



STATE OF NEW JERSEY

In the Matter of Michael Negron,
Hudson County Sheriff's Office

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2020-2235

Reassignment Appeal

ISSUED: FEBRUARY 7, 2022 (SLD)

Michael Negron, a Sheriff's Officer, Hudson County Sheriff's Office, represented by Robert Chewning, Esq., appeals his reassignment.

By way of background, the appellant and two other Sheriff's Officers¹ were reassigned to the Court Division, Court Bureau, day shift from the Patrol Bureau, night tour.² On appeal, the appellant claims that his reassignment was retaliatory for his attempts to prevent government mismanagement and the abusive behavior of the Undersheriff. Specifically, the appellant argues that he has a long history of making objections, disclosures and filing grievances against the appointing authority's policies and procedures that he believed to be discriminatory, retaliatory and/or unlawful and submits numerous documents he maintains are in support. In particular, he notes a December 23, 2019 email which concerned training, weapons and protective gear being requested for active shooter events that he sent.

The appellant asserts that approximately two and one-half years earlier, he, and others, had filed a complaint against a Captain and the Undersheriff and he notes that some of the individuals who had signed the complaint were reassigned. The appellant also claims that he has been subject to a long history of retaliatory actions undertaken by the Undersheriff, including discipline and reassignments. One of the main issues that appellant claims he raised in 2019 and 2020 along with the Police Benevolent Association (PBA) Local 334 President, and which was ultimately filed by

¹ It is noted that three Sheriff's Investigators were concurrently reassigned from the Court Division to the Patrol Bureau.

² The other two employees who had been reassigned from the Patrol Bureau to the Court Division had also filed appeals, however, those two employees settled their complaints and requested that their appeals be closed.

the appellant as a February 2020 grievance, was regarding the Undersheriff's policy that forced Sheriff Officers to work mandated overtime for non-county park facility assignments, despite the relevant PBA contract limiting such overtime to county park facilities. The appellant also claims that he was unfairly disciplined with a written warning for "misusing" compensatory time he had not yet accumulated in January 2020 despite past practices, which resulted in him filing a grievance. The appellant also claims that despite the appointing authority's argument to the contrary, it was not he who failed to continue the grievance process, as it was the appointing authority who did not respond to his grievance.

Additionally, the appellant argues that he reasonably believed his disclosures of alleged violations of the law by the appointing authority and that said disclosures were made to the appropriate recipients. In this regard, he notes that he filed grievances and made several complaints and objections to the PBA President, the Undersheriff, and the appointing authority. Furthermore, the appellant argues that there is a causal connection between his disclosures and the retaliation he suffered. In this regard, he maintains that the appointing authority and the Undersheriff knew of his complaints and objections, including the most recent grievance that was close in time to his reassignment and therefore, his disclosures were "at the very least a motivating factor." Further, the appellant argues that the appointing authority fails to provide any legitimate reason for his reassignment especially considering he was the second most senior Sheriff's Officer in his patrol that was selected to be reassigned. The appellant also argues that the Sheriff's Investigator's that were reassigned to the Patrol Bureau were appointed by the Undersheriff,³ and two of three had made political donations to the Sheriff in 2019. Therefore, even if his reassignment was not retaliatory, he asserts that he has presented an alternative reason for his reassignment. Finally, the appellant requests a hearing on this matter.

In response, the appointing authority, represented by Nidara Rourk, Assistant County Counsel, argues that the appellant has failed to establish a *prima facie* case of retaliation. The appointing authority argues that even assuming that the grievance was filed on February 9, 2020, the appellant has failed to present any evidence that the filing of that grievance triggered the reassignment. In this regard, it notes that there is no indication on the grievance form that the Undersheriff or anyone in management had received the February 9, 2020, grievance prior to the February 10, 2020, reassignment order being issued. Additionally, the appointing authority argues that the Undersheriff denies any knowledge of the February 9, 2020, grievance prior to the issuance of the reassignment order on February 10, 2020. In support, it submits a certification from the Undersheriff.

Additionally, the appointing authority asserts that the appellant has failed to present any evidence which establishes that he reasonably believed in the integrity of his allegations in the February 2020 grievance. In this regard, it notes that

³ The title of Sheriff Investigator is an unclassified title.

although the appellant claimed in the grievance that the appointing authority was forcing Sheriff's Officers to work overtime in violation of the contract, the appellant failed to provide any names of Sheriff's Officers who were forced to work overtime; any dates when the alleged forced overtime occurred or was anticipated to occur; any written orders, policies or any other indicia of the details of the alleged violation. Moreover, it notes that the appellant also fails to provide such information on appeal. Further, the appointing authority asserts that no evidence has been presented to establish that the Undersheriff or anyone in management denied the grievance or perceived the filing as a negative occurrence and thus, it cannot be considered whistleblowing to establish a nexus between the grievance and the transfer.

Moreover, the appointing authority argues that several of the emails/complaints the appellant claims he submitted to the Undersheriff, including a December 23, 2019, email he submitted on appeal which concerned training, weapons and protective gear being requested for active shooter events, have not been established to have triggered any animus within the management at the Sheriff's Office. Rather, the appointing authority notes that it had already created policies for training and responses to active shooter events and that within months of the email it had purchased additional equipment to provide to the officers so that they could respond to active shooter events. The appointing authority also notes that the appellant did not author the December 23, 2019, email, as it was originally authored by D.F., and forwarded to the Undersheriff by the PBA President. Instead, the appellant was merely one of several individuals who were blind copied on the email as indicated in the copy submitted by the appellant on appeal. As such, the appointing authority maintains that the appellant cannot establish a nexus between either himself and the disclosure or even a nexus between the disclosure and the appellant's reassignment.

Further, the appointing authority argues that the complaints he filed in 2017 and 2018 fail to show a causal nexus to his reassignment. In this regard, it asserts that any connection between complaints that were filed over two years prior to his reassignment are, at best, tenuous. Furthermore, the appellant has failed to establish that the Undersheriff suffered any consequences from those complaints or that the appellant received any relief. Specifically, the appointing authority asserts that the simple filing of a complaint alone cannot sow a temporal or substantive nexus to support a claim of retaliation, and therefore, any claims related to complaints from 2017 and 2018 must fail. Finally, the appointing authority argues that the reassignments were based upon consideration of the needs of the Sheriff's Office, the skills and experience of its staff and requests by officers seeking to join the Patrol Bureau.⁴

⁴ In reply, the appellant objected to the appointing authority's submission as being late. However, as there is no statutory time frame in which to submit information in written record appeals, that claim is unpersuasive. Regardless, the Civil Service Commission's (Commission) mission is to make a reasoned determination on matters before it and in doing so prefers as full and complete a record

CONCLUSION

N.J.A.C. 4A:4-7.2 states that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organization unit. Reassignments shall be made at the discretion of the head of the organizational unit. Further, *N.J.A.C.* 4A:4-7.7 states that when an employee challenges the good faith of a reassignment, the burden of proof is on the employee. That section also provides that such an action may not be used as part of a disciplinary action, “except when disciplinary procedures have been utilized.” *See also, N.J.S.A.* 11A:4-16.

N.J.A.C. 4A:2-5.1, generally provides that an appointing authority shall not take or threaten to take any reprisal action against employees in retaliation for an employee’s lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority or on the employee’s permissible political activities or affiliations. *See also, N.J.S.A.* 11A:2-24. In *Katherine Bergmann v. Warren County Prosecutor*, Docket No. A-5665-01T5 (App. Div. December 1, 2004), it was determined that an employee asserting a cause of action under *N.J.S.A.* 11A:2-24 is required to prove the following elements:

- 1) The employee “reasonably believed” in the integrity of the disclosure at the time it was made, meaning the employee had no reasonable basis to question the substantive truth or accuracy of the content of the disclosure just prior to communication (it is here that the term “reasonable belief” is borrowed from the Conscientious Employee Protection Act (CEPA), *N.J.S.A.* 34:19-1, *et seq.*, to define what is the substantive content of a “lawful disclosure”);
- 2) The employee disclosed the information to a source “reasonably” deemed an appropriate recipient of such information just prior to communication (here, the term “reasonably” is used to describe the perceived proper channels through which a “lawful disclosure” should be communicated);
- 3) There is a connection, or nexus, between the disclosure and the complained of action (this is a standard cause-and-effect showing by the employee). *Carlino v. Gloucester City High School*, 57 *F. Supp. 2d* 1, 35 (D.N.J. 1999); *Kolb v. Burns*, 320 *N.J. Super.* 467, 476 (App. Div. 1999).

Only after the employee satisfies the criteria above does the appointing authority bear the burden of showing that the action taken was not retaliatory. *See Wright Line*, 251 *NLRB* 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 *U.S.* 274 (1977).

before it. Accordingly, parties are provided wide latitude in presenting arguments and evidence in support of or reply to matters before it.

Initially, the appellant requests a hearing in this matter. Reassignment appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented in this matter which would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

In this matter, the appellant contends that his reassignment was a form of reprisal. Using the test as enumerated above, the appellant has failed to present a *prima facie* case of reprisal. Although the appellant met the first and second prongs of the test, he has failed to satisfy the third prong of the test. In this regard, the appellant has not presented any evidence that establishes that the Undersheriff knew off or had seen the February 9, 2020, grievance prior to him issuing the memorandum reassigning six employees, including the appellant. The mere fact that six employees, including the appellant, were reassigned the following day does not provide any evidence that the appellant's reassignment was retaliatory or otherwise in bad faith. Moreover, although the appellant claims that earlier complaints and emails, including the December 23, 2019, email, were the reason for his reassignment, he has failed to establish any specific nexus between those emails and his reassignment. In this regard, it is noted that it was not the appellant who authored the December 23, 2019, email, and the concerns raised in that email were already being considered and were ultimately addressed by the Undersheriff and the appointing authority. Finally, the appointing authority has presented essentially undisputed legitimate business reasons for the six reassignments. Accordingly, the appellant has failed to present a *prima facie* case of reprisal and as such, has failed to establish that his reassignment was improper.

ORDER

Therefore, it is ordered that this appeal 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 2ND DAY OF FEBRUARY 2022

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