

registrar's stead in case of absence, disability, or death of the registrar." (Emphasis supplied.) Further, the registrar "may appoint one or two alternate deputy registrars if the local registrar deems such an appointment to be necessary for the office to function efficiently and to provide quality service to the public." *Ibid.* (Emphasis supplied.) Notably, "the deputy registrar and any alternate deputy registrar shall serve at the pleasure of the local registrar." *Id.* Still, the statute requires that Hoboken have a local registrar, and the registrar must *appoint* a deputy registrar. (Emphasis supplied.) Hoboken believes it designated Rivera, absent civil service qualifications or an appointment, as the deputy registrar. Yet, such an appointment is not discretionary, even though the deputy registrar serves at the pleasure of the registrar. An alternate deputy registrar does not serve instead of a deputy registrar, but in addition to the deputy, should the registrar feel the community's service needs support an alternate. Indeed, I **CONCLUDE** that an alternate registrar appointment is discretionary, but a deputy registrar appointment is not.

Suppose the position is unnecessary or useless, and an employer can abolish the job without impairing departmental efficiency. In that case, the motive for the job's elimination or laying off the person holding the position is immaterial. *Greco*, 40 *N.J. Super.* at 189-90. Here, the deputy registrar position is not useless, and Hoboken did not abolish the work. Instead, Hoboken reassigned the duties of the deputy registrar to its alternate deputy registrar, who possessed a Clerk 1 title without a CMR, despite its awareness of the statutory requirements to have a registrar and a deputy registrar. Hoboken rescinded the registrar's layoff notice once apprised of the statute, but not Ciandella's notice. Hoboken suggests that a civil service deputy registrar title and the statutory title are different, and it need not maintain an appointed deputy registrar. Yet, Hoboken cites no authority permitting it to leave a mandatorily appointed deputy registrar position vacant and "designate" an optional alternate deputy to fulfill the statutory role of a deputy. While it may have been economical to use the alternate deputy registrar as its deputy as any salary decrease would, I **CONCLUDE** that Hoboken had no rational legal basis to do so, given its known statutory obligation.

Therefore, I **CONCLUDE** that a preponderance of the evidence exists to show that Hoboken acted in bad faith because its motive in adopting the plan was to remove Ciandella in "violation of [his] civil service protections rather than to accomplish economy." Under these circumstances, I **CONCLUDE** that Ciandella's motion for summary decision should be **GRANTED** as a matter of law and his layoff be **REVERSED**.

Initially, the Commission cannot agree with the ALJ's interpretation of *N.J.S.A. 26:8-17*. *N.J.S.A. 26:8-17* states, in pertinent part:

The local registrar, immediately upon acceptance of the appointment, shall appoint a deputy to assist in the normal, day-to-day operation of the office and whose duty shall be to act in the registrar's stead in case of absence, disability or death of the registrar. In case of death of the local registrar the deputy shall act as local registrar until a new local registrar has been appointed and qualified.

* * *

The deputy registrar and any alternate deputy registrar shall serve at the pleasure of the local registrar.

However, *N.J.S.A. 26:8-20* states:

The provisions of this chapter fixing the terms of office and *providing methods of appointment and removal* shall not apply to the positions of local registrar, deputy registrar, alternate deputy registrar, or subregistrar in municipalities operating under the provisions of the "Civil Service Act," Title 11A of the New Jersey Statutes (emphasis added).

The ALJ did not consider the import of *N.J.S.A. 26:8-20*, despite basing her initial decision almost entirely on a statutory interpretation of *N.J.S.A. 26:8-17*. Given *N.J.S.A. 26:8-20*'s language exempting the "methods of appointment and removal" of the Deputy Registrar, which are specified in *N.J.S.A. 26:8-17*, there has been no analysis as to whether *N.J.S.A. 26:8-17*'s requirement to appoint a Deputy Registrar is applicable in Civil Service jurisdictions. Moreover, even if the Deputy Registrar is a required position in Civil Service jurisdictions, there has been no finding of fact that the appointing authority willfully violated the statute or acted in bad faith. Solely relying on the proposition that the title is statutorily required, as the ALJ did, does not necessarily mean that the appellant's layoff was in bad faith. As such, a full hearing where all the testimony and evidence in the record is analyzed to ascertain whether the appellant sustained his burden of proof would be required.

Accordingly, the Commission reverses the ALJ's granting of partial summary decision and remands the matter to the Office of Administrative Law to have the ALJ reconcile *N.J.S.A. 26:8-17* and *N.J.S.A. 26:8-20*, as well as to conduct a full evidentiary hearing to determine whether the appellant's layoff was undertaken for reasons other than economy, efficiency, or other related reasons. See *N.J.A.C. 4A:8-2.6(a)1*.

ORDER

The Civil Service Commission reverses the ALJ's granting of partial summary decision and the recommendation to reverse the layoff of Gerard Ciandella. Further, the Commission remands this matter to the Office of Administrative Law for further proceedings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 11TH DAY OF OCTOBER, 2023

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION FOR
PARTIAL-SUMMARY DECISION

ELIZABETH WEISS,
Appellant,
v.

OAL DKT. NO. CSV 07512-20
AGENCY DKT. NO. 2021-65

**CITY OF HOBOKEN DEPARTMENT OF
COMMUNITY DEVELOPMENT,**
Respondent.

ANNEMARIE SACCO, ET AL
Appellant,
v.

OAL DKT. NO. CSV 07516-20
AGENCY DKT. NO. 2021-74

**CITY OF HOBOKEN DEPARTMENT OF
PUBLIC SAFETY,**
Respondent.

JENNIFER BOEHM, ET AL
Appellant,
v.

OAL DKT. NO. CSV 07520-20
AGENCY DKT. NO. 2020-2600, et al

**CITY OF HOBOKEN DEPARTMENT OF
ADMINISTRATION,**
Respondent.

KYLE DALY

Appellant,
v.

OAL DKT. NO. CSV 07525-20

AGENCY DKT. NO. 2021-65

**CITY OF HOBOKEN DEPARTMENT OF
COMMUNITY DEVELOPMENT,**

Respondent.

CIANDELLA GERARD, ET AL

Appellant,
v.

OAL DKT. NO. CSV 07530-20

AGENCY DKT. NO. 2020-2575

**CITY OF HOBOKEN, DEPARTMENT OF
HUMAN SERVICES,**

Respondent.

Marcia J. Mitolo, Esq., for appellant Gerard Ciandella (Limsky Mitolo, attorneys)

Mark Tabakin, Esq., for respondents (Weiner Law Group, attorneys)

Record Closed: July 25, 2023

Decided: August 3, 2023

BEFORE **NANCI G. STOKES, ALJ:**

STATEMENT OF THE CASE

The City of Hoboken laid off Gerard Ciandella, its deputy registrar, and assigned his duties to an alternate deputy, carrying a "Clerk 1" title, despite its known statutory obligation to retain an appointed deputy registrar. Should Ciandella's layoff be reversed? Yes. If an employer's motive in adopting the plan was to remove a public employee without following civil service procedures rather than for economy, it acted without good faith.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motion for summary decision, when viewed in the light most favorable to the non-moving party, I **FIND** the following as **FACT** for purposes of this motion only:

Hoboken is an incorporated political subdivision.

On September 26, 2008, Ciandella was appointed deputy registrar of vital statistics and held that position until May 7, 2020. The “Deputy Registrar of Vital Statistics” is a full-time permanent title under the purview of the Civil Service Commission (Commission). Ciandella possesses a certified municipal registrar (CMR) license, required for the civil service deputy registrar title, and appointees to the position. See <https://info.csc.state.nj.us/jobspec/01520.htm>.

On January 15, 2020, Hoboken submitted a layoff plan to the Commission. Hoboken’s plan sought to lay off seventy-nine Hoboken employees, sixty-two of which are members of the Hoboken Municipality Employees Association (HMEA). Hoboken’s layoff plan appropriately outlined:

1. The reason for the layoff.
2. The projected date of the layoff.
3. The positions it slated for layoff.
4. A summary of consultations.
5. An overview of layoff alternatives that Hoboken explored.

On February 28, 2020, Hoboken notified the Department of Human Services employees that they may be laid off or demoted under its layoff plan.

On April 17, 2020, Hoboken notified the Commission that it desired to rescind forty-seven of the individual layoff notices. The layoff rescission did not include Ciandella but did include Hoboken’s layoff notice to its appointed registrar, Dawn

DeLorenzo. At no time did Hoboken seek to have Hudson county's registrar act as its local registrar.

On May 1, 2020, the Commission issued Ciandella a layoff rights notice, effective at the end of business on May 7, 2020, having approved Hoboken's layoff plan. On May 5, 2020, Hoboken offered Ciandella a demotional placement to Clerk 1, which he declined.

At the time of the layoff, the registrar's office consisted of the local registrar, the deputy registrar, and an alternate deputy registrar. Ciandella has more seniority than the alternate deputy registrar, Angela Rivera. Ciandella's civil service position is that of a deputy registrar, but Rivera's civil service title was "Clerk 1" when Hoboken laid Ciandella off. Rivera did not have a CMR license.

After the layoff, the alternate deputy registrar, unaffected by the layoff, performed Ciandella's duties. Hoboken's registrar did not appoint Rivera as the deputy registrar, and Rivera's civil service title since November 2022 is "Clerk 2."

On May 9, 2020, Ciandella appealed, maintaining that the layoff was not in good faith and violated his seniority rights. Specifically, Ciandella asserted that under N.J.S.A. 26:8-17, Hoboken must have a deputy registrar. Yet, Hoboken refused to return him to that job despite knowing its obligation to have a deputy registrar of vital statistics. The Commission noted Ciandella's appeal as postmarked on May 18, 2020.

On August 7, 2020, the Commission's Division of Appeals and Regulatory Affairs transmitted the case to the Office of Administration (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On December 21, 2020, I issued an Order of Consolidation OAL Docket Nos. CSV 07512-20, CSV 07516-20, CSV 07520-20, and CSV 07530-20. Soon after, the parties discovered that the withdrawal of one appellant in OAL Docket No. CSV 07525-20 resulted in the file's return to the Civil Service Commission. However, only one

appellant withdrew his appeal, and the case involved multiple appellants. Thus, the OAL requested the Commission return the file. On May 24, 2021, I ordered the consolidation of CSV 07525-20 with the other cases. Given Eric Cruz's withdrawal, the previous lead appellant, the caption in OAL Docket No. CSV 07525-20 reflects Kyle Daly as the lead appellant.

The parties commenced lengthy discovery and resolved all appellants' claims but those of Gerard Ciandella, Stephanie Sassola, Kleber Vera, Unica Walker, and Elizabeth Weiss. Indeed, Hoboken only recently provided documents requested by appellants. The parties also realized that Sassola was a part-time employee not entitled to representation by the same counsel through the HMEA.¹

On February 26, 2021, Hoboken offered Ciandella the position of assistant violations clerk, which he declined. On February 14, 2023, Hoboken offered Ciandella his former position as deputy registrar of vital statistics at the same base salary at the time of the layoff. However, on February 21, 2023, Ciandella declined that offer. Through this action, Ciandella seeks to be made whole from when Hoboken laid him off until Hoboken offered him his former job.

On April 14, 2023, Ciandella filed a motion for partial summary decision. This motion addresses only the claims of Ciandella. Ciandella's case under OAL Docket No. CSV 07530-20 includes the case of Sassola, and the OAL will retain the file until her claims are heard or resolved.

I granted Hoboken additional time to respond, given unforeseen delays. Hoboken submitted its response on July 21, 2023, and Ciandella filed his reply on July 25, 2023. Both parties agree that the issue presented is legal and that no genuine issue of material fact exists, requiring a hearing.

¹ Since then, Sassola died, and her husband represents her interests.

DISCUSSION AND CONCLUSIONS OF LAW

Summary-Decision Standard

A party may move for summary decision upon all or any substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion must include briefs, with or without affidavits. When the filed papers, discovery, and any affidavits show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When such a motion is made and supported, an adverse party, to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

Even though a statute calls for a "hearing," where a motion for summary decision is made and supported by documentary evidence and where the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

Moreover, even if the non-movant comes forward with some evidence, the court must grant summary judgment if the evidence is "so one-sided that [the movant] must prevail as a matter of law." Ibid. at 536 (citation omitted). If the non-moving party's evidence is "merely colorable or is not significantly probative," the judge should not deny summary judgment. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

Here, no genuine issue of material facts exists. Undeniably, Ciandella was the appointed deputy registrar of vital statistics for Hoboken and carried that civil service title before the layoff. Indisputably, the Commission approved Hoboken's layoff plan. Hoboken laid off Ciandella despite his protests that Hoboken must statutorily employ a deputy registrar of vital statistics, even if Hoboken offers reasons of economy or efficiency as support for its layoff plan. Instead of immediately returning Ciandella to his position, Hoboken transferred his responsibilities to another employee, the alternate deputy clerk, who possessed only a Clerk 1 civil service designation and no CMR license necessary for the deputy registrar civil service title. Still further, the alternate deputy registrar received no appointment to the position of deputy registrar. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Layoff Appeals

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6, and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, seek "to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services." N.J.A.C. 4A:1-1.1. The balance between managerial needs and employee protections is particularly evident in the statutory and regulatory provisions governing layoff procedures and employee layoff rights. N.J.S.A. 11A:8-1 to -4; N.J.A.C. 4A:8-1.1 to -2.6.

A local appointing authority may institute layoffs "for reasons of economy, efficiency, or other related reasons."⁴ N.J.S.A. 11A:8-1(a); N.J.A.C. 4A:8-1.1(a). However, prior to a layoff action, the appointing authority "should lessen the possibility of layoffs by considering voluntary alternatives," such as furloughs and reduced hours, and the employer "should consult with affected negotiations representatives prior to offering alternatives to layoff." N.J.A.C. 4A:8-1.2; N.J.S.A. 11A:8-2 and -3. If, after exploring other options, the appointing authority decides to institute a layoff, it must submit a layoff plan for approval by the Commission. N.J.A.C. 4A:8-1.4(a); Boro. of Keyport v. Int'l Union of Operating Eng'rs, 222 N.J. 314 (2015).

If a layoff plan is approved and implemented, affected employees have certain rights, including "a right to appeal the good faith of such layoff." N.J.S.A. 11A:8-4; N.J.A.C. 4A:8-2.6. However, the abolishment of a position in the classified civil service "cannot be questioned where such action is motivated by a bona fide desire to effect economies and increase . . . efficiency." Greco v. Smith, 40 N.J. Super. 182, 189 (App.Div.1956).

Specifically, an employee must prove by a preponderance of the evidence that the layoff was not instituted for economy, efficiency, or other related reason. N.J.S.A. 11A:8-4; N.J.A.C. 4A:8-2.6(a)(1); DiMarie v. Dep't of Human Servs., 92 N.J.A.R. 2d (CSV) 238, 239. To meet this burden, "[p]roofs must be presented that demonstrate that the layoff resulted from personal animus and hostility or improper political motives, or otherwise, or that the design in adopting the plan which resulted in the employee's layoff was to remove [them] in violation of [their] civil service protections rather than to accomplish economy." Acchitelli v. Dep't of Env'tl. Prot., 93 N.J.A.R.2d (CSV) 716 (citing Schnipper v. Twp. of N. Bergen, 13 N.J. Super. 11, 15 (App.Div.1951)).

In other words, the employee "carrie[s] the burden of proving bad faith, spelled out from words, conduct and all the surrounding circumstances and facts." Greco, 40 N.J. Super. at 193. An employee may be a valuable cog in the civil service machine, but sometimes an appointing authority must make "a substantive policy determination about whether and how to deliver public services when delivery is affected by serious and pressing economic decisions." Keyport, 222 N.J. at 343.

Importantly, the question is not whether the plan or action achieved its purpose of saving money but whether the motive in adopting a plan or an action was to accomplish economies or instead to remove a public employee without following the civil service procedures for removal. Greco, 40 N.J. Super. at 190 (citing City of Newark v. Civil Serv. Comm'n, 112 N.J.L. 571, 574 (Sup. Ct. 1934)). Indeed, "the discharge of the person occupying that position must not be merely colorable or a device for circumventing the employee's civil service protection while retaining his position in substance." Id. at 191. If the employer acted in bad faith, an employee may be restored to his position with an award of seniority credit, back pay, benefits, and counsel fees. N.J.A.C. 4A:2-1.5.

Other cases further define bad faith as "[g]enerally implying . . . design to mislead or deceive another . . . not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive." In re Afolo, CSV 4145-07, Initial Decision, (Mar. 31, 2008) (quoting Brown v. State Dep't of Educ., 97 N.J.A.R.2d (CSV) 537, 541 (1997)), adopted, Merit Sys. Bd. (May 22, 008), <http://njlaw.rutgers.edu/collections/oal/>. In trying to prove bad faith, an appellant carries a heavy burden because bad faith is "not simply bad judgment or negligence" but the conscious doing of a wrong because of some dishonest purpose. Ibid.

Further, an appointing authority may use bona fide methods of adjusting for the loss of a reduced title. However, it cannot eliminate positions under one title and replace them with substantially similar positions under a newly created title. In Newark Housing Authority Layoffs 2009, CSV 13507-09, Initial Decision (February 17, 2012), adopted, Comm'n (May 2, 2012), <http://njlaw.rutgers.edu/collections/oal/>, the appellants successfully showed their layoff was in bad faith because the appointing authority eliminated seventeen positions in the clerk-typist title series, twelve of which were held by employees entitled to civil-service protections, and hired over thirty employees to perform similar duties under two new titles. These actions supported a finding that "the design in adopting the plan which resulted in the employee[s]' layoff was to remove [them] in violation of [their] civil service protections rather than to accomplish economy." Id.

The crux of this case is whether N.J.S.A. 26:8-17 requires Hoboken to maintain the position of a "Deputy Registrar of Vital Statistics" even in the face of economic stress. Notably, N.J.S.A. 26:8-2 notes that Hoboken is a registration district of vital statistics as a political subdivision. Thus, Hoboken's only way to avoid appointing a local registrar is to permit the Hudson County clerk to act as its registrar of vital statistics under N.J.S.A. 26:8-11, which it did not allow. Then, under N.J.S.A. 26:8-17, upon appointment, the local registrar for the district "*shall* appoint a deputy to assist in the normal, day-to-day operation of the office and whose duty shall be to act in the registrar's stead in case of absence, disability, or death of the registrar." (Emphasis supplied.) Further, the registrar "*may* appoint one or two alternate deputy registrars if the local registrar deems such an appointment to be necessary for the office to function

efficiently and to provide quality service to the public.” Ibid. (Emphasis supplied.) Notably, “the deputy registrar and any alternate deputy registrar shall serve at the pleasure of the local registrar.”Id. Still, the statute requires that Hoboken have a local registrar, and the registrar must *appoint* a deputy registrar. (Emphasis supplied.) Hoboken believes it designated Rivera, absent civil service qualifications or an appointment, as the deputy registrar. Yet, such an appointment is not discretionary, even though the deputy registrar serves at the pleasure of the registrar. An alternate deputy registrar does not serve instead of a deputy registrar, but in addition to the deputy, should the registrar feel the community’s service needs support an alternate. Indeed, I **CONCLUDE** that an alternate registrar appointment is discretionary, but a deputy registrar appointment is not.

Suppose the position is unnecessary or useless, and an employer can abolish the job without impairing departmental efficiency. In that case, the motive for the job’s elimination or laying off the person holding the position is immaterial. Greco, 40 N.J. Super at 189-90. Here, the deputy registrar position is not useless, and Hoboken did not abolish the work. Instead, Hoboken reassigned the duties of the deputy registrar to its alternate deputy registrar, who possessed a Clerk 1 title without a CMR, despite its awareness of the statutory requirements to have a registrar and a deputy registrar. Hoboken rescinded the registrar’s layoff notice once apprised of the statute, but not Ciandella’s notice. Hoboken suggests that a civil service deputy registrar title and the statutory title are different, and it need not maintain an appointed deputy registrar. Yet, Hoboken cites no authority permitting it to leave a mandatorily appointed deputy registrar position vacant and “designate” an optional alternate deputy to fulfill the statutory role of a deputy. While it may have been economical to use the alternate deputy registrar as its deputy as any salary decrease would, I **CONCLUDE** that Hoboken had no rational legal basis to do so, given its known statutory obligation.

Therefore, I **CONCLUDE** that a preponderance of the evidence exists to show that Hoboken acted in bad faith because its motive in adopting the plan was to remove Ciandella in “violation of [his] civil service protections rather than to accomplish economy.” Under these circumstances, I **CONCLUDE** that Ciandella’s motion for summary decision should be **GRANTED** as a matter of law and his layoff be **REVERSED**.

I also **CONCLUDE** that the claims of Stephanie Sassola, also under OAL Docket No. 07530-20, remain and are unaffected by this order.

ORDER

Given my conclusions of law and factual findings, I **ORDER** that Ciandella be **GRANTED** summary decision as a matter of law. I further **ORDER** that Hoboken's layoff of Ciandella be **REVERSED**.

This order granting partial summary decision is being submitted under N.J.A.C. 1:1-12.5(e) for immediate review. This recommended order may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION** who by law is authorized to make the final decision in this matter. If the **CIVIL SERVICE COMMISSION** does not adopt, modify, or reject this order within forty-five days and unless such time limit is otherwise extended, this recommended order shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this order was mailed to the parties, any party may file written exceptions with the **CIVIL SERVICE COMMISSION**, (marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 3, 2023



DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

August 3, 2023

Date Mailed to Parties:

August 3, 2023

ljb

