



STATE OF NEW JERSEY

In the Matter of Michael Oakley,
Ewing Township

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

CSC Docket No. 2022-555

Administrative Appeal

ISSUED: AUGUST 3, 2022 (HS)

Michael Oakley, a former part-time Fire Prevention Specialist with Ewing Township (Ewing), requests relief regarding the elimination of his work hours.

As background, on October 12, 2021, Ewing presented a layoff plan to the Division of Agency Services (Agency Services) to be effective January 2, 2022, proposing the appellant’s layoff from the Department of Economic Development for economy and efficiency. Per the job specification for Fire Prevention Specialist, the incumbent inspects buildings and premises to identify and eliminate fire hazards and enforce the provisions of relevant fire safety codes and related regulations. The incumbent must possess a current, valid Fire Inspector Certification issued by the Department of Community Affairs. Ewing indicated that the duties performed by the appellant’s position had been reassigned to Fire Fighters possessing the Fire Inspector Certification. The appellant’s position was the only one targeted. Agency Services approved the layoff plan, and notice was sent to the appellant on November 5, 2021. Agency Services, on or about December 23, 2021, informed the appellant that he would be laid off from his position and that there were no displacement rights available to him.¹ The appellant’s name was placed on appropriate special reemployment lists. The appellant had previously entered permanent service with Ewing as an hourly part-time Fire Prevention Specialist on May 16, 2016. Thomas Leese, the only other Fire Prevention Specialist in the Department of Economic

¹ The Fire Prevention Specialist title has no lateral or demotional title rights to any title. It is also noted that the appellant did not serve in any other title with Ewing.

Development or Ewing,² was appointed to the title in a full-time capacity provisionally on January 4, 2016 and permanently on January 11, 2016. Leese had previously entered permanent service with Ewing on September 27, 1998.

In his appeal to the Civil Service Commission (Commission), postmarked September 3, 2021, the appellant presents the following narrative. On March 18, 2020, his immediate supervisor James Hall informed him that his hours were “frozen” until further notice due to the COVID-19 pandemic. On June 8, 2021, the Mayor informed him that he had been laid off. The Mayor stated that the career Fire Fighters were performing the fire prevention inspections in a “pilot program” that was still being evaluated. The Mayor further stated that in two months, he would inform the appellant of his status and whether additional help was needed or the fire prevention inspection program could be handled “as is.” The appellant asked if his situation was a form of disciplinary action for some unknown reason, but the Mayor informed him that he was an exemplary employee. As of August 9, 2021, all part-time employees, except the appellant, were brought back. In the aforementioned time period, the appellant did not receive any documentation from this agency or Ewing stating that he was officially laid off. In light of the appellant’s narrative, he appeals the following issues: he was never officially laid off in the discussed time period; Fire Fighters are working out-of-title doing his job; and all part-time non-Civil Service employees³ have been returned to work, but he has not. In support, the appellant submits various documents, including a May 25, 2021 e-mail in which the Business Administrator requested that the appellant “return the equipment that belongs to Ewing Township.”

In response, Ewing, represented by Maeve E. Cannon, Township Attorney, acknowledges that the appellant’s hours were reduced to zero as of April 29, 2020. Ewing does not dispute the appellant’s contention that he was “never formally laid off” prior to the October 12, 2021 to January 2, 2022 period. However, it maintains that the career Fire Fighters are not performing duties out-of-title because, per their job specification, they may make periodic inspections and issue citations to ensure compliance with safety regulations. Ewing represents that the program, which started on a “trial basis” in April 2021, would reduce expenditures; promote efficiency; grow the Fire Department’s capabilities to better serve residents; and provide numerous additional benefits, including the ability of the Fire Department to update “pre-plans” for the inspected premises to annotate all present or latent fire hazards to prepare the force in the event of a future fire at the location. Ewing asserts that even with fire prevention inspections, fire suppression activities still make up significantly more than 51% of the certified Fire Fighters’ duties. Further, Ewing

² Agency records reflect that Charles Wycnoff also served in the title of Fire Prevention Specialist, but Wycnoff separated from employment with Ewing in 2012.

³ The appellant stated both that all part-time employees were brought back and that all part-time *non-Civil Service* employees were brought back. For the reasons discussed later, this discrepancy is immaterial to the outcome of this appeal.

argues that the appellant's contention that other part-time positions have resumed their pre-pandemic levels is simply irrelevant.

In reply, the appellant asserts that he began to work 35 hours per week beginning approximately at the end of 2018, but he was never offered a benefit package. In addition, the appellant questions how the "title" of Fire Prevention Specialist could be eliminated as both Hall and Leese hold the title and are actively working under it. The appellant also states that to his knowledge, there has never been an announcement for the title of Fire Official, which Hall holds. Further, the appellant contends that the Fire Fighters now conducting fire prevention inspections were hired under the Rice Bill⁴ and were strictly transfers from other municipalities. They were not, according to the appellant, appointed directly from a Civil Service eligible list. The appellant proffers that when Ewing went through the hiring process under Civil Service requirements, fire prevention inspections were not part of the requirements sent out from this agency at the time of employment. Additionally, the appellant states that when Hall was working in Trenton as an "acting" Battalion Fire Chief, he would cover for Hall as the Fire Official.⁵

In reply, Ewing denies that the appellant worked full-time and represents that he was never intended to work more than 29.5 hours per week. Ewing states that it tracks its payroll for all employees to ensure Affordable Care Act (ACA) compliance and that the appellant never met the threshold for ACA coverage. Ewing acknowledges that the appellant had five pay periods over the course of his employment when he met or exceeded 70 hours over the course of a two-week pay period but maintains that he never met the hours eligibility for benefits and it was not its understanding that the appellant thought he was a full-time employee. The appellant, according to Ewing, was always part-time. Concerning Leese, Ewing states that he performs residential fire prevention inspections and Certificate of Occupancy fire prevention inspections for residential structures. According to Ewing, the appellant was appointed in a part-time capacity to supplement the performance of commercial fire prevention inspections; only the part-time position was eliminated; and the full-time position will continue to perform residential fire prevention inspections. Concerning Hall, Ewing states that while he holds a Fire Inspector Certification, his title is not Fire Prevention Specialist. Rather, Hall is the "fire official and fire Marshall, and holds an unclassified position as such."⁶ Further, Ewing maintains that regardless of the means—Rice Bill list, intergovernmental transfer, or Civil Service eligible list—by which it has appointed Fire Fighters, they all hold the same Civil Service classification that allows them to perform periodic fire prevention inspections should they be certified, which they are. Additionally, Ewing

⁴ See *N.J.S.A.* 40A:14-9.9.

⁵ Agency records reflect that Hall separated from employment with Trenton on January 1, 2018.

⁶ There is no record of any such appointment for Hall with Ewing in the County and Municipal Personnel System. It is noted that Fire Marshall is an unclassified title, while Fire Official is a competitive career service title.

argues that the appellant's assertion that he would cover for Hall in Trenton is irrelevant and his earlier covering for Hall has no bearing on the elimination of his position now. In support, Ewing submits the appellant's payroll history and other documents.

CONCLUSION

N.J.A.C. 4A:6-2.1(a) provides that, in local service, appointing authorities, subject to applicable negotiations requirements, may establish the hours of work. Additionally, an appointing authority has the discretion to reduce the number of hours or days worked by a permanent part-time or hourly employee. *See, e.g., In the Matter of Richard Mizerak* (MSB, decided February 8, 2000). In the instant matter, Ewing acknowledges that, as of April 29, 2020, it had reduced the appellant's hours to zero in an effort to reduce expenditures amid the deteriorating economic situation stemming from the COVID-19 pandemic. In the appellant's case, Ewing did not merely reduce the amount of hours that he worked, such as in the case of *Mizerak, supra*, but rather, it eliminated his work hours and effectively involuntarily separated him from his permanent part-time employment. The Commission emphasizes that a Civil Service employee, with permanent career-service status, has a vested property right to his or her employment. Thus, by involuntarily separating the appellant from his employment, without first having followed established layoff procedures, Ewing imposed a *de facto* layoff in violation of the pertinent statutory and regulatory provisions. *See, e.g., N.J.A.C.* 4A:8-1.4 (providing for review of proposed layoff plan by this agency) and *N.J.A.C.* 4A:8-1.6 (requiring that permanent employee receive at least 45 days' written notice of layoff action). The 45-day notice, among other purposes, provides the employee with what, in effect, is 45 days' severance pay. *See Amodio v. Civil Service Commission*, 81 *N.J. Super.* 22 (App. Div. 1963); *In the Matter of Joseph Bonner, City of Bayonne* (Commissioner of Personnel, decided December 15, 1989). Although the Commission recognizes that Ewing ultimately sought and received approval for its layoff plan, the appellant is still entitled to some relief. Specifically, since the appellant did not receive at least 45 days' written notice in advance of his April 29, 2020 effective layoff and Ewing does not dispute that he was "never formally laid off" at that time, Ewing shall compensate the appellant with 45 days' pay calculated in accordance with the appellant's anticipated work schedule prior to Ewing's action. Additionally, the County and Municipal Personnel System (CAMPS) currently states that the appellant was laid off on January 2, 2022, but the Commission, upon review of the instant appeal, has determined as set forth above that the appellant was effectively laid off on April 29, 2020. Accordingly, it is appropriate in this case that the effective date of the appellant's layoff be recorded as April 29, 2020. However, the appellant is not entitled to any further relief for the reasons discussed below.

The appellant complains that Fire Fighters are now performing the fire prevention inspections he had previously performed and suggests that such duties

are out-of-title. The Commission disagrees. The job specification for Fire Fighter—which, it should be noted, governs whether the incumbent was appointed through a Rice Bill list, a Civil Service eligible list, or the intergovernmental transfer program—clearly provides that the incumbent may make periodic inspections and issue citations to ensure compliance with safety regulations. The appellant’s contention that other part-time employees were returned to work is not relevant. Not only were these employees allegedly returned in August 2020, months *after* the appellant was effectively laid off, what these employees had to do with the fire prevention inspection program is not apparent from the record. Moreover, Ewing has provided a reasonable explanation of the efficiencies realized by having the Fire Fighters perform the fire prevention inspection duties at issue. Thus, the alleged return of other employees is, in this case, not relevant to the matter at hand. Also irrelevant to the current matter is the appellant’s representation that, in the past, he covered for Hall as the Fire Official in Trenton. While the appellant questions how the “title” of Fire Prevention Specialist could be eliminated when Leese remains, Ewing never purported to eliminate the “title.” Rather, it targeted a particular *position* classified by that title. As for the appellant’s complaint that he began to work 35 hours per week beginning approximately at the end of 2018 but was never offered a benefit package, Ewing, relying on payroll documents, disputes that the appellant became a full-time employee. The Commission, moreover, does not have jurisdiction over the issue of whether the appellant was entitled to a benefit package. But in any event, the claim is time-barred. *See N.J.A.C. 4A:2-1.1(b)* (providing, in pertinent part, that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed).

Concerning Hall, the Commission notes that there is no record of his appointment to the title of either Fire Marshall or Fire Official with Ewing in CAMPS. Therefore, Ewing shall, within 30 days of the issuance of this decision, properly record Hall’s appointment, which shall include, but not be limited to, the dates of appointment, appointment type, and title under which Hall is or was employed. *See N.J.A.C. 4A:4-1.10(a)* (all initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified, or senior executive service subject to the review and approval of this agency).⁷

Ewing is reminded that it must comply with Civil Service law and rules. Failure to do so may subject it to fines and penalties. *See N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-2.1(a)2*.

⁷ Once Hall’s appointment is properly recorded, the Division of Agency Services may determine if an examination announcement is required.

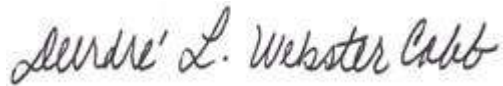
ORDER

Therefore, it is ordered that Ewing Township pay Michael Oakley 45 days' pay in accordance with this decision and that the Division of Agency Services record the effective date of his layoff as April 29, 2020.

It is further ordered that Ewing Township record the appointment of James Hall within 30 days, in accordance with this decision.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF AUGUST 2022



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