


DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
OCTOBER 1, 2014

A handwritten signature in blue ink, reading "Robert M. Czech", is written over a solid black horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

CONSOLIDATED

**IN THE MATTER OF
WILLIAM R. HENDRICKSON, JR.,
VERNON TOWNSHIP,
DEPARTMENT OF PUBLIC SAFETY.**

OAL DKT. NO. CSV 4683-13
AGENCY DKT. NO. N/A **2013-2518**

**IN THE MATTER OF
THOMAS J. VAN GORDER,
VERNON TOWNSHIP,
DEPARTMENT OF PUBLIC SAFETY.**

OAL DKT. NO. CSV 4684-13
AGENCY DKT. NO. N/A **2013-2517**

Bruce D. Leder, Esq., appearing for appellants William R. Hendrickson, Jr. and
Thomas J. Van Gorder (Cohen Leder Montalbano & Grossman, attorneys)

Richard Wenner, Esq., appearing for respondent Vernon Township (Courter
Kobert & Cohen, attorneys)

Record Closed: July 1, 2014

Decided: August 5, 2014

BEFORE TIFFANY M. WILLIAMS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The appellants appeal their layoff from employment, effective October 14, 2011, alleging bad faith on behalf of the appointing authority, Vernon Township (Vernon). The matters were transmitted to the Office of Administrative Law where they were filed as contested cases on April 3, 2013, and were consolidated by Order dated July 17, 2013. A hearing was conducted on April 21, 2014, and the record closed upon the receipt of the post-hearing briefs.

FACTUAL BACKGROUND

At the hearing, both appellants testified as to the events that preceded their layoff, as did Vernon's mayor and business administrator.

Thomas J. Van Gorder

Van Gorder testified that he had been employed with Vernon since 2002. In his initial capacity, Van Gorder served as a fire prevention specialist and was promoted to the fire official in 2005. The position was a part-time, permanent position requiring three days of work during the week, with night and weekend responsibilities as they arose. The position compensated him based on twenty-one hours worked, without regard to whether he worked excess hours. As the fire official, Van Gorder supervised Hendrickson (a part-time fire prevention specialist) and a full-time administrative secretary. In addition to his part-time role for Vernon, Van Gorder served as a full-time firefighter in Englewood.

Van Gorder testified that on October 14, 2011, he was directed to report to the mayor's office, for a meeting with Mayor Victor Marotta and Business Administrator Gerald Giaimis. During the meeting, Van Gorder was advised that his employment had been terminated because Vernon had decided to hire a full-time fire official. Van Gorder acknowledged that in September 2011, Giaimis had advised him that Vernon was considering transitioning to a full-time fire official. At that meeting, Van Gorder advised Giaimis that he wanted to discuss the matter further with the mayor.

Van Gorder testified that he was not ever able to meet with the mayor and never saw a job posting for the full-time position. On the day of his termination, Van Gorder participated in an exit interview in which he filled out data on a written form. He reported that he had been very happy with his job and rated the highest degree of satisfaction in the job satisfaction, working conditions, communication, promotional opportunities, and job-challenge categories. He also noted that the fringe benefits were average, that there were too many supervisors, and that supervisors generally were more positive than negative, and sometimes acknowledged extra effort. Van Gorder also reported that he continually had more work than he could complete and had been promised a raise two years prior but never received it because Vernon was experiencing budget problems. Van Gorder testified that he never experienced any personal animus directed towards him from the mayor or the business administrator.

Van Gorder also presented testimony regarding a Field Monitoring Visit performed by the State Department of Community Affairs (DCA), which demanded corrective action in that Vernon did not have adequate inspectors to complete all inspections in the required time frame. (J-11.)

William R. Hendrickson, Jr.

Hendrickson testified that he had been employed with Vernon as a part-time fire prevention specialist since 2006. He described that although he was compensated for twenty-one hours a week (three seven-hour shifts), he frequently worked in excess of twenty-one hours weekly. Like Van Gorder, Hendrickson was terminated from employment on October 14, 2011, and was advised that the grounds were solely financial considerations. Hendrickson acknowledged that he had previously been advised that Vernon had been considering instituting a full-time fire official position. Specifically, in September 2011, the mayor had advised him of the potential plan and invited him to submit his resume. On October 3, 2011, Hendrickson interviewed for the position and referenced the DCA report that noted that additional inspectors were needed to complete fire inspections in a timely manner. (J-11.)

Hendrickson also recalled having participated in an exit interview and having experienced no personal animosity from the mayor. He expressed that the business administrator had been disrespectful and rude by walking by him the day before the termination and failing to return Hendrickson's morning greeting.

Victor Marotta

Marotta testified that he had served as the mayor of Vernon since July 1, 2011. Upon taking office, he oversaw the transition and reorganization of Vernon's entire form of government from a "strong council" model to a "strong mayor" model, which empowered the mayor with administrative duties formerly held by the town manager. Mayor Marotta described that upon review of Vernon's fiscal overview, he determined that the economic conditions required departmental cuts. One option that he considered was shared services with Sussex County. After advising Van Gorder and discussing the DCA report that noted that more hours were needed for fire inspections, he concluded that a full-time fire inspector was the appropriate approach. In late July 2011, the mayor noted that the full-time secretary who was employed in the department retired. Rather than replacing her, the mayor adopted a cost-savings alternative of hiring floating administrative staff who were cross-trained in every department. Mayor Marotta was also aware that Van Gorder worked full-time in another capacity, as a fireman in Englewood.

LEGAL ANALYSIS AND CONCLUSION

On appeal from a layoff, the issue to be determined is limited to whether the appointing authority's action was motivated by good-faith considerations of economy or efficiency in effectuating the layoff. An appointing authority may institute layoff actions for reasons of economy, efficiency, or other related reasons. N.J.A.C. 4A:8-1.1(a).

The burden of proof is on the appellant to demonstrate a contrary or bad-faith motivation. N.J.S.A. 11A:8-4; N.J.A.C. 4A:2-1.4(c); N.J.A.C. 4A:8-2.6(c). Where it is shown that a layoff action was motivated by a bona fide desire or necessity to effect economy, the action taken is presumed to be in good faith. Greco v. Smith, 40 N.J.

Super. 182, 189 (App. Div. 1956); Sieper v. Dep't of Civil Serv., 21 N.J. Super. 583, 586 (App. Div. 1952). And,

[t]he mere fact that the removal of an individual from the municipal payroll results in an economy is not the exclusive test, since such removal will always be manifested by a saving. The question is, not narrowly whether a plan conceived and adopted for the purposes of saving money actually, in operation, attained that purpose, but whether the design in adopting the plan was to accomplish economy or, on the contrary, was to effect the removal of a public employee, protected by civil service, without following the statutory procedure for removal. City of Newark v. Civil Service Commission, 112 N.J.L. 571, 574 (Sup. Ct. 1934), affirmed 114 N.J.L. 185 (E. & A. 1935).

[Greco, supra, 40 N.J. Super. at 190.]

Therefore, in proving that an appointing authority has acted in bad faith, the employee must show that the layoffs were not motivated by true considerations of economy and/or efficiency. It is not sufficient to meet the burden of proof for an employee to show that a layoff is uneconomical. Such evidence may assist the establishment of bad faith, but the employee must go further. He or she must show by sufficient proof that the layoffs resulted for reasons other than economy and efficiency. Amodio v. Civil Serv. Comm'n, 81 N.J. Super. 22 (App. Div. 1963); Chirichella v. Dep't of Civil Serv., 31 N.J. Super. 404 (App. Div. 1954); Prosecutors, Detectives and Investigators Ass'n of Essex Co. v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30 (App. Div. 1974).

Evidence may indicate that a mixture of motives existed in connection with a layoff decision. If other motives besides economy and efficiency were involved, it makes no difference so long as the position involved was useless and its abolition was in the public interest. Pellet v. Dep't of Civil Serv., 10 N.J. Super. 52, 57 (App. Div. 1950).

It is also settled that the holder of a protected civil service position may be laid off in the interest of economy and his or her duties consolidated and assigned to others. Gianettino v. Civil Serv. Comm'n, 120 N.J.L. 531, 533 (Sup. Ct. 1938); Sieper, supra, 21

N.J. Super. at 583. It is a question of the bona fides of the action, and the burden is on the appellant to show that the action taken was in bad faith.

I **CONCLUDE** that the record is deplete of evidence of bad faith on the part of Vernon Township, who readily acknowledged that the proper layoff proceedings were not initially followed. The appellants seek to use the Civil Service Commission's (CSC) prior finding that Vernon Township failed to follow the proper layoff procedures as a sword in this proceeding to demonstrate bad faith. However, that issue was properly decided previously by the CSC and the appellants received the remediation for Vernon Township's lapse that was within the CSC's scope and authority. The appellants cannot receive further relief on that resolved issue in this proceeding absent compelling legal authority to support a de facto finding of bad faith in similar circumstances.

Moreover, neither of the appellants' testimony revealed any bona fide evidence of bad faith. Hendrickson admitted that he was considered and interviewed for the position and offered a forum to detail his credentials and his recommendations on how the position should be structured. He also acknowledged that he experienced no personal animus from the mayor in their interactions. Although he did indicate that he experienced the business administrator to be disrespectful and rude, those assertions alone were insufficient to constitute bad faith on the part of Vernon Township in failing to hire him for the position. Particularly, the mayor's recollection of the interview was consistent with Hendrickson's, except the mayor also recalled that Hendrickson indicated that he really wanted to be a professor and therefore, the position would be a stop along the route to his ultimate career desire. I found the mayor credible in that he considered that Hendrickson had other priorities in long-term employment plans in making his decision not to hire him.

Similarly, I **CONCLUDE** that Van Gorder's testimony did not elicit evidence of bad faith in Vernon Township's decision not to hire him for the position.

I found the business administrator's testimony credible that he advised both Hendrickson and Van Gorder that they could apply for the new position, which was corroborated by the mayor's testimony that he informed Van Gorder that the potential

change to a full-time position was forthcoming in the transition of administration changes. Additionally, I find it incredible that in such a small department in which Hendrickson and Van Gorder worked in such close concert, that Hendrickson would know about the opportunity to apply but Van Gorder did not. Additionally, it is undisputed that Van Gorder held a full-time position as a firefighter in Englewood, which created a reasonable and good-faith appearance that he was not otherwise available for full-time work as a fire marshal in Vernon Township.

Finally, the preponderance of credible evidence demonstrates that Vernon Township laid off the appellants for purposes of efficiency and economy, in light of the change in administration and form of government. The Township's witnesses were compelling and credible, including their contrition and acknowledgement of having botched the initial layoff due to a misconception of the applicability of the Civil Service rules to part-time employees—an issue which the CSC has previously resolved.

ORDER

Accordingly, I **ORDER** that the appointing authority's lay-off decision as to both appellants is **AFFIRMED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

8/5/14
DATE

Tiffany M. Williams
TIFFANY M. WILLIAMS, ALJ

Date Received at Agency:

August 5, 2014
Lucia Sanders

Date Mailed to Parties:

AUG - 6 2014

**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

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APPENDIX

LIST OF WITNESSES

For Appellants:

Thomas J. Van Gorder
William R. Hendrickson, Jr.

For Respondent:

Victor Marotta
Gerald Giaimis

LIST OF EXHIBITS

Joint:

- J-1 Decision of the Civil Service Commission dated January 24, 2013
- J-2 Layoff Plan submitted by the Township of Vernon
- J-3 CAMPS for Thomas Van Gorder dated February 15, 2012
- J-4 CAMPS for William Hendrickson dated February 10, 2012
- J-5 Vernon Township Ordinance #11-21 date September 26, 2011
- J-6 Vernon Township Ordinance #12-03 dated March 5, 2012
- J-7 Vernon Township Ordinance #12-06 dated April 9, 2012
- J-8 Vernon Township Ordinance #11-17
- J-9 Vernon Township Ordinance #12-01 dated January 23, 2012
- J-10 Bureau of Fire Prevention LEA Year End Summary Report for Years Ending 12/31/2010, 12/31/2011 and 12/31/2012
- J-11 Correspondence dated July 25, 2011, from Department of Community Affairs to Thomas Van Gorder, fire official
- J-12 Correspondence dated August 6, 2012, from Department of Community Affairs to David L. Tynan, fire official

- J-13 Correspondence dated October 4, 2011, from Vernon Township offering employment to David Tynan
- J-14 Budget 2010, 2011, and 2012
- J-15 Annual Financial Statement 2010, 2011, and 2012

For Appellants:

None

For Respondent:

- R-1 Exit Interview dated October 14, 2011