



In the Matter of Joyce Gregory-Hunt
City of Paterson, Department of
Community Development

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-2372
OAL DKT. NO. CSV 01736-16

ISSUED: JANUARY 18, 2017 BW

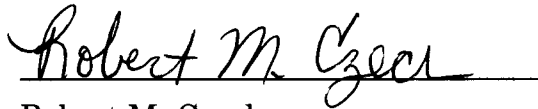
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on January 18, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

The Civil Service Commission therefore dismisses the appeal of Joyce Gregory-Hunt.

Re: Joyce Gregory-Hunt

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
JANUARY 18, 2017

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION TO DISMISS

OAL DKT. NO. CSV 01736-16

AGENCY REF. NO. 2016-2372

**IN THE MATTER OF JOYCE GREGORY-HUNT,
CITY OF PATERSON, DEPARTMENT OF
COMMUNITY DEVELOPMENT.**

Kathleen Mazzouccolo, Esq., for appellant, Joyce Gregory-Hunt

Steven S. Glickman, Esq., for respondent, City of Paterson

Record Closed: December 5, 2016

Decided: December 13, 2016

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Joyce Gregory-Hunt appeals her January 5, 2016, layoff as a management specialist for the City of Paterson, Department of Community Development (the City). She contends that she was laid off in bad faith; the City replies that its actions were motivated by a valid need to effectuate economies.

PROCEDURAL HISTORY

After being notified of her layoff via letter dated December 8, 2015, Gregory-Hunt requested a hearing before the Civil Service Commission via letter dated December 28, 2015. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on January 27, 2016. A hearing was conducted on August 23, 2016. Consistent with the requirements of N.J.A.C. 4A:8-2.6(c), Gregory-Hunt bore the burden of proving by a preponderance of the evidence that her layoff was for reasons other than economy, efficiency or other good cause. See also: N.J.S.A. 11A:8-4. After she presented her case, counsel for the City of Paterson moved to dismiss.¹ The City's motion must be decided pursuant to R. 4:37-2(b). The rule provides that:

After having completed the presentation of the evidence on all matters other than the matter of damages (if that is an issue), the plaintiff shall so announce to the court, and thereupon the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal of the action or of any claim on the ground that upon the fact and upon the law the plaintiff has shown no right to relief. Whether the action is tried with or without a jury, such motion shall be denied if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor.

All evidence supporting the party defending the motion must be accepted, and that party must be "accorded the benefit of all inferences which can be reasonably and legitimately deduced therefrom." Syvertsen v. Scotch Plains-Fanwood Bd. of Educ., 92 N.J.A.R.2d (EDU) 251 (citing Dolson v. Anastasia, 55 N.J. 2 (1969)). For the reasons that follow, the motion to dismiss is **GRANTED**.²

¹ The City presented no witnesses. Appellant relied on several documents that had been pre-marked as the City's exhibits, and these were moved into evidence.

² After the hearing, and at the request of appellant's counsel, I allowed her to supplement her submissions by filing a brief. After several requests for extensions of time she did so on November 23, 2016. The respondent replied on December 5, 2016, and the record closed.

STATEMENT OF FACTS

Prior to her layoff, Gregory-Hunt had been employed by the City of Paterson since January 2011. She worked under two administrations. Initially, Gregory-Hunt oversaw three divisions for the Department of Community Development, to include personnel; “drawdowns”; and the FEMA “buy-back” program. A new mayor took office on July 1, 2014, and Gregory-Hunt’s position now focused on vouchers, and she reported to the Director of Budgets. She remained responsible for the “buy back” program as well.

Community Development is funded by a variety of grants. Each of the grant programs has extensive rules and regulations that govern how the allocated funds may be used by a recipient. Gregory-Hunt’s position was funded by a Community Development Block Grant (CDBG), under which only 20% of grant funds may be used for salaries or other administrative costs. Other positions in Gregory-Hunt’s department were funded by other grant programs; such as the HOME Investment Partnerships (HOME) Program; the Housing Opportunity for People with AIDS (HOPWA) Program; and the Emergency Solutions Grant (ESG) Program. Correspondence received by the Director of Community Development, Barbara Blake-McLennon, on or about September 23, 2015, confirmed that her department had received \$2,199,939 via the CDBG grant for the 2015-2019 fiscal years. (R-3)

In a November 5, 2015, layoff plan, the City advised the Civil Service Commission that it intended to issue notices of layoff in the Department of Community Development. (R-4) The proposed layoffs were part of an overall plan to reduce the total number of positions in the Department “in an effort to close a portion of a projected \$3.8 million budget deficit for 2015.” Three positions were slated for lay-off, including the Management Specialist title held by Gregory-Hunt; a First Time Loan Advisor position held by Patricia Alarcon; and a receptionist position held by Shanaiah Williams. The plan indicated that the proposed layoffs would affect two collective negotiations representatives, and indicated that a meeting would take place on November 7, 2015, in accordance with N.J.A.C. 4:8-1.3(c). But the layoff plan then goes on to state that “[o]nce the approval is received from the State of New Jersey Civil Service Commission

a meeting will take place.” In any event, it is uncontroverted and I **FIND** that no meeting took place until at least in or about January 2016. The Civil Service Commission approved the November 5, 2015, lay-off plan via letter dated November 18, 2015.

Via letter dated December 8, 2015, Gregory-Hunt was advised that her layoff had been recorded, but that her name would be placed on the Special Reemployment List for her current permanent title and for other titles that might be appropriate. She was additionally advised that she had a demotional displacement right to the position of Program Monitor, then held by Montaha Deeb-Ciares. Via letter dated December 18, 2015, Gregory-Hunt informed the Civil Service Commission that she did not wish to exercise her right to Deeb-Ciares's position. She testified that she felt uncomfortable displacing a co-worker who was herself struggling to make ends meet as a single mother. Gregory-Hunt moreover noted that Deeb-Ciares was not a part of her department, and in fact, was paid from funds available through the Sewer Department. Several witnesses were called to verify that Deeb-Ciares was not a Community Development Department member, and I **FIND** that she was not. Gregory-Hunt sought employment opportunities elsewhere for the City, as confirmed by a December 9, 2015, memorandum from her to James TenHoeve, the then Acting Director of the Finance Department. While she was not placed in any of the positions she expressed interest in, Gregory-Hunt was able to meet with the supervisor for at least one such position.

Gregory-Hunt urged that the financial shortfall in her department was due to mismanagement of other grant accounts, and not the account from which her salary was paid. Indeed, there apparently was a \$5 million dollar shortfall from the HOME grant account. But the testimony also readily demonstrated that there were insufficient CDBG funds to cover salaries and benefits in the Community Development Department. Gregory-Hunt's salary was \$67,000 per year at the time of her layoff. Together with counsel for the City, she reviewed the salaries of other employees in the Department who were paid from the CDGB grant. Together, they tallied all the salaries and agreed that they totaled approximately \$350,000. Together, they agreed to add another 33% of that sum to account for benefits, making the total expense \$465,500. As noted above, only 20% of the \$2,199,939 SDBG grant could be used for salaries and administrative expenses, thus, making only \$439,988 in funds available to pay salaries under the

grant. I **FIND** that there was an obvious financial shortfall in the Community Development Department, even without further analyzing any shortfall as a result of the difficulties with the HOME grant.

Gregory-Hunt urged that her layoff was a result of dissatisfaction with her work performance. But she could provide only very limited evidence of any such dissatisfaction; one letter of reprimand. In April 2015, Blake-McLennon brought concerns to Gregory-Hunt's attention regarding an error in a financial report. Blake-McLennon asked to promptly receive verification that the correction was made so that she could present the correction to HUD. An employee disciplinary report issued in by Blake-McLennon in July 2015, notes an auditor's "finding" due to this error. The disciplinary notice indicates that Gregory-Hunt "lacked the ability and talents" to properly process the information at issue, thus resulting in the erroneous report. Gregory-Hunt filed a grievance on July 24, 2015. She was laid off before the grievance was heard.

Gregory-Hunt urged that there was money available to save her position, because she had worked closely with the State Police Office of Emergency Management, and in an email dated December 16, 2015, Sergeant Bradley Waugh, a representative of the State Police, urged that Gregory-Hunt was an asset to the Emergency Management program. He wrote that "Paterson does have the opportunity to charge Joyce's time, for her work toward the buy-out program, to the Irene HMGP 4021 grant. Her time could be reimbursed at 75/25...." But Gregory-Hunt described her various duties, and it became apparent that she spent only a fraction of her time on matters relevant to State Police emergency management. I **FIND** that the offer of the State Police, to defray 75% of a fraction of her salary could not have saved her position, as she alleges.

CONCLUSIONS OF LAW

The Civil Service Act provides that "a permanent employee may be laid off for reasons of economy, efficiency or other related reasons." N.J.S.A. 11A:8-1; see also N.J.A.C. 4A:8-1.1(a). However, a layoff is permitted only where it represents a "good

faith” effort to achieve governmental economy or efficiency. Prosecutors Detectives and Investigators Ass’n of Essex Cty. v. Bd. of Freeholders, 130 N.J. Super. 30, 43 (App. Div. 1974). While an employee who is laid off may appeal the bona fides of the layoff, the burden is squarely on the former employee to prove by a preponderance of the evidence that the layoff was for reasons other than economy, efficiency or other related reasons. N.J.S.A. 11A:8-4 and N.J.A.C. 4A:8-2.6(c); see also Sparany v. Brick Twp. Sch. Dist., 92 N.J.A.R. 2d (CSV) 396. The burden is a substantial one, and the employee must overcome the presumption of good faith attached to the appointing authority’s action. Greco v. Smith, 40 N.J. Super. 182, 189 (App. Div. 1956); Schnipper v. N. Bergen Twp., 13 N.J. Super. 11, 14-15 (App. Div. 1951).

Even if the motive for the removal is tainted by improper considerations, the action will be upheld if the position is unnecessary and can be abolished without impairing departmental efficiency. Santucci v. Paterson, 113 N.J.L. 192 (Sup. Ct. 1934). In order to prevail, the former employee must demonstrate illegitimate reasons for the layoff such as spurious justifications, improper political considerations, or personal hostility toward the employee. In short, the appointing authority need not demonstrate good faith. Rather, the former employee must demonstrate bad faith on the part of the appointing authority. Greco, supra, 40 N.J. Super. at 189.

I **CONCLUDE** that Gregory-Hunt has failed to meet her burden. I heard no spurious reasons for her lay-off; at worst, she presented evidence that a different administration might have crunched the numbers differently. But even if the City could have or should have made different fiscal decisions, this would not evidence the bad faith required to overturn its actions. It is not enough that the layoff was apparently the result of mistakes of policy or judgment. Reimer v. Mayor and Council of Allendale, 123 N.J.L. 563, 567-68 (Sup. Ct. 1939). Gregory-Hunt urges that the Civil Service Commission erroneously thought that Deeb-Ciares was a member of the Community Development department, and would not have approved the lay off if it knew this was not the case. This is a highly speculative and wholly unsupported contention. She urges that a deal could have been struck to save her job via funding from the State Police, but even if this were the case, the City was not obliged to pursue such an arrangement. It exercised its discretion to cut costs in the manner in which it did.

Indeed, it is not enough that a reviewing agency may have had a different preference for achieving needed savings or that the employer could have chosen other alternatives to the layoff. Acchitelli v. Dep't of Env't'l Prot. and Energy, 93 N.J.A.R.2d (CSV) 716.

Finally, Gregory-Hunt asserts that the failure of the City to timely conduct a meeting with her union representatives is evidence of bad faith and requires that her layoff be overturned, relying on In re Hendrickson and Van Order, 2013 N.J. CSC LEXIS 139 (January 24, 2013). I cannot agree. In accordance with N.J.A.C. 4A:8-1.4, the employer must submit a layoff plan to the Department of Personnel that outlines the reason for the layoff; its projected date; the positions slated for layoff; a summary of consultations with negotiations representatives; and a discussion of alternatives to layoff that were explored. In Hendrickson, where no lay-off plan had been submitted at all, and the affected parties received no notice of their impending layoffs, the Commission awarded the appellants 45 days' pay. And although the Commission chastised the appointing authority, it gave it an opportunity to cure its procedural errors, holding that if it approved the late submitted layoff plan, the appellants would be "deemed laid off." At no time did the Commission suggest, as this appellant urges, that an appointing authority's procedural errors required a finding that staff be reinstated or that an appointing authority could not proceed with its layoff as planned.

Conversely here, a layoff plan was duly submitted and approved. There is no allegation that the appointing authority failed to comply with N.J.A.C. 4A:8-1.4, but rather, that it failed to timely conduct the meeting contemplated by N.J.A.C. 4A:8-1.3. While a meeting did not take place on November 7, 2015, as proposed in the plan, the plan also indicated that a meeting would be held after the plan was approved.³ And such a meeting did take place in January 2016. Thus, while the City did not formally consult with negotiations representatives pre-layoff, its meeting in January cured this procedural error. Indeed, Hendrikson confirms that the appropriate relief, if any, would be to direct the parties to meet.⁴ That limited relief would be consistent with the

³ It is uncontroverted that the meeting did not take place in November, but appellant offered no evidence that demonstrated that the postponement until January was motivated by bad faith by the City.

⁴ Indeed, Gregory-Hunt received adequate notice of her layoff. And if the meeting in January had prompted the City to reconsider her layoff, she could have readily been made whole.

limitations of the meeting contemplated by N.J.A.C. 4A:8-1.3. The regulation directs that the parties “consult” but in no way dictates the outcome of that consultation. It plainly would be inconsistent with the spirit and intent of the regulatory scheme to punish an appointing authority for failing to so consult by directing it to reemploy staff it feels it can no longer afford.

I **CONCLUDE** that the petition of appeal should be dismissed.

ORDER

Based on the foregoing, I **ORDER** that the petition be **DISMISSED**.

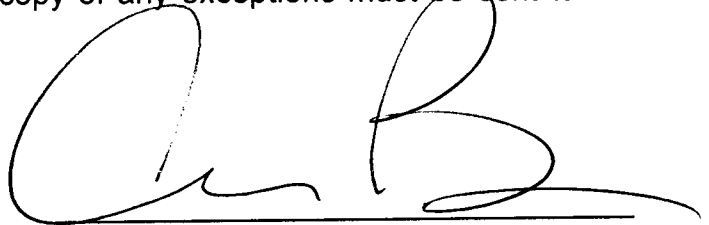
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

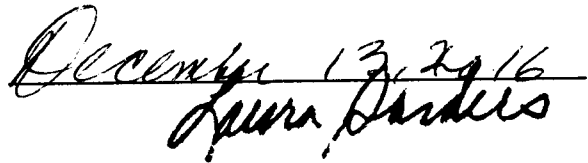
December 13, 2016

DATE



ELLEN S. BASS, ALJ

Date Received at Agency:



Date Mailed to Parties:

DEC 14 2016

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

WITNESSES

For Appellant:

Joyce Gregory-Hunt
Jennifer Foster
Hazel Hughes
Patricia Alarcon
Terry Woodrow

For Respondent:

None

EXHIBITS

Joint:

J-1 2015 Memorandum of Understanding
J-2 2014 Memorandum of Understanding

For Appellant:

P-1 Letter received June 1, 2015
P-2 Tally
P-3 Email
P-4 Employee disciplinary report and attachments
P-5 Grievance
P-6 Personnel action form
P-7 Resume
P-8 Response to OPRA request

For Respondent:

- R-1 Not admitted
- R-2 Not admitted
- R-3 HUD grant assistance dated September 23, 2015
- R-4 Layoff plan
- R-5 Individual layoff notice, Alarcon
- R-6 Individual layoff notice, Williams
- R-7 Individual layoff notice, Gregory-Hunt
- R-8 Layoff plan approval
- R-9 Not admitted
- R-10 Letter dated December 8, 2015
- R-11 Memorandum dated December 9, 2015
- R-12 Letter dated December 18, 2015
- R-13 Letter dated December 28, 2015
- R-14 Not admitted
- R-15 Not admitted