



STATE OF NEW JERSEY

In the Matter of Alan Brundage,
et al., Bergen County Sheriff's Office

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2018-307, *et al.*

Layoff Rights Appeal

ISSUED: MARCH 29, 2018 (JET)

Alan Brundage, *et al.*,¹ represented by Michael A. Bukosky, Esq., on behalf of the Policemen's Benevolent Association (PBA) Local 49, appeal the determinations of their layoff rights by the Division of Agency Services (Agency Services).

As background, the rationale for the layoffs which are the subject of this matter are set forth in detail in the attached prior decision. *See In the Matter of County Police Officers, Bergen County Sheriff's Office* (CSC, decided June 7, 2017).² Additionally, the Bergen County Sheriff submitted a layoff plan to this agency by letter dated March 23, 2017, and an amended plan dated March 31, 2017, targeting 26 County Police employees (three Captains, five Lieutenants, three Sergeants and 15 Police Officers) for layoff, with an effective date of June 12, 2017. Upon the approval of the plan, pursuant to *N.J.A.C. 4A:8-1.6(a)*, Agency Services directed the appointing authority to issue 45-day notices to affected employees. On May 26, 2017, Agency Services issued letters to the affected parties advising them of their layoff rights.³

Thereafter, County Police Captain Mark Lepinski and County Police Lieutenant Christopher Zovistoski retired from service effective June 1, 2017, and therefore, it was determined that they were not subjected to the layoff. As a result of the aforementioned mentioned retirements, it was determined that County Police

¹ The 38 appellants in this matter are listed at the end of this decision.

² The appellants in the prior matter requested a stay of the layoff, which was denied.

³ County Police Officer Alexander DeJesus was on military leave at the time the layoff was implemented, and as such, was not subjected to the layoff.

Lieutenant John Baker, and County Police Sergeant Robert Carney, III were no longer subjected to the layoff. Accordingly, Agency Services issued amended layoff notices dated July 13, 2017, advising the affected individuals that displacement rights were reordered. It is noted that the letters notified the affected employees that their separations from employment would be recorded by the close of business on June 26, 2017.

Additionally, Agency Services determined that, as a result of an administrative error, County Police Sergeant Robert Abrahamsen's seniority⁴ was incorrectly listed in the County and Municipal Personnel System (CAMPS). As a result, it was determined that Abrahamsen possessed more seniority than Robert Carney, III. As such, Agency Services determined that Abrahamsen was no longer subjected to a demotion due to the layoff, displacement rights were reordered, and Robert Carney, III was subjected to displacement as a result of the layoff. Accordingly, Agency Services issued further corrected layoff notices, dated July 19, 2017, notifying the affected individuals of the changes.⁵ The following chart illustrates the final layoff and displacement rights, in title and seniority order, after issuance of all amended and corrected letters.

Individual subjected to layoff	Position subjected to layoff	Displacement rights to
Alan Brundage ⁶	County Police Captain	County Police Lieutenant held by Robert Espinosa
James Mullin	County Police Captain	County Police Lieutenant held by Michael Devine
Michael Devine	County Police Lieutenant	County Police Sergeant held by Thomas Miller
Robert Espinosa	County Police Lieutenant	County Police Sergeant held by John Paletto
Matthew Tiedemann	County Police Lieutenant	County Police Sergeant held by Gabriel Escobar
James Smith	County Police Lieutenant	County Police Sergeant held by Vincent Mayo
Frank Carrafiello	County Police Lieutenant	County Police Sergeant held by Denise Ryaby
John LaDuca	County Police Lieutenant	County Police Sergeant held by Victoria Alberto
Bruce Reed	County Police Lieutenant	County Police Sergeant held by Robert Carney, III
Robert Carney, III	County Police Sergeant	County Police Officer held by James Paolizzi

⁴ Robert Abrahamsen retired from service effective July 1, 2017.

⁵ James Paolizzi was serving in an unclassified title at the time the layoff was approved by this agency, and as such, he was not included in the initial layoff plan. However, he was subsequently added to the layoff.

⁶ Alan Brundage retired from service effective August 1, 2017.

Victoria Alberto	County Police Sergeant	County Police Officer held by Justin Garcia
Denise Ryaby	County Police Sergeant	County Police Officer held by Daniel Sansavere
Vincent Mayo	County Police Sergeant	County Police Officer held by Michael Marciniak
Gabriel Escobar	County Police Sergeant	County Police Officer held by Daniel Antinori
John Paletto	County Police Sergeant	County Police Officer held by Jason Gretkowski
Thomas Miller	County Police Sergeant	County Police Officer held by Dario Vargas
Gidget-Ann Petry	County Police Sergeant	County Police Officer held by Gary Bendit
Christopher Chan	County Police Sergeant	County Police Officer held by Ronald Salzano
Sara Toro	County Police Sergeant	County Police Officer held by Stanislav Tovbin
Stanislav Tovbin	County Police Officer	None
Ronald Salzano	County Police Officer	None
Gary Bendit	County Police Officer	None
Dario Vargas	County Police Officer	None
Jason Gretkowski	County Police Officer	None
Daniel Antinori	County Police Officer	None
Michael Marciniak	County Police Officer	None
Daniel Sansavere	County Police Officer	None
Justin Garcia	County Police Officer	None
Christopher Sullivan	County Police Officer	None
Peter Bongiovanni	County Police Officer	None
Peter Flannery	County Police Officer	None
Robert Hintzen	County Police Officer	None
Alexander Echevarria	County Police Officer	None
Andrew Kara	County Police Officer	None
Joseph Pride	County Police Officer	None
Matthew Bartlett	County Police Officer	None
James Paolizzi	County Police Officer	None
William McMonigle	County Police Officer	None
Jacek Demczuk	County Police Officer	None
Frank Caneja	County Police Officer	None
Oscar Lopez	County Police Officer	None
Jeremiah Nayda	County Police Officer	None
Christopher Tinio	County Police Officer	None
Wendy Tinio	County Police Officer	None

On appeal, the appellants argue that it appears that Lepinski's and Zovistoski's retirements resulted in the issuance of the amended layoff notices and affected the reordering of the seniority list. As such, the appellants argue that their seniority rights determinations were still under consideration in July 2017. The appellants add that Agency Services made determinations on July 13, 2017 and July 19, 2017, that not only reordered displacement rights but also determined that several officers were either not subjected to the layoff or reversed their demotion. In this regard, the appellants contend that Robert Abrahamsen retired effective July 1, 2017, and since his retirement became effective when Agency Services was determining his seniority displacement rights, it does not seem reasonable to factor his retirement into the seniority rights determinations, particularly when, as of July 13, 2017, Agency Services was still in the process of making seniority determinations and certain employees were no longer subjected to the layoff. The appellants add that it appears that the effective date of the layoff had not yet been calculated for some of the officers, and as such, they question if the effective date of the layoff is correct. The appellants state that, since it appears that the effective date of the layoff had not yet been determined, Agency Services reinstated employees to their former positions. Accordingly, the appellants request the Civil Service Commission (Commission) to reconsider the seniority rights determinations.

CONCLUSION

N.J.A.C. 4A:8-2.2(a) provides that employees shall be ranked, for purposes of exercise of layoff rights, in order of seniority. *N.J.A.C.* 4A:8-2.4(b) provides, in pertinent part, that for police and fire titles in State and local service, seniority is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. Seniority shall be based on total calendar years, months, and days in title regardless of work week, work year, or part-time status.

N.J.A.C. 4A:8-2.2(c) provides that in local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit. The rights of employees are decided from the highest title and seniority to the lowest. That is, employees in higher class codes and seniority. In an appeal of this nature, it is the appellants' burden to show that Agency Services did not properly apply this agency's rules in determining layoff rights. In this regard, it is the appellants' burden to provide evidence of a misapplication of the relevant regulatory criteria in determining layoff rights.

A thorough review of the record establishes that the appellants' layoff rights were properly determined. The appellants were notified of the layoff by way of the May 26, 2017 layoff notices, July 13, 2017 amended notices, and the July 19, 2017 corrected notices. The aforementioned letters clearly notified the appellants about their title rights. The appellants do not argue that they did not receive the aforementioned layoff notices. Moreover, the appellants have not demonstrated

that the effective date of the layoff was not established, as they were notified that the effective date of the layoff would be recorded as June 26, 2017.

The record establishes that the appellants were laid off from the titles of County Police Officer, County Police Sergeant, County Police Lieutenant, and County Police Captain effective June 26, 2017. The appellants serving as County Police Sergeant, County Police Lieutenant, and County Police Captain possessed displacement rights and records reflect that they exercised such rights and accepted lateral or demotional positions. County Police Officers did not possess displacement rights. The appellants have submitted no substantive arguments or evidence to show that Agency Services improperly determined the appellants' seniority and displacement rights in this matter. As such, the appellants have not satisfied their burden of proof in this matter.

Additionally, in order to properly implement a layoff when unforeseen circumstances occur, it is at this agency's discretion to reorder displacement rights. Contrary to the appellants' claims, the reordering of displacement rights does not establish that the layoff rights determinations were incorrectly determined by this agency. Title rights are determined by this agency and may impact individuals not initially identified in a proposed layoff plan if the incumbents in the targeted positions have displacement rights to a particular title.

In this matter, since Captain Lepinski's and Lieutenant Zovistoski's retirements were not reported to this agency until after the layoff plan was approved of by this agency, it was necessary to reorder the appellants' displacement rights. Initially, this agency determined that Captain Lepinski possessed displacement rights to the position of County Police Lieutenant held by Robert Espinosa, and Lieutenant Zovistoski possessed displacement rights to the position of County Police Sergeant held by Thomas Miller. However, as a result of their retirements prior to the effective date of the layoff, it was determined that Captain Lepinski and Lieutenant Zovistoski were no longer subjected to the layoff. As such, this agency issued the amended July 13, 2017 letters notifying the affected individuals of the reordering of displacement rights. Similarly, since it was determined that Robert Abrahamsen possessed more seniority than Robert Carney, III, it was appropriate, and indeed required, to issue the July 19, 2017 corrected letters reordering displacement rights, as Abrahamsen was no longer subjected to a demotion due to the layoff. As illustrated by the previously presented chart, other than reordering the displacement rights, the changes did not have a substantial impact on the layoff plan or the employees who were ultimately separated from employment. Moreover, Abrahamsen's retirement occurred after the effective date of the layoff, thus, contrary to the appellant's contentions, his inclusion in the layoff as well as the implications from his change in seniority status was proper. Accordingly, the appellants have not met their burden of proof in this matter.

ORDER

Therefore, it is ordered that these appeals be denied.

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 27th DAY OF MARCH, 2018**



Deirdre L. Webster Cobb
Acting Chair
Civil Service Commission

Inquiries
and
Correspondence

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Attachment

c: Alan Brundage (Docket No. 2018-307)
John LaDuca (Docket No. 2018-308)
Robert Carney, III (Docket No. 2018-309)
John Baker (Docket No. 2018-311)
Gary Bendit (Docket No. 2018-312)
Christopher Chan (Docket No. 2018-313)
Jason Gretkowski (Docket No. 2018-314)
Michael Marciniak (Docket No. 2018-315)
Justin Garcia (Docket No. 2018-316)
Peter Bongiovanni (Docket No. 2018-317)
Christopher Sullivan (Docket No. 2018-318)
Peter Flannery (Docket No. 2018-319)
Robert Hintzen (Docket No. 2018-320)
Andrew Kara (Docket No. 2018-321)
Alex Echevarria (Docket No. 2018-322)
Matthew Bartlett (Docket No. 2018-323)
Frank Caneja (Docket No. 2018-324)
Christopher Tinio (Docket No. 2018-325)

Michael Devine (Docket No. 2018-326)
John Paletto (Docket No. 2018-327)
Jeremiah Nayda (Docket No. 2018-328)
Denise Ryaby (Docket No. 2018-329)
Thomas Miller (Docket No. 2018-350)
Bruce Reed (Docket No. 2018-351)
Daniel Antinori (Docket No. 2018-352)
Gabriel Escobar (Docket No. 2018-355)
Frank Carrafiello (Docket No. 2018-356)
Dario Vargas (Docket No. 2018-357)
Vincent Mayo (Docket No. 2018-358)
Joseph Pride (Docket No. 2018-365)
Robert Espinosa (Docket No. 2018-366)
James Mullin (Docket No. 2018-368)
Daniel Sansavere (Docket No. 2018-369)
Jacek Demczuk (Docket No. 2018-370)
Sara Toro (Docket No. 2018-371)
Wendy Tinio (Docket No. 2018-372)
Gidget-Ann Petry (Docket No. 2018-373)
Oscar Lopez (Docket No. 2018-374)
Michael A. Bukosky, Esq.
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Catherine M. Elston, Esq.
Kelly Glenn



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STATE OF NEW JERSEY

In the Matter of County Police
Officers, Bergen County Sheriff's
Office

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-3520

Request for a Stay and
Request for Administrative Relief

ISSUED: JUN - 7 2017 (JET)

The Policemen's Benevolent Association (PBA) Local 49, Bergen County Police Department, represented by Michael A. Bukosky, Esq., petitions the Civil Service Commission (Commission) for a stay of the layoff of County Police Officer personnel of the Bergen County Sheriff's Office.

By way of background, on October 16, 2013, Bergen County passed ordinance 13-27 and transferred the division of the Bergen County Police Department from the Department of Public Safety to the Office of the County Sheriff. It provides, in pertinent part, that the Bergen County Police Department be removed from direct control of the Bergen County Director of Law and Public Safety and County Executive, and transfers such control to the Bergen County Sheriff's Office. The ordinance was based upon a study called "The Bergen County Police Consolidation plan," which essentially recommended consolidating the County Police Officers and other titles to work within and be supervised by the Sheriff's Office. Additionally, by a Memorandum of Agreement for the Long Term Realignment of Police Services between the Bergen County Police Department and the Office of the Bergen County Sheriff executed on January 1, 2015 ("Realignment MOA"), the Bergen County Police Department was realigned to operate as a division of the Sheriff's Office known as the "Bergen County Sheriff, Bureau of Police Services" under the control of the Sheriff. It is noted that the reason for the realignment was to reduce employees solely through attrition to 201 total Officers, and layoffs were not contemplated at the time of the action. As such, the Sheriff's Office, as a result of the action, had within its control 152 Sheriff's Officers as well as 103 County Police Officers, for a total of 255 Officers. As of the date of the MOA, there were 75 County

Police Officer positions reduced through attrition, but it was still in excess of the maximum number of 49 deemed to be appropriate by the appointing authority's "table of organization" adopted by ordinance by the County Freeholders on February 25, 2015.

The Bergen County Sheriff submitted a layoff plan to this agency by letter dated March 23, 2017, and an amended plan dated March 31, 2017, targeting 26 County Police Officers (3 Captains, 5 Lieutenants, 3 Sergeants, and 15 Police Officers) for layoff, with an effective date of June 12, 2017. The Sheriff indicated that the contemplated layoffs were for reasons of economy and efficiency. Upon the approval of the plan, pursuant to *N.J.A.C. 4A:8-1.6(a)*, Agency Services directed that the appointing authority issue 45-day notices to the affected employees by no later than April 24, 2017. Specifically, the Sheriff explained that, in May 2015, the Court Security Plan was approved by the New Jersey Supreme Court, mandating the assignment of an armed Sheriff's Officer to every courtroom in use by a judge or a hearing officer. As such, compliance with the Court Security Plan in 2017 requires the Sheriff's Office to hire approximately 35 new entry-level Sheriff's Officers at an estimated cost of \$3.3 million. In addition, pursuant to *N.J.S.A. 40:4-45.45b* and as a result of budget increases commencing on January 1, 2017, increases in the portion of the annual budget by a county sheriff and funded by property taxes were limited to no more than 2% of the previous year's budget request. As such, the Sheriff stated that the abolition of the 26 County Police Officer positions via layoffs would expedite the cost effective measures contemplated by the Realignment MOA, as well as offset the cost of hiring new Sheriff's Officers mandated by the Court Security Plan. In this regard, it presented that the estimated average annual compensation for each of the 75 County Police Officers employed is \$256,582 as compared to an annual averages compensation of \$94,101 for each of the new Sheriff's Officers. As such, the appointing authority will be able to maintain the maximum number of 49 County Police Officers after the layoff as required by county ordinance. The Sheriff considered alternatives including pre-layoff actions, and noted that a hiring freeze has been in place since January 1, 2015. Lateral transfers were considered for the affected employees, but the proposed layoff was determined as the best means of achieving and promoting the goals of the economy and efficiency of the Sheriff's Office. Additionally, on January 27, 2017, General Counsel for Bergen County Sheriff met with representative of the affected labor union to advise of the prospect of layoffs/demotions and the reasons such action would be implemented.

REQUEST FOR STAY OF THE LAYOFF

In its petition to the Commission for a stay, the PBA initially requests the Commission disapprove the layoff plan, or in the alternative, forward the matter to the Office of Administrative Law (OAL) for a hearing as a contested matter. The petitioners maintain that they have a clear likelihood of success on the merits

regarding the good faith of the layoff. The PBA avers that the layoff will have an adverse effect on their rights to collectively organize and their right of association, and will undermine its bargaining unit. The petitioners add that monetary awards cannot adequately address such damages. The petitioners argue that, if they are subjected to layoff, such action will violate the State and federal Constitutions, and as such, immediate injunctive relief is required. The petitioners state that the public interest will be served if the stay request is granted, as a layoff that violates public policy cannot be approved. The petitioner contends that the appointing authority would not experience a hardship if a stay is granted, and the harm the petitioners will experience outweighs any inconvenience to the appointing authority. The petitioners explain that, despite the layoff plan, the appointing authority is appointing more Sheriff's Officers who are performing the same duties as the County Police Officers.

Additionally, the petitioners argue that the Sheriff was not the proper appointing authority to have submitted the layoff plan to this agency. Rather, the petitioners assert that the correct appointing authority is Bergen County. The petitioners contend that, if the Sheriff was not the proper authority to have submitted the layoff plan, it is now void. Additionally, the petitioners explain that the layoff was not implemented for reasons of economy and efficiency. Rather, the petitioners contend that the evidence shows that the underlying reasons for the layoff were to avoid a "union nightmare" due to fear of union related grievances which would cause a mutiny. The petitioners maintain that such information clearly shows retaliatory motive on behalf of the Sheriff which invokes their constitutional protections.¹ As such, the petitioners assert the layoff is clearly illusory.

PRE-LAYOFF ACTIONS

In its petition to the Commission, the PBA asserts that the Sheriff failed to implement pre-layoff actions as required by *N.J.A.C. 4A:8-1.3*. Specifically, it states that it requested that the Sheriff reassign Sheriff's Officers performing duties traditionally performed by County Police Officers and to "transfer" targeted County Police Officers to those positions, thus freeing up Sheriff's Officers to be assigned where appropriate. However, the Sheriff refused to consider this alternative. The PBA also claims that the Sheriff has not instituted a hiring freeze as a pre-layoff action, noting that Sheriff's Investigators are considered "non-permanent" employees and any career service appointees would not be considered permanent until completion of the 12-month working test period.

¹ The petitioners claim that the Sheriff stated that the basis of the layoff was due to the "mutiny" in the ranks which would be "a union nightmare." The PBA submits a news article dated May 1, 2017 indicating that the Sheriff stated "How do I have a County Police Officer and a Sheriff's Officer in the same courtroom when one is making \$25,000 more doing the same job? That is a union nightmare. I will be handed down all kinds of grievances – and they're probably legitimate grievances. I want no part of that. I cannot have that."

REQUEST TO EXPAND LAYOFF UNIT

The petitioners argue that, pursuant to *N.J.A.C. 4A:8-1.5(a)*, the layoff unit should consist of the entire Sheriff's Office, and as such, every position within the Sheriff's Office, including Sheriff's Officers and County Police Officers, should have been considered in the layoff plan. The PBA maintains that *In re Donahue*, 329 *N.J. Super.* 488 (App. Div. 2000)² stands for the proposition that not only appointing authorities, but affected negotiations units, should expect the Commission to consider requests to relax the provisions of *N.J.C.A. 4A:8-1.5(a)* to expand layoff units. Thus, the PBA argues that *In re Donahue* should be considered in light of the circumstances of this matter, namely, the need to describe the layoff unit as the entire Sheriff's Office, which in this matter includes Sheriff's Officers and County Police Officers, due to the commingled nature of their employment; the functional and organizational structure of the Sheriff's Office, which has assimilated the County Police; the number of employees, funding sources and job titles in the proposed unit, which in this case reveals identical functions and funding concerning County Police and Sheriff's Officers; the effect upon layoff rights; and the impact upon services to departmental clientele and the public.

REQUEST TO NOT APPROVE LAYOFF PLAN

The PBA contends that the reason provided by the Sheriff in the layoff plan is in error and pretextual. In this regard, it argues that there is no legal impediment which precludes County Police Officers from performing court security functions. In this regard, it asserts that there is no constitutional or legal basis to prevent County Police Officers from performing their duties under the "Model Court Security Plan" and no meaningful discussions occurred between it and the Sheriff to explore alternatives to the layoff. It also claims that the Sheriff submitted the plan in retaliation for the PBA filing grievances regarding salary entitlements.

² It is noted that *In re Donohue* involved a reorganization plan that merged the Department of Environmental Protection (DEP) with the Board of Public Utilities (BPU), wherein the appellants in that matter, who were serving in the Rate Analyst 2, Utilities title at the time, were transferred from BPU to DEP. As a result of another reorganization, the BPU returned to its prior status as an autonomous agency in, but not of, the Department of the Treasury. As the title of Rate Analyst, Utilities was utilized by both BPU and DEP at the time, the majority of these employees were transferred back to BPU. However, DEP retained the appellants' positions. Thereafter, DEP implemented a layoff targeting the incumbents in the Rate Analyst 2, Utilities title. On appeal to this agency, the appellants in that matter requested a rule relaxation in order to exercise lateral and demotional rights against employees serving in the Rate Analyst, Utilities title at BPU, maintaining that they should have been transferred to BPU prior to the layoff at the time of the second reorganization. The Commissioner of Personnel determined that the rules would not be relaxed and that the appellants' rights were properly determined. See *In the Matter of Joseph Donohue, et. al., Rate Analyst 2, Utilities, Department of Environmental Protection* (Commissioner of Personnel, decided May 27, 1998).

REQUEST FOR COMPARISON OF DUTIES PERFORMED BY SHERIFF'S OFFICERS AND COUNTY POLICE OFFICERS

The petitioners argue that the description of duties listed in the job specifications for County Police Officer and Sheriff's Officer titles are identical in all substantive respects and should possess lateral title rights to each other. Additionally, the petitioners argue that it is irrelevant that Sheriff's Officers and County Police Officers are in a different bargaining unit, as neither *N.J.S.A. 11A:8-1*, nor *N.J.A.C. 4A:8-2.1* through *N.J.A.C. 4A:8-2.6* provides that the bargaining unit should be considered in determining lateral title rights. The petitioners add that County Police Officers are eligible to take the Civil Service examination for Sheriff's Officer, which only requires candidates to possess three years of law enforcement experience. The petitioners aver that such examinations no longer ask questions pertaining to the topic of court services. Moreover, the petitioners state that, since the Sheriff's Office consolidated and absorbed County Police Officers by an agreement, it is further evidence that Sheriff's Officers and County Police Officers titles should possess lateral rights, as they are performing the same duties.³ Specifically, the petitioners argue that the duties performed by Sheriff's Officers and County Police Officers are interchangeable, identical, and undistinguishable. In this regard, it explains that Sheriff's Officers and County Police Officer duties include, among other things, executing warrants, guarding prisoners, restraining individuals, executing writs and orders, and providing service at the Bergen County Regional Medical Center. Other duties include conducting property checks, completing patrol, making arrests, providing training, transporting individuals, collecting monies, serving complaints, and conducting traffic enforcement. Further, it avers that any duties not normally performed by County Police Officers, such as sequestering juries and posting public sales, can be done by County Police Officers, since such duties constitute administrative tasks. The PBA adds that Sheriff's Officers and County Police Officers receive the same training and are awarded a police officer certification, and there is no legal restriction or impediment for County Police Officers to provide the same services as Sheriff's Officers. Moreover, the PBA asserts that approximately 70% of the duties performed by Sheriff's Officers do not include courtroom activity, but rather, consist of duties historically performed by County Police Officers. As such, it requests the layoffs be avoided by reassigning County Police Officers in the Sheriff's Department rather than replacing them with newly hired Sheriff's Officers. In support of their arguments, the petitioners provide certifications from Captain James Mullen and County Police Officer Christopher Weston for review.

The PBA also submits a February 27, 2017 memorandum from the Office of the Bergen County Sheriff, indicating that on February 28, 2017, the Bergen County Sheriff's Office hired and swore in 12 new Sheriff's Officers. By letters dated February 7, 2017 and March 3, 2017, the PBA requested, among other things,

³ It is noted that the agreement was not approved by this agency.

copies of the proposed layoff plan and documents supporting the Sheriff's alleged 2% budget cap restrictions. The PBA submits a letter dated April 10, 2017 from the Office of the Bergen County Sheriff, indicating that the appointing authority denied the PBA's OPRA request for any writings pertaining to the proposed layoff plan submitted to this agency. The PBA also submits a copy of this agency's 2016 Sheriff's Officer Sergeant Exam Orientation guide, to show that court room activities are no longer a topic of such examinations.

In response, the Sheriff's Office, represented by John McCann, Esq. and Catherine M. Elston, Esq., maintain that this agency appropriately approved the layoff plan. The Sheriff's Office explains that, since the MOA and realignment, two unforeseen events occurred that necessitated the abolition of the remaining 26 County Police Officers including the Supreme Court's approval of the Court Security Plan mandating the assignment of an armed Sheriff's Officer to every courtroom, and the Legislature's adoption of a statute limiting the annual budget request to a county governing body by a County Sheriff to be funded by property taxes no more than 2% of the previous year's budget request. It reiterates that compliance with the aforementioned requirements will cost the jurisdiction an estimated 3.3 million dollars. The Sheriff's Office adds that it considered various alternatives to the layoffs and apprised the PBA of such during a meeting January 27, 2017.

In addition, the Sheriff's Office avers that PBA 49 did not satisfy any of the four factors for interim relief in the petition for a stay and the request for a different layoff unit is moot. In this regard, the PBA's arguments failed take into account that the Sheriff's Officer title and County Police Officer title have separate statutory definitions and are classified differently under this agency's classification system. As such, the affected employees are not entitled to a lateral title change. It adds that the job specifications for the titles list different definitions and duties, which shows that this agency does not consider County Police Officer and Sheriff's Officer as the same or comparable to each other for the purpose of lateral title rights. As such, there cannot be an expanded layoff unit based on the PBA's mistaken assumption pertaining to the titles. It adds that, since the Commission did not exclude Sheriff's Officers from the layoff unit, the PBA's petition for an expanded layoff unit is moot. The Sheriff's Office explains that it is improper to delay the implementation of the layoff, as the PBA and the affected employees are entitled to file appeals pursuant to *N.J.A.C. 4A:8-2.6(a)(2)*. It adds that the PBA's reliance on *In re Donohue, supra*, is misplaced and is factually distinguishable from this matter. In this regard, 11 of the incumbents in the higher rank of the County Police Officer title series have displacement rights, resulting in the demotions of those 11 senior officers and the layoff of 26 of those with the least seniority in the County Police Office title. It adds that the expansion of the layoff unit seeks to displace Sheriff's Officers who are not performing essentially the same duties as the County Police Officers.

Additionally, the Sheriff's Office argues that the PBA cannot produce sufficient evidence to overcome the presumption of good faith of the layoff, and such arguments should be properly presented in a hearing at OAL after the layoff occurs pursuant to *N.J.A.C.* 4A:8-2.6(a)(1). It adds that at the time the MOA was issued, it was acknowledged that there were 54 unnecessary County Police Officer positions within the Sheriff's Office, and through attrition, the number was reduced to 26 at the time the layoff plan was submitted to this agency. As such, the remaining positions were sought to be abolished through the layoff plan. Further, the Sheriff's Office asserts that, contrary to the PBA's arguments, it is not mandatory to implement pre-layoff actions. It states that the pre-layoff actions set forth in *N.J.A.C.* 4A:8-1.3(a) are merely suggestions. It adds that, if pre-layoff actions were mandatory, it would interfere with an appointing authority's fundamental policy-making authority. The appointing authority maintains that it appropriately discussed pre-layoff actions with the PBA and none were feasible. Moreover, the Sheriff's Office maintains that it is the appropriate appointing authority to have submitted the layoff plan to this agency, and as such, the PBA's claims to the contrary are baseless. Accordingly, the Sheriff's Office maintains that the PBA has failed to show that there is a danger of immediate and irreparable harm if the stay in this matter is not granted.⁴

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for a stay:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

N.J.S.A. 11A:8-4 and *N.J.A.C.* 4A:8-2.6(a)1 provide that good faith appeals may be filed based on a claim that an appointing authority laid off or demoted an employee in lieu of layoff for reasons of economy, efficiency or other related reasons. When a position is abolished, there is a presumption of good faith and the burden is on the employee to show bad faith and that the action taken was not for purposes of the economy. *Greco v. Smith*, 40 *N.J. Super.* 182 (App. Div. 1956); *Schnipper v. North Bergen Township*, 13 *N.J. Super.* 11 (App. Div. 1951). As the Appellate Division further observed, "That there are considerations other than economy in the

⁴ The Sheriff's Office notes that it did not receive a copy of the instant stay petition until May 30, 2017, and it appropriately submitted a response within a reasonable amount of time on June 2, 2017. The Sheriff's Office adds that the PBA filed an order to show cause regarding the layoff with the Chancery Division, Superior Court, and the hearing is scheduled for June 6, 2017. It also notes that the PBA filed a request for permission to file an emergent motion with the Appellate Division, Superior Court. On May 26, 2017, the PBA's request for permission to file an emergent motion was granted.

abolition of an office or position is of no consequence, if, in fact, the office or position is unnecessary, and can be abolished without impairing departmental efficiency." *Schnipper, supra* at 15 (emphasis added).

N.J.A.C. 4A:8-1.5(c) provides that in local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency, or an entire school district. *See also, N.J.S.A.* 11A:8-1(c). However, prior to the time set by *N.J.A.C.* 4A:8-1.4 for submission of information to the Civil Service Commission, a different layoff unit consisting of one or more departments may be approved by the Chairperson under the following procedures: (1) a request may be submitted by an appointing authority to the Chairperson or the matter may be initiated by the Chairperson; and (2) notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Chairperson; (3) after receipt of the request, the Chairperson shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations; (4) thereafter, the Chairperson shall issue a determination approving, modifying, or rejecting the proposed layoff unit, after considering: (i) The need for a unit larger than a department; (ii) the functional and organizational structure of the local jurisdiction; (iii) the number of employees, funding source and job titles in the proposed unit; (iv) the effect upon employee layoff rights; and (v) The impact upon service to departmental clientele and the public.

Additionally, *N.J.A.C.* 4A:8-2.2(c) states that in local service, a permanent employee in a position effected by a layoff action shall be provided title rights within the layoff unit. Moreover, an appellant has the burden of proving that a misapplication of the regulatory criteria occurred in determining layoff rights. *See N.J.A.C.* 4A:8-2.6(c).

N.J.S.A. 11A:8-2(b), *N.J.A.C.* 4A:8-1.2(e) and *N.J.A.C.* 4A:8-1.3(c) provide that appointing authorities shall consult with affected negotiations representatives prior to offering alternatives to layoffs or implementing pre-layoff measures. *N.J.S.A.* 11A:8-3 and *N.J.A.C.* 4A:8-1.2(b) and (c) provide that appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives, such as granting leaves of absence without pay to permanent employees without loss of seniority, granting voluntary furloughs, allowing a voluntary reduction of work hours, or providing employees with optional demotional title changes. *N.J.S.A.* 11A:8-2 and *N.J.A.C.* 4A:8-1.3(a) provide that an appointing authority shall lessen the possibility, extent or impact of layoffs by implementing pre-layoff actions, such as initiating a temporary hiring and/or promotional freeze, separating non-permanent employees, returning provisional employees to their permanent titles, reassigning employees, or assisting potentially affected employees in securing transfers or other employment. *N.J.A.C.* 4A:8-1.4(e) states that upon approval of a layoff plan, affected negotiations representatives shall be provided

with a copy of the plan as it effects their represented employees. *See also, N.J.S.A. 11A:8-2 and N.J.S.A. 11A:8-3.*

With respect to the PBA's argument regarding title comparability, the PBA does not specify the names of any individuals whose positions are allegedly misclassified as Sheriff's Officers who perform duties which would warrant that their position be classified as County Police Officer. Regardless, notwithstanding its argument to the contrary, the Sheriff's Officer and County Police Officer series are appropriately not given title rights to one another. In this regard, the job specifications and classification of the County Police Officer and Sheriff's Officer title series are consistent with classification studies and evaluations conducted by the Federal government. The United States Department of Labor (USDOL), Employment and Training Administration, organizes groups of jobs into "occupations" based on their similarities and defines the structure and content of occupations in the *Dictionary of Occupational Titles (DOT)*. The Employment and Training Administration reports that the occupational definitions are the result of "comprehensive studies of how similar jobs are performed in establishments across the nation and are composites of data collected from this diverse sources." Thus, the term "occupation" as used in the DOT refers to this collective description of a number of individual jobs performed, with minor variations, in many establishments. Occupations are clustered into nine broad "categories," which are further divided into "divisions" and then into specific "groups." *See Dictionary of Occupational Titles, Volume 1, Fourth Edition, Revised 1991, Employment and Training Administration.* Additionally, the USDOL, Bureau of Labor Statistics, has developed the Standard Occupational Classification System (SOC) in which workers are classified into one of over 820 occupations according to their occupational definition. To facilitate classification, occupations are combined to form 23 major groups, 96 minor groups, and 449 broad occupations. Each broad occupation includes detailed occupation(s) requiring similar job duties, skills, education, and experience.

Although the County Police Officer series is not mentioned in the DOT, it does have a listing for Police Officers. Moreover, the PBA's arguments pertaining to Special Class 2 Law Enforcement Officers are of no moment, as Special Class 2 Law Enforcement Officers are not Civil Service titles. Under the DOT, the Police Officer title series are considered part of the occupational group Police Officers and Detectives, Public Service. According to the DOT, this group includes occupations concerned with patrolling assigned beat on foot, on motorcycle, in patrol car, or on horseback to control traffic, preventing crime or disturbance of peace, arresting violators, noting suspicious persons and establishments, submitting reports to superior officer, dispersing unruly crowds at public gatherings, and issuing tickets to traffic violators. In contrast, the Sheriff's Officer title series is considered part of the occupations group Sheriffs and Bailiffs. This group includes occupations concerned with enforcing law and order in unincorporated districts, maintaining

order in court and serving summonses. According to the SOC, the Police Officer title is part of the broad category "Police Officers" (33-3050), which includes the Sheriff's Officer title in the broad category "Police and Sheriff's Patrol Officers" (33-3051).

Moreover, *N.J.S.A.* 40A:9-117.6 establishes that Sheriff's Officers, pursuant to the provisions of title 11 of the Revised Statutes, where applicable, perform the duties involved in attending the courts heretofore performed by court attendants, or in serving court processes, or in the investigation and apprehension of violators of the law, or in criminal identification, or in ballistics, or in any related work which the sheriff shall, from time to time, prescribe and as shall be determined to be appropriate by the Commission. Except as provided herein, no such officer shall be assigned to any penal institution, jail, penitentiary, county correction center or workhouse for the purpose of guarding, having custody of, or being charged with the rehabilitation of any inmate housed therein, except upon emergency conditions. Any sheriff's officer who, on the effective date of this act, is assigned to any penal institution, jail, penitentiary, county correction center, or workhouse for the purpose of guarding, having custody of, or being charged with the rehabilitation of any inmate housed therein, may continue to serve in such capacity until such officer is reassigned or terminated, at which time the position shall be filled with an individual in a title appropriate to the duties to be performed. Additionally, *N.J.S.A.* 40A:9-117.10 provides that Sheriff's Officers . . . shall have the duties, benefits and powers conferred by law on sheriff's officers, and their compensation shall be as fixed by the sheriff in accordance with the generally accepted county salary ranges and within the confines of the sheriff's budget allocation set forth by the governing body. Nonetheless, *N.J.S.A.* 2A:154-3 empowers Sheriff's Officers to act as officers in the detection, apprehension, arrest and conviction of offenders against the law and to have full power of arrest for any crime committed in their presence within the territorial limits of the State of New Jersey. Thus, the assignment of these types of duties to a Sheriff's Officer is proper and would be substantially similar to those of a County Police Officer.

Further, the KSAs for the Sheriff's Officer title series include knowledge of interviewing and photographing persons for investigations and identifications, knowledge of the procedures used in ballistic testing and of the proper methods and procedures for gathering and preserving evidence, ability to learn quickly from observation, oral and written explanations, and from demonstrations, and ability to perform varied investigation work. Examples of work for the Sheriff's Officer title include "may operate a motor vehicle for the transportation of prisoners to various locations" and is responsible for the care, custody, and security of prisoners while being transported to various locations." In contrast, the KSA's for the County Police Officer title series indicates that incumbents perform one or more functions in the following areas: knowledge of rules and regulations of the department, knowledge of public agencies and facilities, knowledge of ways of handling crowd situations,

knowledge of investigative procedures, knowledge of current laws pertaining to search and seizure activities, knowledge of laws affecting arrest procedures, knowledge of amount of force required to make arrests, and the knowledge and willingness to take action in preventing potential accidents from happening. Examples of work for the County Police Officer title includes responding and intervening in fights and domestic disputes, patrolling an assigned area either on foot or in a vehicle, assessing situations, inspecting premises, issuing summonses for violations of municipal and county ordinances, maintaining surveillance of suspected unlawful activity, reporting suspects at large, attempting to disarm persons threatening others with a weapon, making service calls, controlling crowds at an emergency scene, providing police protection when large sums of money are present, making investigations of complaints involving misconduct and other matters within the field of police operations, enforcing traffic laws and traffic control, responding to motor vehicle accidents, completing investigations, making arrests and apprehending suspects, providing testimony in court, and other supportive duties, such as dispatching units in accordance with departmental procedures.

In contrast, *N.J.S.A. 40:A:14-107* provides that members of a county police department shall have the powers to enforce 1) all rules and regulations made and promulgated by the governing body of the county governing the use of by the public, and the welfare of the public, on county highways and roads; 2) all provisions of chapter 171 (Sunday observances) of title 2A of the New Jersey Statutes; 3) all provisions of Title 39 (Motor Vehicles and Traffic Regulation) of the Revised Statutes; 4) all provisions of Title 2C of the New Jersey Statutes; and 5) all rules and regulations made and promulgated by the governing body of the county respecting the general health, safety and welfare of the public within the territorial limits of the county. It also provides that said members and officers have authority to arrest for the commission of any crime anywhere in the county of their appointment [and] have full authority to arrest for any crimes committed in their presence which are committed anywhere within the territorial limits of the State of New Jersey. Additionally, the job specification for County Police Officer indicates that incumbents, during an assigned tour of duty, on foot, or in an automobile, patrols a designated area to provide assistance and protection for persons, safeguards property, ensures observance of the law, and apprehends law breakers. Conversely, the job specification for Sheriff's Officer indicates that incumbents perform one or more functions in the following areas: maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics and investigations, and apprehension of violators of the law. As such, given the differences in categorizations and the differing main focus of the titles, it is clear that this agency's classification of the County Police Officer and Sheriff's Officer titles appropriately does not provide lateral title rights for those titles.

With respect to the PBA's request to expand the layoff unit, the Commission does not find that any unique circumstances exist in this matter to relax the rules for an expansion of the layoff unit for County Police Officers in this matter. Initially, the Commission finds that *In re Donohue, supra*, is factually distinguishable from this matter. The Appellate Division in that matter essentially instructed this agency to make specific findings of fact and articulate a conclusion pertaining to the appellants' request to expand the layoff unit. However, the matter was settled prior to when a decision could be issued by this agency. As such, neither the remand of that matter nor this agency ultimately decided if the layoff unit should be expanded. Further, the layoff unit in this matter does not improperly impact a common title like it did in *Donohue*, which was Rate Analyst 2, Utilities. Moreover, the reorganization that occurred in *Donohue* is not analogous to the realignment that occurred in this matter. Rather, the County Police Officers were subjected to a realignment with the Sheriff's Office as a result of ordinance 13-27 and the MOA, which did not separate the County Police Officers into a separate autonomous department, but rather realigned them as a unit overseen by the Sheriff's Office. Thus, unlike in *Donahue*, the County Police Officers in this matter were not separated from their autonomous agency at any time.

Additionally, in *Donohue*, the Appellate Division determined that the *principal issue* before this agency was to determine whether a layoff unit as defined by this agency's rules should be relaxed (emphasis added). It also instructed this agency to make specific findings of fact and articulate a conclusion with sufficient particularity to enable interested parties and possibly a discerning court, to discern the basis of the decision. Pursuant to *Donohue*, the Commission will now provide such an analysis in this matter.

Initially, the PBA did not show that the appointing authority or this agency did not comply with the regulatory criteria in implementing the proposed layoffs. In the instant matter, Agency Services properly approved Bergen County Sheriff's request for a layoff for reasons of economy and efficiency. The appointing authority considered alternatives, including reassignments, however, such actions were not feasible for the affected individuals. Although the PBA argues that the County Police Officers could be reassigned to avoid the layoffs, this argument is essentially an argument pertaining to the good faith of the layoffs. Since the layoff has not yet occurred, the PBA's claim is not ripe for a determination and its claims are speculative and unsupported. As discussed above, Sheriff's Officers and County Police Officers do not perform the same functions. The Commission is cognizant of the impact of a layoff on affected employees. However, the harm that the individuals may suffer while awaiting an Office of Administrative Law hearing is financial in nature, and as such, can be remedied by the granting of back pay should they prevail in the good faith layoff appeal. With respect to the comments the PBA attributes to the Sheriff to show that he is biased against County Police Officers, as well as the arguments pertaining to hiring new employees and failure to consider

reassignments, such issues present disputes of facts that cannot be addressed fully on the written record. Additionally, although the Commission is not bound by the aforementioned MOA, how the County Police function was absorbed into the Sheriff's Office since 2015 is essentially of no moment to the situation. The Commission finds that issues of assignment and reassignment are within the sphere of managerial prerogative, with limited exceptions. Indeed, in State service, the Commission has consistently explained that administrative agencies have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them. Further, deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection is responsive to the purpose and function of the agency. See *In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., Jan. 10, 1992). Accordingly, there is no need to determine in this matter that the entire Sheriff's Department should have been targeted for the layoff. As such, the Commission finds no substantive reason to grant the request for stay in this matter. Finally, the Commission notes that the PBA's argument in this regard is in many ways moot as the Commission has found that the titles of Sheriff's Officer and County Police Officer do not have any displacement rights between them and expansion of the layoff unit to include County Police Officers would, in essence, have no effect.

As such, the Commission finds that the PBA has not provided any substantive basis to grant the request for a stay in this matter. The PBA has failed to demonstrate that it is clearly likely to succeed on the merits of its anticipated challenge to the good faith of the proposed layoff. The PBA essentially argues that the appointing authority did not act in good faith when the Sheriff submitted the layoff plan, as evidenced by the Sheriff's alleged misrepresentations and his bias against County Police Officer personnel. Further, the PBA contends that the Sheriff is not the proper appointing authority to have submitted the layoff plan to this agency. Moreover, the PBA asserts that the appointing authority and this agency did not consider its request for an alternative layoff unit prior to approving the layoff. Although the PBA requests that this matter be stayed or, in the alternative, referred for a hearing at OAL, it did not provide any information to show that the layoff plan is inaccurate, and this agency's records clearly show that the Bergen County Sheriff was the proper appointing authority to have submitted the layoff plan. This is bolstered by the fact that the County Police Department was absorbed and is now overseen by the Sheriff's Office, which the PBA does not dispute, and the County and Municipal Personnel System (CAMPS) indicates that the affected employees are serving in the Sheriff's Office. As such, the appointing authority properly recorded the affected employees as serving in the Sheriff's Office. An employee is considered an employee of only one department and it is from that department that the employee's rights emanate. In this case, the Commission finds that the affected employees were of the Sheriff's Department. As such, the Bergen County Sheriff is the appropriate appointing authority, *not* Bergen County. As noted above, ordinance 13-27 and the MOA established that the Sheriff is the

appointing authority for County Police Officers. As such, the County Police are not considered a separate department from the Sheriff's Office. The exercise of lateral or demotional title rights may have a serious impact on other government workers, who may be displaced, as well as on the appointing authority, whose work force may be rearranged. Therefore, layoff rights may only be exercised only with the explicitly defined limits of the layoff unit. As such, under these circumstances, the affected employees can only be provided layoff rights within the Sheriff's Office. See *N.J.A.C. 4A:8-2.2(c)*.

Additionally, no requirement is imposed upon appointing authorities under Civil Service law and rules to provide a layoff plan to affected negotiations representatives prior to its approval. See *N.J.A.C. 4A:8-1.4(e)*, see e.g., *In the Matter of County of Morris Layoffs* (Commissioner of Personnel decided February 28, 2007). It must be noted that Civil Service law and rules do not require *negotiations* with affected bargaining units prior to implementing a layoff. Rather, *N.J.S.A. 11A:8-2(b)*, *N.J.A.C. 4A:8-1.2(e)* and *N.J.A.C. 4A:8-1.3(c)* require *consultations* with affected unions. The level of "consultation" contemplated by Civil Service law and rules governing layoffs does not require "negotiations" with affected collective bargaining units as that term is used in labor relations law. Rather, Civil Service law and rules contemplate that a meaningful discussion will occur between an appointing authority and affected negotiations representatives with a view toward a reduction in force altogether or lessening the impact of a proposed layoff on permanent employees and the provision of public services. However, the record shows that the appointing authority consulted with the PBA, and the layoff plan submitted by the appointing authority demonstrates that it considered the feasible pre-layoff actions and alternatives to the layoff. See *In the Matter of County of Morris Layoff, supra*.

The Commission will not attempt to determine the merits of these issues without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of the witnesses, and weigh all the evidence in the record before making an initial decision. Therefore, since there are disputes of facts, there has not been a demonstration of a clear likelihood of success that the anticipated layoff has been conducted in bad faith. Accordingly, the PBA has not demonstrated a sufficient basis for a stay of the instant layoff. However, the PBA or any employees affected by the layoff are not precluded from pursuing such good faith arguments in any subsequent appeal of the layoff.

ORDER

Therefore, it is ordered that this petition be denied.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7th DAY OF JUNE, 2017**



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Chairperson
Civil Service Commission**

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