



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matters of Nicole Barlow-Griffin and Darring Villegas, Chief Juvenile Detention Officer (PC3776D), Bergen County

CSC Docket Nos. 2023-1253 and 2023-1311

Bypass Appeal
Administrative Appeal

ISSUED: May 24, 2023 (HS)

Nicole Barlow-Griffin, represented by Michael L. Prigoff, Esq., appeals the bypass of her name on the Chief Juvenile Detention Officer (PC3776D), Bergen County eligible list. Darring Villegas appeals his non-appointment from the same list. These matters have been consolidated herein.

The subject eligible list promulgated on June 16, 2022 and expires on June 15, 2025. Barlow-Griffin appeared as the first ranked non-veteran eligible. Villegas and John Falconi, also non-veterans, were both ranked second. A certification consisting of their three names only was issued on July 15, 2022 (PL220983). In disposing of the certification, Bergen County appointed Falconi, effective October 17, 2022, and retained the appellants.

On appeal to the Civil Service Commission (Commission), Barlow-Griffin proffers that Falconi’s promotion was based on political favoritism and prejudice and that Falconi is a friend and former subordinate employee of Jorge Sandoval, Superintendent, Juvenile Detention Facility. She argues that she has significantly more experience in supervisory positions in the Juvenile Detention Center, having served as a “Lieutenant” for 10 years¹ and the sole Lieutenant since 2019 and performed many of the functions of the Chief Juvenile Detention Officer for the past two-plus years since the former Chief Juvenile Detention Officer retired, including fire drills, training, and some scheduling. Barlow-Griffin states that by contrast,

¹ According to official personnel records, Barlow-Griffin has served in the title of Supervising Juvenile Detention Officer since February 2013.

Falconi has only served as a “Sergeant” since April 2019.² She represents that for the past two years, she has been the highest-ranking officer in the building, including at times when no administrators were present. Barlow-Griffin also alleges that Falconi falsified his application for the promotion.

Villegas too alleges that Falconi falsified his application for the promotion and that Sandoval, with whom Falconi shares an in-depth friendship outside the workplace, played a part in the falsification in nepotistic fashion.

In response, Bergen County, represented by Brian M. Hak, Esq., states that Falconi was the best fit and was selected for the promotion based on the interviews conducted of the three eligibles and its evaluation of his qualifications for the position. Bergen County maintains that it properly exercised its discretion in selecting the individual who best fits its needs and that it must be afforded the flexibility to select a candidate who it feels would be most able to succeed in the position. On Falconi’s alleged falsification of his application, Bergen County anticipates that the appellants are arguing that Falconi resides not in Bergen County but in another New Jersey county. This is because the certification provides an address for Falconi in Bergen County, while Bergen County’s records list his home address as being in another New Jersey county. Bergen County states that it does not have a residency requirement and, accordingly, applicants for positions of employment need only be New Jersey residents in accordance with the New Jersey First Act. Therefore, according to Bergen County, the residency issue that the appellants appear to raise did not preclude Falconi’s promotion regardless of whether he resides in Bergen County, per the certification, or in another New Jersey county, per Bergen County’s records. In support, Bergen County submits copies of the disposed-of certification and Bergen County records concerning Falconi’s address.

In reply, Barlow-Griffin contends that her bypass was part of a pattern and practice of discrimination against her and other women and was retaliation against her for, along with other officers, reporting problematic conditions at the Juvenile Detention Facility that involved Sandoval and Nicholas Montello, Chief Clinical Psychologist and Director of the Department of Human Services, Division of Family Guidance. She offers the following as examples:

- Following the Bergen County Sheriff’s Department’s investigation and confirmation of the officers’ complaints in 2019, Montello and Sandoval, as well as other superiors, engaged in disparaging and hostile treatment of her, including ignoring the chain-of-command and raising issues with her subordinates rather than with her.
- She was often excluded from meetings and other work functions as the only woman superior officer.

² According to official personnel records, Falconi served in the title of Senior Juvenile Detention Officer from April 2019 until his October 2022 promotion to Chief Juvenile Detention Officer.

- In several meetings, her suggestions were mocked and dismissed only to have those same ideas implemented and claimed by her superiors as their own.
- She has been subjected to hurtful and sexist comments by her superiors, including Sandoval, who has referred to her as the “mother of the building” and called her dumb, emotional, and a “crazy woman.”
- Several female officers have been reprimanded or terminated for infractions that were also committed by male officers with little or no consequences.

Barlow-Griffin also argues that the promotional process reflected the animus exhibited toward her because, for example, two of the individuals who conducted the interviews of the candidates were Sandoval and Montello, the very superiors who had been the subject of her justified complaints in 2019.³ Montello, according to Barlow-Griffin, even asked her a question regarding that issue during the interview. Barlow-Griffin contends that Bergen County has offered only a boilerplate, unrevealing, conclusory, and unmeaningful justification for her bypass that is insufficient under applicable case law. *See In re Foglio*, 207 N.J. 38 (2011). Barlow-Griffin also questions how Bergen County could not have deemed Falconi’s lack of responsibility in completing his application disqualifying regardless of whether residency was mandated. In support, Barlow-Griffin submits her certified statement.

In reply, Bergen County proffers that Barlow-Griffin’s “unsubstantiated” claims are outside the scope of the appeal and should be disregarded.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Moreover, it is noted that the appellants have the burden of proof in these matters. *See N.J.A.C.* 4A:2-1.4(c).

In cases of this nature where dual motives are asserted for an employer’s actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. *See Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990). In *Jamison*, at 445, the court outlined the burden of proof necessary to establish discriminatory or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to

³ Bergen County does not dispute that Sandoval and Montello were on the interview panel and that they were involved in the decision-making process.

articulate a legitimate non-discriminatory or non-retaliatory reason for the decision. If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the discriminatory or retaliatory motive. In a case such as this, where the adverse action is failure to promote, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.⁴

In this matter, Barlow-Griffin appeared as the first ranked eligible on the certification. Villegas and Falconi were both ranked second. Barlow-Griffin argues that even though she was well-qualified for the position, she was bypassed in favor of Falconi due to political favoritism, gender discrimination, nepotism, and retaliation. Villegas too alleges that nepotism was at play. Bergen County maintains that Falconi was selected based on the interviews and its evaluation of his qualifications; Falconi was the best fit; and it believed he would be most able to succeed in the position.

Barlow-Griffin disagrees with Bergen County's assessment and notes, among other things, that she has been serving in the title of Supervising Juvenile Detention Officer since February 2013, while Falconi was able to skip that rank and move from Senior Juvenile Detention Officer to Chief Juvenile Detention Officer. Moreover, beyond Bergen County's general statements as to why it selected Falconi, there is a dearth of information in the record as to his qualifications. *See Foglio, 207 N.J. at 48-49* (Commission must have certainty that appointment process was not exercised arbitrarily, and appointing authority explanation must provide "real enlightenment").

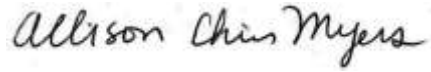
Based on the foregoing, material disputes of fact exist in these matters regarding the reasons for the bypass and non-appointment of Barlow-Griffin and Villegas, respectively, on the certification. Accordingly, under these circumstances, where it is not possible to determine on the written record whether the reasons for these actions were proper, these matters should be referred to the Office of Administrative Law for hearings.

ORDER

⁴ As this discussion should make clear, Barlow-Griffin's claims of political favoritism, gender discrimination, nepotism, and retaliation are very much within the scope of the appeal, notwithstanding Bergen County's contention to the contrary. And while Bergen County criticized the claims as being "unsubstantiated," it should be noted that Barlow-Griffin's appeal is supported by a certified statement.

Therefore, it is ordered that these matters be referred to the Office of Administrative Law for hearings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF MAY, 2023



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