

In the Matter of Umar Salahuddin,, et al., Atlantic City
CSC Docket Nos. 2010-3600 and 2011-343
OAL Docket No. CSV 6737-10
(Civil Service Commission, decided September 18, 2013)

The appeal of Umar Salahuddin, Assistant Youth Opportunity Coordinator with Atlantic City,¹ of the good faith of his demotion in lieu of layoff to the title of Community Service Aide effective May 27, 2010, was heard by Administrative Law Judge Bruce M. Gorman (ALJ), who rendered his initial decision on April 30, 2013. Exceptions were filed on behalf of the appointing authority and cross-exceptions were filed on behalf of the appellant.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 18, 2013, accepted the Findings of Fact as contained in the attached initial decision but did not adopt the recommendation to reverse the demotion in lieu of layoff.. Rather, the Commission upheld the appellant's demotion to the title of Community Service Aide.

DISCUSSION

On March 12, 2010, the appointing authority submitted a layoff plan to this agency indicating that managerial and administrative duties being performed by incumbents in various managerial/supervisory titles were being performed by other employees and were redundant or were non-essential functions. As a result, employees in the Departments of Public Safety, Health and Human Services, Revenue and Finance, and Administration would be subject to layoff. By implementing efficiencies through the layoff, the appointing authority indicated that it would realize savings of approximately \$2,700,000. The Division of State and Local Operations (SLO)² reviewed and approved the layoff plan on April 12, 2010 and issued title rights determination letters to the impacted employees on May 17, 2010. SLO advised the appellant that he had demotional title rights to the Community Service Aide title and that his name would be placed on the applicable special reemployment lists. It is noted that the appellant did not file a title rights appeal at the time of the layoff. Upon the appellant's appeal of the good faith of his

¹ Regina Armstrong, Gary Baker, Hariann Bernstein, Lois Braithwaite, Dona Gaskill, Shermaine Gunter-Gary, John Imfeld, Gwendolyn Lewis, Keith Mills, and Lawton Nelson also appealed the good faith of their layoffs. However, by individual letters dated August 8, 2011, these appellants withdrew their appeals. Therefore, the ALJ's initial decision only addresses the appeal of Umar Salahuddin. It is noted that the Commission acknowledged the withdrawal of the appeals at its meeting on September 18, 2013.

² Now, the Division of Classification and Personnel Management (CPM).

layoff to the Commission, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In his initial decision, the ALJ determined that the appellant was demoted within the context of the general 2010 layoff as an act of political retaliation by Mayor Lorenzo Langford. In this regard, although the demotion of the appellant to Community Service Aide resulted in a \$3,300 savings, the ALJ found that this savings was negated shortly thereafter by the appointment of Michael Bailey, a political supporter of Langford, to the previously vacant position of Youth Opportunity Coordinator at a net salary increase of \$4,090. Thus, the ALJ concluded that the delay of hiring Bailey was an effort to provide legitimacy to the layoff and the appellant's demotion was not to accomplish economy. Rather, the hiring of Bailey effectively continued the appellant's position, but with a person friendlier to Langford. Indeed, the ALJ observed that if the appointing authority were interested in saving money, it would not have hired Bailey, but, as testified by Ronald Cash, Director of Health and Human Services, he and Langford's brother-in-law, Wilbur Banks, would have performed the appellant's duties. Moreover, the position of Youth Opportunity Coordinator was transferred out of the Department of Health and Human Services into the Department of Public Safety, while the vacant position of Assistant Youth Opportunity Coordinator, as well as Community Service Aide, remained in the Department of Health and Human Services. The ALJ found that the only possible conclusion for the transfer of this position to the Department of Public Safety was to insulate Bailey from an effort by the appellant to compete for the position.

The ALJ indicated that the above conclusion was buttressed by Langford's equivocation on the witness stand that undercut his credibility. For example, Langford asserted that he had no recollection of the identity of his opponents in the 2009 primary and general elections, but then admitted that he did in fact know who they were. Further, Langford claimed to have no knowledge that the appellant had supported his opponent, Martin Small, in the 2009 primary, then delineated a history of the appellant's political activity, culminating in the appellant's support for Small in 2009. Additionally, Langford asserted that he was not aware that the appellant supported Scott Evans against him in the 2008 election, denied knowledge of the appellant's salary reduction despite the fact that he signed the document reducing his salary, and that he had no knowledge that Bailey, a personal and professional friend, had been promoted to Youth Opportunity Coordinator. Langford also contended that he had no knowledge of the "hit list" of people who were going to be laid off, which was reported in a local newspaper, despite the fact that his press aide, Kevin Hall, testified that he reviewed the contents of the newspaper with Langford daily. The ALJ concluded that the sum of Langford's testimony that he had no knowledge of anything that went on during the 2010 layoff process was incredible and unbelievable.

Based on the testimony of the witnesses, as well as Langford's admission that he "does not get mad, he gets even," the ALJ determined that the 2010 layoff offered him a perfect opportunity to get even with the appellant for his contrary political activity. At the same time, demoting the appellant provided the opportunity for Langford to appoint a political ally, Bailey, to Youth Opportunity Coordinator. As additional cause to seek the appellant's demotion, the ALJ noted that Langford was aware that the appellant engaged in many speaking events, which gave him extensive contact with the general public and put him in a position to influence those who heard him speak. Thus, given his political opposition to Langford, the appellant's extensive interaction with the general public was not desirable to Langford and his demotion would limit any potential political impact. Therefore, the ALJ concluded that the appellant's layoff was done in bad faith and he recommended that the demotion be reversed.

In its exceptions to the initial decision, the appointing authority underscores that the financial circumstances it faced in 2010 required it to implement multiple layoffs. As a result of this budget crisis, the department heads and directors of the various departments compiled a list of titles it determined were not necessary. This resulted in the appellant's demotion and a decrease in his salary of \$3,221.60. The appointing authority underscores that the \$3,221.60 reduction in the appellant's salary was not the only savings realized as a result of selecting the Assistant Youth Opportunity Coordinator title for layoff. Specifically, the domino effect caused by the appellant "bumping down" into the Community Service Aide title resulted in two other employees being "bumped" or displaced. Consequently, the total savings as a result of selecting the Assistant Youth Opportunity Coordinator position for layoff was in fact \$32,627.62. Regarding the manner in which the employees were selected for inclusion in the 2010 layoff, although Langford approved the layoff list, he did not create it or select the impacted employees. Rather, the various department directors selected the positions to be included in the 2010 layoff and at no point did Langford direct, recommend, or suggest who should be included. In this regard, the appointing authority underscores that Scott testified that there was no single decision maker as to who would be included in the layoff and that Langford had very little involvement in the process. Moreover, the appellant's division director, Ronald Cash, indicated that he identified the appellant's title for inclusion in the layoff and he did not have any discussion with Langford about the recommendation.

With respect to the appointment of Bailey, the appointing authority states that he was provisionally appointed to Youth Opportunity Coordinator in October 2011, a different fiscal year than when the layoff took place in 2010, and economic conditions had improved. More significantly, Bailey was not appointed as a Youth Opportunity Coordinator in the Department of Public Safety "shortly after" the appellant was demoted from his position. Rather, following the May 2010 layoffs, the appointing authority operated without an Assistant Youth Opportunity

Coordinator for approximately 18 months without incident. Thereafter, in October 2011, Bailey, who has more seniority and a higher level of education than the appellant, was appointed. As such, Bailey's \$4,090 salary increase in a different fiscal year had no impact on the savings realized in the 2010 budget as a result of the appellant's demotion. Additionally, the appointing authority states that there was no evidence that Bailey was a political supporter of Langford or that the Youth Opportunity Coordinator position was transferred out of the Department of Health and Human Services to the Department of Public Safety. Finally, the appointing authority argues that the ALJ's credibility determinations concerning Langford's testimony are flawed since he did not recite specific findings of fact in the initial decision.

In response, the appellant states that the ALJ's decision did not deprive the Commission of any meaningful review and it essentially addresses the findings of fact in the legal discussion portion of the decision. Further, the appellant states that the ALJ's finding that Langford's testimony was not credible is supported by the record and that the conclusion that he was targeted for layoff due to political retaliation, not economic necessity, is correct. Moreover, the salary savings achieved by his layoff was minimal and the appointing authority has not explained how it could fill the Youth Opportunity Coordinator position when the appellant is on the special reemployment list. Additionally, the appellant maintains that the ALJ properly concluded that Bailey was a Langford supporter and that the delay in Bailey's provisional appointment was done in order to provide legitimacy to the action of laying him off.

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 the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. When a local government has abolished a position, 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 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 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). The question is not whether the plan or action actually achieved its purpose of saving money, but whether the motive in adopting a plan or action was to accomplish economies or instead to separate a public employee without following Civil Service law and rules. Thus, a good faith layoff exists if there is a logical or reasonable connection between the layoff decision and the personnel action challenged by an employee. Additionally, it is within an appointing authority's discretion to decide how to achieve its economies. *See Greco, supra*. Further, if the appellant establishes a *prima facie* case, *i.e.*, rebutting the presumption of the good faith basis for the

layoff, the appointing authority then assumes the burden of providing preponderating evidence that the layoff would have occurred even when there is evidence of a dual motive. Finally, if the appointing authority provides preponderating evidence of a legitimate business reason, the burden shifts back to the appellant to establish that the legitimate business reason was a mere pretext used to remove the appellant without complying with Civil Service law and rules *i.e.*, bad faith. In this regard, an appeal must fail even in the face of a showing of dual motives, such as economy and efficiency and ill will, if the presumptions of economy and efficiency cannot be overcome. *See e.g., Matter of Bridgewater Tp.*, 95 N.J. 235 (1984); *See also Wright Line*, 251 NLRB 1083 (1980).

Upon a review of this matter, the Commission finds nothing in the record to demonstrate that the appellant's demotion was for reasons other than economy or efficiency. The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Board appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by the credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this case, the ALJ specifically found that Langford's testimony lacked any credibility. While the Commission finds that there is sufficient evidence in the record to support the ALJ's credibility determination regarding Langford, the appellant has not demonstrated that his layoff was not taken for purposes of economy.

Initially, there is absolutely no evidence in the record that Langford authored the "hit list" to target political opponents for layoff. While he may have been aware of the individuals who were being targeted based on Hall's testimony that he reviewed the newspaper with Langford on a daily basis, this does not establish that Langford composed the "hit list." There is also no evidence that Langford specifically targeted the appellant's position for layoff. In this regard, Scott's testimony that the targeting of positions for layoff was done as a group process, starting with department directors and human resources, and that ultimately, the department directors proposed the layoffs, is un rebutted. Although Langford, as Mayor, approved these recommendations, his final approval of his department head recommendations does not demonstrate that he targeted the appellant's position for demotion in retaliation for his past political opposition. Significantly, the

appellant's demotion did result in salary savings of \$32,627.62 for the 2010 budget year because of the domino effect such actions cause in the workplace with respect to positions of other employees. Therefore, the appellant's demotion resulted in more than a token savings. Moreover, the savings realized by the appellant's demotion in 2010 was not cancelled out by Bailey's promotion to the Youth Opportunity Coordinator title in 2011, in a different department, 18 months after the 2010 layoff. As noted in the appointing authority's exceptions, this movement had no impact on the savings that needed to be achieved to address the budget gap during the year of the layoff. Further, the appellant would not have had special reemployment rights to the Youth Opportunity Coordinator title since it is a higher level title than Assistant Youth Opportunity Coordinator. Thus, the filling of the Youth Opportunity Coordinator position in a different department 18 months after the subject layoff does not evidence that the appointing authority acted in bad faith.

Accordingly, the evidence demonstrates that the appellant's position was targeted for legitimate budgetary reasons. *See e.g., In the Matter of Bergen County Layoff*, Docket No. A-5281-03T5 (App. Div. July 15, 2005) (The Appellate Division upheld the elimination of the position of Assistant Tax Administrator for Bergen County and found that it was based on legitimate budgetary reasons. The appellant, who was laid off, was replaced by a "Confidential Assistant" who performed substantially the same duties. The appellant argued that he was targeted because of his political affiliation. However, the court found that the appellant did not present any evidence that he was targeted for layoff based on his political affiliation). Moreover, the circumstances presented, viewed in the most favorable light for the appellant, do not overcome the establishment of actual economies demonstrated by the appointing authority and, therefore, any evidence of an alternate bad faith motive for the appellant's demotion is unsustainable. *See e.g., Matter of Bridgewater Tp.*, supra; *Wright Line*, supra. Accordingly, the appellant's demotion to Community Service Aide is upheld.

ORDER

The Civil Service Commission finds that the appointing authority's action in demoting the appellant to the title of Community Service Aide was justified. Therefore, the Commission upholds that action and dismisses the appellant's appeal.

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