

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2697-11T4

IN THE MATTER OF
CORRECTION MAJOR,
DEPARTMENT OF CORRECTIONS.

Argued February 27, 2013 - Decided August 15, 2013

Before Judges Grall, Koblitz and Accurso.

On appeal from the New Jersey Civil Service
Commission, Docket Nos. 2012-1035 and
2012-1446.

Mario A. Iavicoli argued the cause for
appellant, New Jersey Law Enforcement
Commanding Officers Association.

Todd A. Wigder, Deputy Attorney General,
argued the cause for respondents, Civil
Service Commission and Department of
Corrections (Jeffrey S. Chiesa, Attorney
General, attorney; Lewis A. Scheindlin,
Assistant Attorney General, of counsel; Mr.
Wigder, on the brief).

PER CURIAM

The New Jersey Law Enforcement Commanding Officers
Association (NJLECOA or the Union) appeals from a final decision
of the Civil Service Commission (the Commission) approving a
change to the State Classification Plan. The Commission's
action created the title of Correction Major in the Department

of Corrections (DOC) to consolidate comparable functions performed by existing custody supervisory staff in the titles of Correction Captain, Director of Custody Operations 1 and Director of Custody Operations 2 (collectively DOCOs).¹ NJLECOA contends that the DOC's request to abolish the Captain and DOCO titles was motivated by anti-union bias which the Union should have been allowed the opportunity to prove at a contested hearing. We affirm, substantially for the reasons expressed by the Commission in its clear and comprehensive decisions of October 6, 2011 and December 22, 2011.

Before the reclassification complained of occurred, DOCO was the highest ranking law enforcement position in the DOC and Captain, the second-highest. In a September 8, 2011 letter, DOC Commissioner Gary M. Lanigan requested that the Commission consolidate the DOCO and Captain titles into the single title of Correction Major. The DOC explained that although DOCOs had responsibility for the overall custody function at each institution, DOCOs and Captains had similar job responsibilities in that both were responsible for supervision of the custody workforce, maintaining discipline among inmates, assisting with

¹ The difference in the two DOCO titles was that a DOCO 1 supervised the custody workforce in a Class 1 or 2 institution housing between 300 and 1000 inmates and a DOCO 2 performed the same function in a Class 3 institution housing fewer than 300 inmates.

investigations, overseeing training programs and directing the overall operations of the custody unit. The DOC maintained that the responsibilities that were specific to each title were few. DOCOs conducted grievance hearings and prepared budget requests, which Captains did not do. Captains were more typically assigned to supervise a distinct area within the facility, they gave direction to lieutenants, and tended to have more direct contact with employees and inmates than did DOCOs. The DOC believed it would be more efficient to combine these responsibilities and add responsibilities not covered in either job specification. Specifically, the DOC wanted to create a Central Operations Desk to handle emergency situations throughout the prison system and create a few high ranking custody supervisors to undertake regional responsibilities.

In support of its request to consolidate the DOCO and Captain titles, the DOC set forth a proposed restructuring that would accompany the consolidation. Whereas each facility typically had one DOCO and multiple Captains, the new structure would replace the DOCOs and Captains in each facility by dividing oversight of custody operations between two Correction Majors, a Major of Administration and a Major of Security. The Captains assigned to the Special Operations Group, Central Transportation, and Training Units would be converted to Majors.

The DOC intended to place six Majors at a new Central Operations Desk to be staffed twenty-four hours a day, which would coordinate the response to all emergency situations, and create three Regional Correction Majors to provide assistance and coordination among the facilities in each region. The Regional and Central Operations Majors were not intended to oversee the other Majors, but simply perform different duties at the same rank. The salary for all Majors would be \$116,000.

The DOC maintained that its proposed structure would enhance oversight and result in an ultimate reduction of twenty full-time positions. The DOC anticipated needing only thirty-eight Majors, instead of the fifty-eight DOCOs and Captains in its budget. No lay-offs or demotions were contemplated, however. Instead, the DOC proposed to laterally transfer all forty-six DOCOs and Captains then employed into the title of Correction Major. Any DOCO or Captain making less than \$116,000 would receive an immediate increase to that salary. Any DOCO or Captain making more than \$116,000 would continue to receive his or her higher salary, which would be "red-circled," meaning it would not increase or decrease until the time that the Correction Major salary surpassed it. The DOC would not seek to add additional Majors until attrition reduced their number to thirty-eight.

The DOC maintained that its plan would increase efficiency and yield considerable savings. It planned to use the savings to fund the consolidation and help correct a salary disparity among the institutional administrative staff, which it viewed as a significant problem in recruiting and maintaining qualified individuals.

NJLECOA objected to the consolidation on the grounds that it did not promote economy and efficiency and was merely a means to destroy NJLECOA and the DOCOs' and Captains' collective bargaining power. Specifically, NJLECOA contended that the move was in retaliation for the Captains' and NJLECOA's recently successful efforts in assisting the DOCOs to recently unionize. The DOC had opposed the DOCOs efforts to form a union and the DOCOs were forced to litigate the issue before the Public Employment Relations Commission (PERC). Captain Scott Derby, President of NJLECOA, certified to the Commission that a high ranking DOC executive had threatened him because of NJLECOA's support of the DOCOs' unionization petition and warned that if the DOCOs went forward with the petition the DOCO title might be abolished.

In October 2009, after the PERC hearing concluded but before a decision had been issued, the DOC allowed the DOCOs to be certified as a collective bargaining unit. The DOCOs joined

NJLECOA but could not reach a collective bargaining agreement with the DOC. Claiming that the DOC refused to negotiate, NJLECOA filed for interest arbitration on behalf of the DOCOs before PERC. Before the interest arbitration could be completed, however, the DOC sought to abolish both the DOCO and Captain titles by creating the new title of Correction Major. The Union sought a hearing before the Commission to prove its allegations.

In a clear and comprehensive opinion, the Commission approved the title change. The Commission explained that approvals of changes to the State Classification Plan are treated as reviews of the written record pursuant to N.J.S.A. 11A:2-6b. Hearings are granted only in those limited circumstances in which the Commission determines that there exists a material and controlling dispute of fact that can only be resolved at a hearing. See N.J.A.C. 4A:2-1.1d.

N.J.S.A. 11A:3-1 directs that the Commission shall assign and reassign titles among the career service, senior executive service, and unclassified service. The statute provides that the Commission shall:

- a. Establish, administer, amend and continuously review a State Classification plan governing all positions in State service and similar plans for political subdivisions;

b. Establish, consolidate and abolish titles;

c. Ensure the grouping in a single title of positions with similar qualifications, authority and responsibility;

d. Assign and reassign titles to appropriate positions; and

e. Provide a specification for each title.

The enacting regulation, N.J.A.C. 4A:3-3.3(a)2, specifies that the Commission shall "[e]stablish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility." The regulations also specify,

(b) Requests for new titles or title series must be submitted in writing by the appointing authority to the Department of Personnel² on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;

2. Designation of any title to be abolished or replaced; and

² The Department of Personnel was abolished by amendment to N.J.S.A. 11A:11-2, effective June 29, 2012, which also continued and transferred certain powers to the Civil Service Commission.

3. Any other information requested by the Department of Personnel.

(c) If the Department of Personnel determines that there is a need for a new title or title series, a new job specification will be prepared and in State service the title will be evaluated for compensation purposes.

[N.J.A.C. 4A:3-3.6.]

The Commission determined that the DOC had complied with N.J.A.C. 4A:3-3.6(b) by submitting a detailed description of how its operations would be enhanced by the creation of the Correction Major title and the abolishment of the DOCO and Captain titles. Upon review of the job definitions, the Commission concluded that

the only real distinction between the two title series is that a [DOCO] is the single highest level custody member in a facility who is responsible for the supervision of the entire custody workforce while the [Captain] can "assist in the overall supervision of the custody workforce." In fact, the job specification for [Captain] indicates that an incumbent can act in the place of the [DOCO] in his or her absence.

The Commission interpreted the DOC's request as an effort to eliminate one layer of management in its organization by creating "specific lines of accountability for custody issues to the Correction Major assigned to custody and accountability for

administrative issues to the Correction Major assigned to administration."

The Commission acknowledged that administrative agencies, such as the DOC, "have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them." It found that the DOC was not obligated to prove, nor was the Commission obligated to find, that the changes to the State Classification Plan were for economy and efficiency; rather, the Commission merely needed to ensure that the action was not arbitrary, capricious, or unreasonable. See Mullin v. Ringle, 27 N.J. 250, 256 (1958). It noted that although it seeks technical input from appointing authorities to assist in the process, only the Commission, and not the DOC, possesses the statutory authority to establish, consolidate, abolish and reassign titles. N.J.S.A. 11A:3-1.

Only if the DOC were targeting the DOCOs or Captains for layoffs would the agency need to show that it was doing so in good faith for reasons of economy or efficiency. See Greco v. Smith, 40 N.J. Super. 182, 189 (App. Div. 1956) (holding the power of a municipality to abolish a position in the classified civil service cannot be questioned where such action is motivated by a desire to effect economies and increase efficiency, and the burden in such case is on the petitioner to

show bad faith). Because the DOC was not proposing to layoff any of the DOCOs or Captains or reduce their salaries, no showing of economy or efficiency was necessary.

The Commission found that eliminating levels of supervision and management within an organization to create efficiencies in operations is not an unusual approach to better manage an organization. The Commission rejected NJLECOA's argument that eliminating the DOCO title would create chain-of-command problems, noting that different paramilitary organizations used different chain-of-command structures to carry out the function of their specific agencies.

The Commission concluded that the DOC's determination that it did not need three titles responsible for the overall supervision of the custody staff was not arbitrary, capricious, or unreasonable and thus that the creation of the Correction Major title to consolidate comparable functions performed by incumbents in the DOCO and Captain titles was appropriate. It determined that NJLECOA's allegations that the DOC was using the consolidation to try and "break" the recently recognized union representation for the DOCOs or "do an 'end run'" around the collective bargaining process were issues for PERC, as the Commission was without jurisdiction to consider violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-

1 to -39. Finally, it determined that no hearing was required as there were no material issues of disputed fact on the record presented.

In its opinion on reconsideration, the Commission maintained its position that the issues of alleged anti-union bias were not properly before it. It carefully explained that NJLECOA's contention that the matter constituted a contested case appeared to be premised on a misunderstanding of the differences between a position and a title. The Commission explained that a "position" is the assignment of specific duties and responsibilities requiring the employment of one person, whereas a "title" is a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. N.J.A.C. 4A:1-1.3. If the DOC were proposing the abolishment of any DOCO or Captain positions for reasons of economy, the affected employees would certainly be entitled to a hearing to test the bona fides of the decision. See Weaver v. N.J. Dep't of Civil Serv., 6 N.J. 553, 558-59 (1951). Because the DOC only proposed reclassifying those employees' titles, however, and all would retain their positions and current salaries, or receive an immediate increase in salary, no hearing was required. Carls v. Civil Serv. Comm'n, 17 N.J. 215, 221-22 (1955).

We affirm, substantially for the reasons expressed by the Commission in its two very thorough opinions. The law is well-settled that employees have no vested rights in a classification and are

at all times subject to the broad reclassification powers which have been delegated by the Legislature to the Commission in the interests of sound governmental administration. The incidental disarrangements which result from bona fide reclassification must readily be subordinated to the greater public good; where the Commission reasonably exercises its statutory reclassification powers, courts should be careful not to interfere lest they usurp functions entrusted to other branches of government.

[Id. at 223.]

While it is also clear that the Commission would have jurisdiction to consider anti-union bias charges arising in the context of a contested case involving merit and fitness, City of Hackensack v. Winner, 82 N.J. 1, 18-19 (1980), we see no error in the Commission having declined to consider NJLECOA's anti-union bias allegations in the context of the Commission's exercise of its regulatory powers in this title reclassification.

NJLECOA had already filed an unfair practice charge with PERC on the title change at the time the Commission issued its

decision in this matter.³ The Union contended before the Commission that the DOC sought the title reclassification to avoid its obligations to bargain with the Union. That matter, however, was properly before PERC both in the unfair practice proceeding and in the interest arbitration between the State and NJLECOA on behalf of the DOCs.⁴ The Commission did not abuse its discretion in declining to consider NJLECOA's allegations of anti-union bias in connection with the title reclassification in light of those proceedings before PERC.

Affirmed.

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



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³ The Union apparently withdrew that charge after the conclusion of the proceedings before the Commission.

⁴ We note from the record that NJLECOA was subsequently certified as the exclusive representative for the Correction Majors following the Commission's decision on reconsideration, and that PERC subsequently acknowledged the State's willingness to allow NJLECOA to amend its interest arbitration petition to include the Correction Majors so that the interest arbitration already underway at PERC could proceed without delay.