STATE OF NEW JERSEY

In the Matter of Kevin McClone, Stockton University	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2025-8	:	Administrative Appeal

ISSUED: February 5, 2025 **(HS)**

Kevin McClone appeals the decision of Stockton University to reassign him from Galloway to Atlantic City.

As background, on April 11, 2024, an unprofessional incident occurred between the appellant, a Grounds Worker, and William D'Agostino, a Maintenance Worker 2 Grounds. As a result, the appointing authority issued Preliminary Notices of Disciplinary Action to both and convened a disciplinary hearing. James Brown, Assistant Head Grounds Worker, who supervised both the appellant and D'Agostino; John Fritsch, Assistant Vice President of Facilities and Plant Operations; and Giovanni Maione, Lieutenant Campus Police, were management witnesses. In its opening statement, management indicated that Facilities and Plant Operations had requested that one of the employees be reassigned to the Atlantic City Campus. Brown testified that other employees did not like to work with the appellant. Fritsch testified that Facilities and Plant Operations met monthly with the International Federation of Professional & Technical Engineers (IFPTE) team. At the March 27, 2024 meeting, he was presented with a list of signed petitions from IFPTE grounds crew members stating that they were uncomfortable working with the appellant because of his actions. Fritsch further testified that the petitions stated that the appellant records his co-workers with his cell phone. On the appellant's cross-examination, Fritsch testified that he did not observe the recordings and that he did not have the opportunity to address this because the appellant refused to participate in a scheduled meeting with him in the room. As a result, a meeting with the appellant, the Ombuds Officer, and others was scheduled but never took place. On

D'Agostino's cross-examination, he asked Fritsch what, if anything, the shop petition letters said about him. Fritsch testified that they were positive and that D'Agostino helps out when needed. Fritsch recommended that one of the employees be assigned to the Atlantic City campus since it is smaller; supervision would be easier; and there are fewer employees there.

In her report, the hearing officer indicated that because the employees' accounts of the incident contradicted one another, video footage was requested from the Stockton Police Department. However, due to camera angles and the lack of cameras in the parking lots, Maione was only able to find one camera that picked up the relevant parking lot. The video only showed the truck pulling up and the appellant walking. Ultimately, the hearing officer determined that neither the appellant nor D'Agostino would be suspended for any period of time; a no-contact directive would remain in effect through August 31, 2024; and both the appellant and D'Agostino were ordered to attend training on how to get along with co-workers/build relationships. Additionally, and most pertinent to the instant appeal, the hearing officer indicated:

> I am satisfied with the testimony of both . . . Brown and . . . Fritsch. They both provided convincing evidence of the work environments and atmospheres involving [the appellant] and . . . D'Agostino. . . . Fritsch stated that he received signed petition letters submitted by the IFPTE team indicating that they were uncomfortable because of [the appellant's] actions. This is very compelling and indicates that [the appellant's] presence creates a disruption to business operations. This is a direct violation of Stockton University's Policy for Campus Conduct Code. In [the appellant's] summation, he stated that he wished that they could have mediated the situation instead. If [the appellant] truly wished to mediate the situation, I ask why he went to the Stockton Police to file a voluntary statement, as this is contrary to working it out together as colleagues. Therefore, I support and approve . . . Fritsch's recommendation and order [the appellant] to be relocated to the Atlantic City Campus effective immediately. There will be no change to [the appellant's] title or salary. . . . D'Agostino shall remain assigned to the Galloway Campus.

The appointing authority upheld the hearing officer's decision in a final notice to the appellant.

On appeal to the Civil Service Commission (Commission), the appellant challenges his reassignment to Atlantic City on the basis that it violated the IFPTE collective negotiations agreement (CNA), which provides in pertinent part:

> Reassignments of employees may be made in accordance with the fiscal responsibilities of the appointing authority; to improve or maintain operational effectiveness; or to provide employee development and job training or a balance of employee experience in any work area. Where such reassignments are not mutually agreed to, the appointing authority will make reassignments in the inverse order of the job classification seniority of the employees affected, providing the employees are capable of doing the work, and the objectives stated above are met. Individual shift or schedule changes will be considered to be covered under this provision and paragraphs below.

In response, the appointing authority maintains that the instant appeal should be rejected as the appellant was not disciplined but rather was reassigned, as the less senior of the two participants,[1] in order to maintain safety, health, order or effective direction of public services.

In reply, the appellant argues that as between himself, a Grounds Worker, and D'Agostino, a Maintenance Worker 2 Grounds, neither one is more senior as they are in different job classifications. He complains that the appointing authority is trying to have it both ways: if his reassignment, which he calls discipline, is allowed to stand, the appointing authority could always have its way when an employee is found innocent as it could always add an addendum to fit its needs. The appellant insists that as the appointing authority indicated that its decision to reassign him was based on the earlier-quoted provision of the CNA, the appointing authority must follow the CNA.

CONCLUSION

N.J.A.C. 4A:4-7.2 provides that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. Further, *N.J.A.C.* 4A:4-7.7 provides that when an employee challenges the good faith of a reassignment, the burden of proof shall be on the employee. That section also provides that such an action shall not be utilized as part of a disciplinary action except when disciplinary procedures have been utilized. *See also, N.J.S.A.* 11A:4-16.

As an initial matter, the Commission will not attempt to resolve any dispute over the correct interpretation of the CNA or whether the appellant's reassignment violated the CNA. The Commission generally does not enforce or interpret items that are contained in a CNA between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson,* Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is

[1] Personnel records indicate that D'Agostino and the appellant began permanent service with the appointing authority on July 5, 2011, and October 24, 2022, respectively.

the Public Employment Relations Commission. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4(c).

Nevertheless, the appellant retained the right to appeal his reassignment to the Commission, which may properly consider whether a reassignment is appropriate under Civil Service law and regulations. In that regard, reassignments are at the discretion of the appointing authority but they must be made in good faith. Here, there is sufficient evidence in the record that the appellant's reassignment was based on legitimate business and operational reasons. Specifically, the hearing officer had credited witness testimony that provided "convincing evidence of the work environments and atmospheres involving [the appellant] and . . . D'Agostino" and that "indicate[d] that [the appellant's] presence create[d] a disruption to business operations." The appellant has not established in any way that these reasons were not legitimate or served as a pretext to allow the appointing authority to reassign him for some other, bad faith reason. Therefore, the appellant has failed to establish by a preponderance of the evidence that his reassignment was made in bad faith.

In addition, reassignments may not be used for disciplinary purposes except when disciplinary procedures have been utilized. Here, the parties dispute whether the appellant's reassignment was in fact a disciplinary measure. In this regard, at least some of the information uncovered in the hearing, if true, could have subjected the appellant to new disciplinary action, such as the allegation that he records his co-workers with his cell phone. However, there is no evidence that the appointing authority sought to pursue actual new disciplinary action on those allegations or specifically used those allegations as the reason for the reassignment. Rather, its proffered reasons for the reassignment as described above were not based on information that would necessarily be subject to discipline, *i.e.*, his co-workers generalized discomfort with the appellant's continued presence. Such reasons can be considered legitimate workplace concerns and could appropriately be utilized by an appointing authority, in its discretion, to implement a reassignment.

Even assuming, *arguendo*, that the appellant's reassignment was disciplinary, there would be no basis to disturb the reassignment because there is sufficient evidence in the record that sufficient disciplinary procedures were utilized in effectuating it. In this regard, the new allegations were presented at the hearing, and as such, the appellant had notice of those allegations at that time and the opportunity to challenge that information at the hearing. In other words, even if the new allegations were the reason for the reassignment, any procedural due process errors in its implementation would be considered, at most, *de minimis* and insufficient to rescind the reassignment. Further, though the facts in *In the Matter of Diane Murphy* (MSB, decided June 6, 2000) do not precisely mirror those in the instant matter, that case is nonetheless instructive. In *Murphy*, the appellant, after successfully appealing her removal from employment, challenged her reinstatement which included a reassignment to a new work location. Specifically, the former Merit

System Board (Board) noted that where the Board orders reinstatement of an employee after a successful appeal of a removal, the Board does not explicitly order an appointing authority to return an appellant to the exact position as was held prior to the Board order. The Board noted that it does not expressly specify such a remedy in order to allow an appointing authority the opportunity to exercise its discretion regarding the deployment of its workforce. The Board further observed that the Public Employment Relations Commission had held that an employer may reinstate an individual to a position substantially equivalent to the position the employee previously held, *even if at a different location*, so long as such a reinstatement was not for invidious reasons.

ORDER

Therefore, it is ordered that this appeal 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 5TH DAY OF FEBRUARY, 2025

Allison Chris Myers

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Allison Chris Myers
Chairperson
Civil Service Commission

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