



**STATE OF NEW JERSEY**

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

In the Matter of Josiah Acevedo, *et al.*, City of Newark

CSC Docket Nos. 2022-2125, *et al.*

Administrative Appeals

**ISSUED:** November 2, 2022 (SLD)

Josiah Acevedo, *et al.*, Fire Fighter, Newark, represented by Craig S. Gumpel, Esq., appeal their reassignments.

By way of background, on January 15, 2022, an on-duty Fire Captain and a former Fire Fighter were discovered unresponsive at a Newark fire house (Location A), and taken to the hospital, where the Fire Captain was pronounced dead. As a result, the Essex County Prosecutor’s Office launched an investigation, which is still ongoing. All of the Fire Fighters who were on duty at that time were interviewed by the Prosecutor’s Office, but no criminal charges were filed. Additionally, no disciplinary charges have been filed against any of the Fire Fighters who were on shift on the date in question. Thereafter, on February 3, 2022, all Fire Fighters on all four shifts assigned to Location A were reassigned to other locations throughout Newark. It is noted that 25 other Fire Fighters were then reassigned to Location A.

On appeal, the appellants argue that on January 18, 2022, all of the Fire Fighters who had been on shift at the time of the Fire Captain’s death were “illegally” drug tested and were notified that security cameras would be installed in all firehouses, in “non-public” locations where they congregate. Moreover, they contend that the Fire Fighters who had been assigned to Location A were reassigned,<sup>1</sup> despite

<sup>1</sup> The appellant’s note in their submission that they will be using the words “transfer” and “reassignment” interchangeably in their arguments.

only two individuals having requested a reassignment. As a result of these reassignments, 25 other Fire Fighters were then reassigned to Location A. The appellants maintain that their reassignments were not made in good faith and were instead done for disciplinary reasons in violation of *N.J.A.C. 4A:4-7.2*. The appellants assert that although reassignments may be done at the discretion of the Director of Public Safety, they must be done in good faith. In this regard, they point to the “illegal” drug testing and the installation of security cameras in, what they believe will be “non-public” areas of the firehouses, including the kitchen and other areas where Fire Fighters may congregate. The appellants contend that the security cameras serve no other purpose than to infringe upon their privacy and seek to discourage them from engaging in protected union activity and speech. Furthermore, they note that the relevant collective negotiations agreement between the Newark Fire Fighters Union and Newark (NFU Contract) provides stipends for certain fire company assignments. The appellants argue that they lost their stipends after the reassignments because they were reassigned to locations that were not entitled to the stipend. The appellants maintain that the reassignments were done to solely “punish them for being associated with . . . [Location A], or collaterally their lack of association with . . . [Location A] led to their disciplinary transfers.” Therefore, they argue that since the appointing authority has failed to provide a lawful justification for the reassignments, other than to punish them, their reassignments must be reversed.

Additionally, the appellants contend that pursuant to *N.J.S.A. 11A:4-16*, they were entitled to at a minimum of 30 days prior to their “transfers.” They contend that they were only provided with 16 days-notice. The appellants maintain that, although Civil Service law and rules provide that reassignments are at the discretion of the Director of Public Safety, there is a procedure in place where reassignments are done on request. The appellants maintain that since their positions require teamwork, then the involuntary placement of a Fire Fighter to another location runs counter to effective teamwork.

In response, the appointing authority, represented by France Casseus, Assistant Corporation Counsel, argues that the appellants have failed to establish that the reassignments were done for disciplinary reasons, or that they were made in bad faith. Rather, the appointing authority contends that after the incident became public knowledge, due to coverage on the news and media sites, the allegations of drug use in the fire house resulted in a loss of confidence and speculation by citizens. Therefore, based on the loss of life, safety concerns and the pending investigation, it was determined that it was in the best interest of the Fire Division to reassign the Fire Fighters from Location A. Moreover, the appointing authority notes that the appellants have the burden of proof in this matter, which they have failed to support. Finally, the appointing authority notes that no security cameras have been installed in any location.

In response, the appellants reiterate their arguments. Additionally, the appellants contend that the appointing authority has failed to establish that there were any legitimate operational needs or safety considerations at play in the reassignments of all Fire Fighters from Location A. In this regard, they note that in order to maximize safety and efficiency, it is critical that the members of a fire company are familiar with the area in which they are primarily responsible to respond to in an emergency. Moreover, the appellants maintain that individuals who were not familiar with the area, or the duties of Location A, were assigned without regard to the individuals' relevant experience. Furthermore, the appellants assert that the appointing authority has failed to establish that the reassignments were in the best interest of the Fire Division as it caused safety concerns and did not alleviate any safety concerns. Additionally, the appellants argue that like *In the Matter of Robert Trent* (CSC, decided September 21, 2011), their reassignments were "remedial" actions, and thus disciplinary in nature, and therefore, the Civil Service Commission (Commission) should order that they be returned to their prior locations.

The appellants also reiterate that they were not provided with the required 30 days' notice pursuant to *N.J.S.A. 11A:4-16*. In this regard, they assert that *N.J.S.A. 11A:4-16* uses the terms "transfer" and "reassignment" interchangeably, and thus, they were entitled to 30 days' notice. Finally, the appellants acknowledge that while there are no cameras currently installed, the appointing authority did "commence" the security camera installation by going to each fire house to begin the planning stages for the camera locations.

## 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."

*N.J.S.A. 11A:4-16* provides, in pertinent part, that the rules of the Commission shall define and establish the procedures for transfer, reassignment and lateral title change. Employees shall be granted no less than 30 days' notice of transfer, except with employee consent or under emergent circumstances as established by rules of the Commission.

In the instant matter, the appellants argue that transfers and reassignments are interchangeable terms, and thus they were entitled to 30 days' notice pursuant to *N.J.S.A. 11A:4-16*. The Commission does not agree. In this regard, and contrary to the appellants' arguments, the terms transfer and reassignment are not

interchangeable. Rather, *N.J.S.A.* 11A:4-16 provides that the *rules* of the Civil Service Commission *shall define and establish* the procedures for transfer, reassignment and lateral title change (emphasis added). *N.J.A.C.* 4A:4-7.1(a) defines a permanent transfer as the movement of a permanent employee between organizational units within the same governmental jurisdiction. *N.J.A.C.* 4A:4-7.1(a)2 provides in pertinent part, that in local service, an organizational unit shall mean a department or separate agency within the same county or municipality. In local government, transfers normally require the consent of all parties including the employee. *See N.J.A.C.* 4A:4-7.1. However, a reassignment is defined as the in-title movement of an employee to a new job function, shift, location or supervisor within the organization unit, and does not require the consent of the employee. *See N.J.A.C.* 4A:4-7.2. Moreover, *N.J.S.A.* 11A:4-16 only provides that “employees shall be granted no less than 30 days’ notice of *transfer*” (emphasis added), it does not provide that such notice must be provided in cases of reassignment or lateral title change. Accordingly, since the appellants were moved to different locations within the same organizational unit, their movements are properly classified as a reassignment, and *not* a transfer. As such, since the 30 days’ notice requirement is applied to transfers only, that provision of *N.J.S.A.* 11A:4-16 was not violated.

Additionally, the appellants argue that the reassignment of all of the employees assigned to Location A, and other individuals who were then assigned to Location A were made in bad faith and/or for disciplinary reasons. Specifically, the appellants maintain that although the appointing authority contends that the reassignments were done in the best interest of the Fire Service, that the appointing authority has failed to establish this assertion. The Commission notes that *N.J.A.C.* 4A:4-7.7 applies and specifically provides that when an employee challenges the good faith of a reassignment, the burden of proof is on the employee. Additionally, *N.J.A.C.* 4A:4-7.2 provides that reassignments are to be made at the discretion of the appointing authority, and do not require the consent of an employee. In this regard, the appointing authority has provided legitimate business and operational reason for the appellants’ reassignments. Namely, that due to the unfortunate death of an on-duty Fire Captain, and the allegations of drug use, the public had lost confidence in the employees assigned to Location A. *N.J.A.C.* 4A:4-7.2 provides appointing authorities with broad discretion in employee reassignments. Notably, administrative agencies have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them. Deference is normally given to an agency’s choice in organizing its functions, considering its expertise, so long as the selection was 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). However, such discretion is not limitless and must be balanced against the rights and protections provided to employees by Civil Service law. *See In the Matter of Philip Martone* (MSB, decided September 20, 1994) (Counsel fees and rescission of reassignment ordered for appellant who was relieved of supervisory duties due to incompetence but was not subjected to disciplinary procedures). *Compare, In the Matter of John Brooks* (MSB,

decided January 31, 2007) (Appointing authority did not act in bad faith when it reassigned employee as a result of an incident for which he also received a one-day suspension, where it utilized appropriate disciplinary procedures); *In the Matter of Deborah Palombi* (MSB, decided January 17, 2007) (No evidence of bad faith found in reassigning employee, where discussion regarding realigning employees began before employee complained of environmental problems in the workplace and appointing authority possessed legitimate business needs for employee's placement). Given the circumstances of this matter, the reasons provided by the appointing authority, and the lack of persuasive evidence as to any bad faith reasons for the reassignments, the appointing authority's actions are deserving of such deference.

Here, there is no indication in the record that the reassignments were due to the inactions or actions of the appellants or were for remedial or disciplinary reasons. Compare, *In the Matter of Tameshia Russell* (CSC, decided August 17, 2011) *aff'd on reconsideration* (CSC, decided May 2, 2012) (Commission ordered appointing authority to either institute disciplinary procedures or return the appellant to her prior position where the appointing authority claimed the reassignment was due to her "performance issues"); *In the Matter of Amanda Wright* (CSC, decided January 20, 2021) (The Commission ordered the appointing authority to either institute disciplinary procedures or return the appellant to her prior position where the appointing authority claimed it had reassigned her due to her "negligence," "dereliction of duties," and "violation of the Statutes"). Other than the appellants' bare allegations, the appellants have not established that the reasons provided by the appointing authority were not legitimate or served as a pretext to allow the appointing authority to reassign all of the appellants in bad faith.

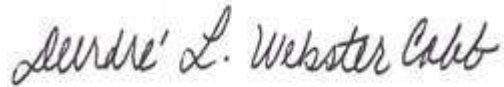
Finally, the appellants assert that because of the reassignments, some of them are no longer entitled to a location-based stipend that they had been receiving. However, a potential decrease of compensation due to a loss of stipend and/or overtime opportunities, perceived loss of status, higher-risk duties, and/or a less favorable schedule are not considered discipline under Civil Service law and rules. Further, the Commission notes that it does not control the compensation for local service. See *N.J.A.C. 4A:3-4.1*. Accordingly, the appellants have failed to establish by a preponderance of the evidence that their reassignment were improper.

## ORDER

Therefore, the Commission orders 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 2<sup>ND</sup> DAY OF NOVEMBER, 2022



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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: See attached list  
Craig S. Gumpel, Esq.  
Tiffany Stewart  
France Casseus, Assistant Corporation Counsel  
Division of Agency Services  
Records Center

Josiah Acevedo (2022-2125)	Angel Narvaez (2022-2162)
Erasmio Assuncao (2022-2126)	Kenneth Nyamekye (2022-2163)
Qudir Ayodele (2022-2127)	Antwan Prayear (2022-2164)
Evan Barbosa (2022-2128)	Daniel Pereira (2022-2165)
Daniel Beachum (2022-2129)	Michael Petrone (2022-2167)
David Alfano (2022-2130)	Gregory Pierre (2022-2168)
Robert Bongiovanni (2022-2131)	Stanley Polanco (2022-2171)
William Garces (2022-2132)	Robert Praino (2022-2173)
Alberto Garcia, Jr. (2022-2133)	Joseph Prat, Jr. (2022-2175)
Roman Garcia (2022-2134)	Steven Rebelo (2022-2177)
Andrew Caetano (2022-2135)	Danny Rivera (2022-2179)
Kevin Carangel (2022-2136)	Angelo Rizzolo (2022-2180)
Martin Garrido (2022-2137)	Braulio Rodriguez (2022-2181)
Brandon Cruz (2022-2138)	Ernesto Rojas (2022-2182)
Thiago Dasilva (2022-2139)	Roberto Rodriguez (2022-2183)
Mark Defeo (2022-2140)	Dennis Rosario (2022-2184)
Ricardo Dorcelly (2022-2141)	Jeromy Santiago (2022-2186)
Ramadan Edwards (2022-2142)	Orlando Santana (2022-2187)
Fernando Espinso, Jr. (2022-2143)	Jason Santos (2022-2188)
Leonico Fermin (2022-2144)	Melquisede Valera (2022-2189)
Jon Ferreira (2022-2145)	Robert Simpkins (2022-2190)
Carlos Figueroa (2022-2146)	Brian Vermeal (2022-2191)
Theodore Gissen (2022-2147)	Brian Torres (2022-2192)
Daquan Harris (2022-2148)	Deven Torres (2022-2193)
Jamal Hawkins (2022-2150)	Salvatore Vicari (2022-2194)
Joshua Hodge (2022-2152)	John Tracy (2022-2195)
Steven Huaman (2022-2153)	Joseph Troise (2022-2196)
Edwin Irizarry (2022-2158)	Michael Williams (2022-2197)
Michael Lewis-Williams (2022-2159)	Mark Wolk (2022-2198)
Jorge Marques (2022-2160)	Brett Yskamp, Jr. (2022-2199)
Javier Morales (2022-2161)	Troy Harrison (2022-2418)