



STATE OF NEW JERSEY

In the Matters of Jordan Zorrer, *et al.*, Union County

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

CSC Docket Nos. 2022-170, *et al.*

Administrative Appeals

ISSUED: January 18, 2023

Jordan Zorrer, *et al.*, represented by Michael A. Bukosky, Esq., request relief regarding the June 30, 2021 layoff. These matters have been consolidated due to common issues presented.

As background, on March 30, 2021, Union County submitted a “Layoff and Reconciliation Plan” (Plan) to the Division of Agency Services (Agency Services) proposing to issue layoff notices to, as relevant here, 204 employees in the Union County Department of Corrections (UCDOC) in order to recognize cost savings. The Plan recounted that in August 2020, Union County and Essex County entered into a shared services agreement (SSA) pursuant to which Union County transfers inmates from the Union County Jail to be housed at the Essex County Jail at an agreed-upon daily rate. Essex County had demonstrated its willingness, ability, and excess capacity to accept and house all of the Union County inmates, and Union County intended to transfer all of its housed inmates to Essex County by July 1, 2021. With these transfers, Union County would cease the long-term housing of inmates through the UCDOC, which, consequently, would be eliminated by action of the Board of County Commissioners—an action Union County termed a “significant policy consideration.” After June 30, 2021, the UCDOC would no longer exist. But since there would remain a need for the transportation and temporary holding of individuals awaiting criminal adjudications and court appearances, those functions would be assumed and staffed by employees of the Union County Sheriff’s Office

(Sheriff's Office) through the operation of a smaller transitional facility known as the "Hub."

Union County, noting that both it and Essex County were Civil Service jurisdictions, indicated that Essex County would serve as the "host" county and assume the governmental function of housing inmates on Union County's behalf. Union County noted that since it was the existence of the SSA that permitted it to abolish the UCDOC and effect the layoffs, an employment reconciliation plan pursuant to *N.J.S.A. 40A:65-11*¹ was required. By way of reconciliation, the Plan noted, Union County was taking the following steps: attempting to assist in placing through intergovernmental transfer (IGT) every impacted employee who would be laid off; planning a job fair; widely publicizing the availability of IGTs; approving intragovernmental transfers of approximately 53 current UCDOC employees (of which three would be "civilians") to the Sheriff's Office in connection with the operation of the Hub; and engaging in impact bargaining with unions representing affected employees.

Union County noted that it had implemented a hiring freeze for all UCDOC positions effective January 1, 2021. It also held meetings with union leadership on January 7, 2021, February 11, 2021, February 17, 2021, and March 16, 2021 to discuss the reason and rationale for the proposed layoffs as well as alternatives to layoff and pre-layoff actions, including the retirement of eligible officers; intragovernmental transfers; intergovernmental transfers; and development of an employment reconciliation plan. Union County indicated that in accordance with *N.J.A.C. 4A:8-1.1, et seq.* and *N.J.S.A. 40A:65-11*, it was requesting Agency Services' approval of the Plan. On April 30, 2021, Agency Services approved the Plan, which would be effective close of business June 30, 2021, and directed Union County to issue 45-day notices to affected employees no later than May 15, 2021. PBA Local 199 and PBA Local 199A were among those copied on Agency Services' approval letter.²

The appellants' County Correctional Police Sergeant positions were among those targeted. However, according to agency records, the appellants ultimately were not laid off. Rather, they transferred to the Sheriff's Office in connection with the operation of the Hub and voluntarily demoted to the title of County Correctional Police Officer. Specifically, the Sheriff made letter "Offer[s] of Employment" stating as follows:

I am pleased to offer you a position in the Union County Sheriff's Office ("UCSO") effective July 1, 2021. Your title will be that of Correctional

¹ *N.J.S.A. 40A:65-11* is a section of the Uniform Shared Services and Consolidation Act. *N.J.S.A. 40A:65-1* to -35.

² The Plan noted that PBA Local 199 covered County Correctional Police Officers and PBA Local 199A covered County Correctional Police Sergeants, County Correctional Police Lieutenants, and County Correctional Police Captains.

Police Officer . . . in the newly formed UCSO Correctional Hub (“Hub”). Your transition to the Hub will be effectuated through an intragovernmental transfer.

The offer letters outlined the following “specific terms and conditions of . . . employment:” annual salary; work hours/shift/days off; sick leave; vacation leave; personal leave; health/prescription/dental/vision benefits; and pension benefits. The letters further stated: “If you wish to accept this offer, please sign below. I look forward to welcoming you to the UCSO.” The appellants, on or before June 30, 2021, signed below the following language on the offers: “I hereby accept the offer of employment with the Union County Sheriff’s Office effective July 1, 2021.”

It is noted that PBA Local 199 and PBA Local 199A had previously petitioned for interim relief from the layoff. The unions argued, among other things, that Union County never negotiated with it about alternatives to closure of the jail. In deciding the petition, the Civil Service Commission (Commission) 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:8-2b*, *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. The record showed that Union County consulted with union leadership, and the Plan submitted by Union County demonstrated that it considered feasible pre-layoff actions and alternatives to the layoff. The Commission also rejected the unions’ contention that Union County failed to submit an employment reconciliation plan that conformed to *N.J.S.A. 40A:65-11*. See *In the Matters of Union County Layoff* (CSC, decided June 30, 2021).

In the present appeals to the Commission,³ the appellants argue that the County violated *N.J.S.A. 40A:9-6*, which requires compensation for officers performing the duties of an enhanced rank or supervisory officers. They note that it is common within police departments to provide for out-of-rank pay where an officer is performing the duties and responsibilities of a higher rank. The appellants contend that the County violated *N.J.S.A. 40A:65-11*, which requires an employment reconciliation plan, and failed to compensate separated officers the severance

³ The appeals of Giuseppe Romano, Marris Taylor, and Jordan Zorrer were initially postmarked July 20, 2021, August 2, 2021, and July 26, 2021, respectively. Vito Rizzo’s appeal was initially postmarked December 13, 2021. The appeals of the remaining appellants were initially postmarked January 7, 2022.

payment required by *N.J.S.A. 40A:65-11a(2)*. They maintain that their layoff rights were violated and that the layoff was not in good faith.

In response, Union County, represented by Kathryn V. Hatfield, Esq., explains that in selecting employees who would staff the Hub, the Sheriff determined that he would need two County Correctional Police Captains; five County Correctional Police Lieutenants; six County Correctional Police Sergeants; and 37 County Correctional Police Officers. At the time of the layoff, however, there were far more superior officers than the Hub had spots for. Accordingly, using seniority in rank as the basis for selection, the Sheriff offered certain employees the ability to transfer to the Hub. Once all County Correctional Police Sergeants either accepted or declined employment, the Sheriff had approximately 15 remaining County Correctional Police Officer positions that were filled with the most senior County Correctional Police Officers.

Union County notes that it included an employment reconciliation plan within its Plan. As for the severance payment owed separated officers per *N.J.S.A. 40A:65-11a(2)*, Union County maintains that any County Correctional Police Officer who was, in fact, laid off received severance pay. However, former County Correctional Police Sergeants who demoted to County Correctional Police Officer did not receive severance pay, and the statute does not require severance pay because they were not laid off. Rather, Union County insists, these employees chose to take a demotion and an intragovernmental transfer rather than be laid off. Further, Union County proffers that the appellants have inartfully asserted that they continue to perform supervisory duties. It argues that the assertion is unsubstantiated, and, moreover, the proper avenue for relief would be a position review request and not a layoff appeal.

In reply,⁴ the appellants, indicating that they all faced similar factual scenarios, argue that they demoted under duress. According to them, the demotions were provided in an unconscionable “take it or leave it” fashion; they were provided the options of accepting a demotion or being laid off; and they were not left a choice. They had short timelines to respond, which created a high-pressure situation; were unable to consult with their union representative or an attorney; and were unable to negotiate the terms and conditions, or procedures for, demotions, transfers, and layoffs. They were placed in a difficult position of accepting an unwanted demotion and transfer or be terminated and be handed a financial “death sentence.” Thus, in their view, they must be repromoted or, at minimum, should have their rights to future promotional opportunities restored. In support, the appellants submit the certified statements of Lavrador; Lee; Lesniak; Rizzo; and D.W., County Correctional Police Officer.

In reply, Union County states that at the time it submitted its Plan to Agency Services on March 30, 2021, it commenced what resulted in months of negotiations

⁴ The reply is postmarked September 9, 2022.

with the affected employees' bargaining representatives – a fact that, in Union County's view, wholly undermines the appellants' hollow representation that their jobs were changed suddenly and unexpectedly and, consequently, that they lacked time to consult with their union representative. Specifically, according to Union County, it met with representatives to discuss ways to minimize the impact on affected employees, including but not limited to: assisting employees with employment applications for other counties and the State; facilitating inter-governmental transfers; and securing alternate employment within Union County itself. Union County explains that employees were continuously leaving for other positions or retiring from April 2021 through June 2021. Not until mid-June 2021, Union County maintains, did it believe that it had an accurate candidate list based on seniority and could start offering employees Hub positions. It states that it met individually with each employee and offered the employee a Hub position. Union County insists that employees never were coerced or subjected to duress in any way or at any time. At all times, the employees had free will to accept a new position, transfer to another county, or decline the position. Even assuming these were difficult choices to make, Union County argues, it cannot be overemphasized that the employees *always* had a choice. Union County adds that the appellants fail to disclose that in resolving the collective negotiations agreement with PBA Local 199, Union County agreed to provide each demoted County Correctional Police Sergeant with a lump sum amount to make them whole for any amount of money lost resulting from demotion. Thus, Union County asserts, any allegations that its actions caused financial loss are false and misleading. In support, Union County submits the certified statement of the Sheriff.

Zorrer adds that even if he is viewed as not being affected by a layoff action but rather having voluntarily demoted and transferred, he is still entitled to layoff and special reemployment rights since the UCDOC “merged with or was absorbed by” the Sheriff's Office. He argues that there is no reference to demotions in the pre-layoff actions regulation, *N.J.A.C. 4A:8-1.3*. Zorrer cites *In the Matter of the Bergen County Sheriff and County Police Officer Title Series* (CSC, decided October 21, 2020) and argues that all County Police staff there were rehired as Sheriff's Officers or repromoted to their previously held supervisory rank with all contractual rights, including salaries, reinstated. He also cites *Scarillo v. Dep't of Civil Service*, 146 *N.J. Super.* 127 (App. Div. 1977). Further, he notes the existence of a revised modified basic training program for County Correctional Police Officers, often called the “GAP program,” which provides the additional training necessary to allow an eligible County Correctional Police Officer to be certified as a Sheriff's Officer, a Police Officer, or another specified position. *See N.J.S.A. 52:17B-68.3*. Zorrer contends that given the existence of the program, the Commission should insist that the Sheriff's Office GAP train the remaining staff in the event of any further downsizing.

CONCLUSION

Initially, it is noted that most of these appeals were not filed until December 13, 2021 or later. As those appeals were filed five or more months after the layoff, they are untimely. *See N.J.A.C. 4A:2-1.1(b)*.⁵ Nevertheless, because the appeals of three appellants—Romano, Taylor, and Zorrer—were initially timely filed, the Commission will proceed to address the merits.

A review of the record indicates that on April 30, 2021, Agency Services approved the Plan and directed Union County to issue 45-day notices to affected employees no later than May 15, 2021. Relevant negotiations representatives were copied on Agency Services' approval letter. Subsequently, the appellants, then County Correctional Police Sergeants, were offered Hub positions within the Sheriff's Office in the title of County Correctional Police Officer. The offers specified terms and conditions of employment. The appellants signed the offers, indicating acceptance. As such, the record indicates that they agreed to the transfer and demotion. However, the appellants proffer that they agreed under duress.

In New Jersey, the law concerning the concept of duress has been extensively examined. As stated by Administrative Law Judge Robert S. Miller and affirmed by the former Merit System Board in *In the Matter of Dean Fuller* (MSB, decided May 27, 1997):

Duress is a force, threat of force, moral compulsion, or psychological pressure that causes the subject of such pressure to become overborne and deprived of the exercise of free will. *Rubenstein v. Rubenstein*, 20 *N.J.* 359, 366 (1956) . . . This test is subjective, and looks to the condition of the mind of the person subjected to coercive measures, not to whether the duress is of "such severity as to overcome the will of a person of ordinary firmness." [*Shanley & Fisher, P.C. v. Sisselman*, 215 *N.J. Super.* 200, 212 (App. Div. 1987)] (citation omitted). Therefore, "the exigencies of the situation in which the alleged victim finds himself must be taken into account." *Id.* at 213, quoting *Ross Systems v. Linden Dari-Delite, Inc.*, 35 *N.J.* 329, 336 (1961).

However, a party will not be relieved of contractual obligations "in all instances where the pressure used has had its designed effect, in all cases where he has been deprived of the exercise of his free will and constrained by the other to act contrary to his inclination and best interests." *Wolf v. Marlton Corp.*, 57 *N.J. Super.* 278, 286 (App. Div.

⁵ It is also noted that in the appellants' September 9, 2022 reply submission, filed through their attorney Michael Bukosky, Esq., they included D.W.'s certified statement. However, no appeal fee was included for D.W.'s (untimely) appeal. Thus, D.W.'s appeal was not accepted.

1959). Rather, “the pressure must be wrongful, and not all pressure is wrongful.” *Rubenstein, supra* at 367. Further, “it is not enough that the person obtaining the benefit threatened intentionally to injure . . . provided his threatened action was legal . . .” *Wolf, supra* at 286, quoting 5 Williston, Contracts (rev. ed. 1937), § 1618, p. 4523.

It is a “familiar general rule . . . that a threat to do what one has a legal right to do does not constitute duress.” *Wolf, supra* at 287. “A ‘threat’ is a necessary element of duress, and an announced intention to exercise a legal right cannot constitute a threat.” *Garsham v. Universal Resources Holding, Inc.*, 641 F. Supp. 1359 (D.N.J. 1986). Thus, as long as the legal right is not exercised oppressively or as a means of extorting a settlement, the pressure generated by pursuit of that right cannot legally constitute duress. See generally, *Great Bay Hotel & Casino, Inc. v. Tose*, 1991 W.L. 639131 (D.N.J. 1991) (unrep.) and citations therein.

The appellants contend that they agreed to the transfer and demotion under duress after being informed, in an unconscionable “take it or leave it” fashion, that they could accept the transfer and demotion or be laid off. However, even assuming this was the choice the appellants faced and considering the record in the light most favorable to them, they do not provide any substantive evidence that establishes that Union County exerted any pressure on them in this regard. The appellants’ decisions to transfer and demote were personal choices and their beliefs that they would have been laid off, absent evidence of force or intimidation, does not constitute illegal duress. See *In the Matter of Sean Nally* (CSC, decided December 2, 2009); *In the Matter of Claudia Grant* (MSB, decided June 8, 2005).

Although the appellants complain that they faced short timelines leading to a high-pressure situation, this is insufficient to constitute illegal duress as there is no evidence that the pressure felt was *wrongful* pressure. After all, Union County, as the employer, had the right to institute layoffs, and its Plan had been approved for months. The Plan also clearly noted that there would be a Hub and that Union County would be approving the movement of some current UCDOC employees to the Sheriff’s Office in connection with staffing the Hub. Further, the appellants’ contention that they were unable to consult their union representative or attorney and were unable to negotiate is not sufficient to establish illegal duress. In this regard, *N.J.S.A. 11A:8-2b* and *N.J.A.C. 4A:8-1.3(c)* provide only that appointing authorities shall consult with affected negotiations representatives prior to initiating pre-layoff actions. Here, Union County held meetings with union leadership on various dates from January 2021 to March 2021 to discuss, among other things, pre-layoff actions including retirements, intragovernmental transfers, and intergovernmental transfers. The Commission has already determined that Union County met its obligation to consult. See *Union County Layoff, supra*. Further undermining any claim of illegal duress is Union County’s entirely reasonable point

that employees were continuously making decisions to leave or retire between April 2021 and June 2021, making it unclear until the latter date who was available to be offered Hub positions.

In sum, the appellants' transfers and demotions were voluntary pre-layoff actions.⁶ See *N.J.A.C.* 4A:4-7.1(a) (permanent transfer is movement of a permanent employee between organizational units within the same governmental jurisdiction) and *N.J.A.C.* 4A:4-7.8(a)1 (voluntary demotion is voluntary movement of a permanent employee from his or her permanent title to a lower title in local service). They did not obtain their positions as a result of exercising any lateral or demotional "bumping" rights, see *N.J.A.C.* 4A:8-2.2, as a result of being subjected to layoff actions. Thus, since the appellants were not laid off, they have no standing to institute any type of layoff appeal and are not entitled to any of the special reemployment or other rights normally accorded employees in fact subjected to a layoff action. The Commission proceeds below to address other arguments that have been raised.

The appellants' claims that they are performing higher level out-of-title duties without being adequately compensated for such duties are not ripe for the Commission's review. If the appellants believe that their positions are misclassified, they may avail themselves of the established procedures to redress such issue. See *N.J.A.C.* 4A:3-3.9 (position review request and appeal procedure). Further, salary issues in local service are not reviewable by the Commission unless the salary is outside the established range for the job title. In this regard, *N.J.S.A.* 11A:3-7 and *N.J.A.C.* 4A:3-4.1 provide that when a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range. As to the appellants' contention that Union County violated *N.J.S.A.* 40A:65-11, which requires an employment reconciliation plan, the Commission has already considered—and rejected—such contention. See *Union County Layoff*, *supra*.

Two cases cited, *Bergen County Sheriff and County Police Officer Title Series*, *supra*, and *Scarillo*, *supra*, are inapposite. In *Bergen County Sheriff and County Police Officer Title Series*, the Commission ordered that the "[special reemployment list]s" for the various levels of the County Police Officer title series be certified as appropriate for the corresponding rank Sheriff's Officer title series to effect the repromotions "consistent with the settlement." The case is distinguishable for at least two reasons. Unlike these matters, the employees to be repromoted there had actually been subjected to a layoff action as evidenced by their placement on special

⁶ *N.J.S.A.* 11A:8-2b and *N.J.A.C.* 4A:8-1.3(c) do not explicitly use the word "demotion." However, these provisions do not purport to give an exhaustive list of pre-layoff actions as they state that such actions "may include, but are not limited to" the listed examples. Nonetheless, assisting with "securing transfers or other employment" is specifically mentioned.

reemployment lists. In addition, the employees' repromotion rights flowed from a settlement agreement, which is absent here. And in *Scarillo*, the court framed the case as follows:

This is an appeal from an order of the Department of Civil Service (Department). The order upheld the validity of the Department's action in establishing "demotional and/or special reemployment" rights of certain police officers with respect to the position of police sergeant in the City of Newark from which these officers were demoted for reasons of economy. *Appellant challenges the use of an employee's status as a veteran or nonveteran in determining such rights. Scarillo*, 146 *N.J. Super.* at 128-29 (emphasis added).

The issue decided in *Scarillo* has no bearing on the issues in these matters. As such, *Bergen County Sheriff and County Police Officer Title Series* and *Scarillo* do not provide grounds for any remedy.

Turning to the revised modified basic training (or GAP) program for County Correctional Police Officers, a County Correctional Police Officer is eligible for the program if certain requirements, set out in statute, are met. *See N.J.S.A. 52:17B-68.3c*. Among the requirements are that the County Correctional Police Officer has been designated by the Sheriff as eligible to transition into the position of Sheriff's Officer or by the chief executive officer of the county or municipality, as appropriate, as eligible to transition into the position of detective or investigator in the County Prosecutor's Office or County or Municipal Police Officer. *N.J.S.A. 52:17B-68.3c(4)*. The Commission discerns nothing in the statute that would authorize it to mandate that the Sheriff's Office GAP train employees.⁷

ORDER

Therefore, it is ordered that these requests be denied.

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

⁷ The appellants also claim that Union County failed to compensate separated officers the severance payment required by *N.J.S.A. 40A:65-11a(2)*. However, this claim is not salient as it relates to the appellants since they were not laid off. Further, Union County indicates, without rebuttal, that any County Correctional Police Officer who was, in fact, laid off received the severance pay. Thus, the Commission need not consider this claim any further.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JANUARY, 2023

Allison Chris Myers

Allison Chris Myers
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