitioner with a full accounting of its deductions and pension contributions when it makes its payment to the petitioner. Additionally, the appointing authority shall update the petitioner's personnel records to reflect that he retired in good standing as an Assistant Youth Opportunity Coordinator as of July 1, 2015. Further, the appointing authority shall

pay the petitioner's attorney counsel fees in the amount of \$43,950. The back pay and counsel fees shall be paid within 30 days of the issuance of this decision.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries Henry Maurer
and Director
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Attachment

- c: Umar Salahuddin
- Richard L. Press, Esq.
- John R. Dominy, Esq.
- Kenneth Connolly
- Joseph Gambino



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Umar Salahuddin,
Atlantic City

CSC Docket No. 2016-427

Court Remand

ISSUED: **AUG 03 2015** (SLK)

The Appellate Division, Superior Court of New Jersey, reversed and remanded the attached determination of the Civil Service Commission (Commission), *In the Matter of Umar Salahuddin, et al., Atlantic City* (CSC, decided September 18, 2013), which denied the appellant's appeal that his demotion in lieu of layoff to the title of Community Service Aide was not in good faith.

By way of background, the appellant was demoted in lieu of layoff from his permanent title of Assistant Youth Opportunity Coordinator to Community Service Aide effective May 27, 2010. Upon the appellant's appeal of the good faith of his layoff to the Commission, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In his initial decision, the Administrative Law Judge (ALJ) determined that the appellant was demoted within the context of the general 2010 layoff as an act of political retaliation by Mayor Lorenzo Langford. Therefore, the ALJ concluded that the appellant's layoff was done in bad faith and he recommended that the demotion be reversed. (See attached initial decision).

However, in its *de novo* review of the record, while the Commission found that there was sufficient evidence in the record to support the ALJ's credibility determination regarding Langford, it determined that the appellant had not demonstrated that his layoff was not taken for purposes of economy since the domino effect as a result of the appellant's demotion resulted in a savings of \$32,627.62. Accordingly, the Commission found that the appointing authority's

action in demoting the appellant to the title of Community Service Aide was justified and dismissed the appellant's appeal. (See attached final decision).

Subsequently, the appellant appealed the Commission's decision to the Appellate Division, which reversed and remanded the matter for the purpose of reinstating the findings of the ALJ and awarding counsel fees. See *In the Matter of Umar Salahuddin, Atlantic City*, Docket No. A-1278-13T2 (App. Div. July 13, 2013). (Copy attached).

ORDER

The Civil Service Commission finds that the layoff of the appellant was not justified and therefore, reverses that action and upholds the appeal of Umar Salahuddin. Since the layoff has been reversed, the appellant is entitled to mitigated differential back pay, benefits, seniority and reasonable counsel fees pursuant to *N.J.A.C. 4A:2-1.5* for the period from May 27, 2010, the date of the appellant's demotion until July 1, 2015, the date of his retirement.¹ The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*.

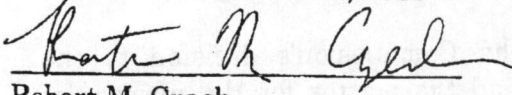
It is further ordered that counsel fees should be awarded to the appellant as the prevailing party pursuant to *N.J.A.C. 4A:2-2.12*. The appellant shall provide proof of income earned and an affidavit or services to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*.

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

¹ The appellant's demotion and retirement dates are as indicated in his County and Municipal Personnel System (CAMPS) record.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29th DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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Attachments

- c: Richard L. Press, Esq.
- Steven S. Glickman, Esq.
- Umar Salahuddin
- Elizabeth A. Davies, DAG
- Kenneth Connolly
- Joseph Gambino