

CSC B-70



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Morris

CSC Docket No. 2014-1614

Request for Enforcement

ISSUED

01 18 2014

(EG)

Michael Morris, a Senior Security Guard with the City of Trenton (Trenton), represented by Jack A. Butler, Esq., petitions the Civil Service Commission (Commission) to fine Trenton for delaying in providing him his back pay award as ordered in *In the Matter of Michael Morris* (CSC, decided September 4, 2013). A copy of that decision is attached hereto and incorporated herein.

As background, Morris was laid off effective September 16, 2011 pursuant to a layoff plan. Morris appealed, claiming his title rights had been violated. He also contended that Trenton was attempting to circumvent Civil Service layoff rules by keeping another employee in a part-time provisional title while he performed the duties of a full-time Senior Security Guard. In a decision, rendered April 3, 2013, the Commission found that Morris had not been properly laid off. It determined that the seasonal appointment of another employee exceeded the six month limit for employment in a temporary position. Therefore, the Commission found that Trenton improperly utilized a seasonal position where a permanent appointment appeared to be needed. Accordingly, the Commission ordered the immediate reinstatement of Morris with back pay accruing from the 31st day after the decision date.

Subsequently, Trenton requested reconsideration of the Commission's prior decision. It argued that it could not comply with the Commission's order because the other employee was serving as a Seasonal Security Guard, not as a Senior

Security Guard. Trenton maintained that a Seasonal Security Guard was different than a Senior Security Guard in that incumbents are paid hourly, are not part of the pension system, and do not receive any health benefits. Morris argued that he should be granted back pay and counsel fees based on Trenton's bad faith and its invidious motivations in laying him off. In this regard, Morris provided a statement from a former Trenton Business Administrator which indicated that the (former) Trenton Mayor wanted to reward this other employee for political contributions and wanted to lay off Morris from his supervisory position so he could install his own person. The Mayor also made a statement to another Trenton employee that he would "fire every motherfucking ranger before I bring that nigger back." Based on the foregoing, the Commission found that it was clear that Trenton's intent was to keep this other employee permanently in the Security Guard position and to circumvent Civil Service laws and rules by utilizing an employee with no status when a permanent civil service employee should have been utilized. Therefore, the Commission denied Trenton's request for reconsideration. The Commission also found that that Trenton took adverse action against Morris in bad faith and/or with invidious motivation and awarded Morris back pay and counsel fees.

In the instant matter, Morris initially requested enforcement of the back pay award which the Commission had granted him. While the appeal was pending, Morris indicated that he received his back pay award. However, he requests that Trenton be fined for not making a good faith effort to comply with the decision within 10 days as indicated in the Commission's order. In this regard, Morris argues that it took five full months before he received his back pay award.

The appointing authority, despite being provided the opportunity, did not submit any substantive reply to Morris' allegations.

## CONCLUSION

*N.J.A.C. 4A:10-2.1(a)2* provides the Commission with the authority to assess costs, charges and fines not to exceed \$10,000 for failing to comply with a Commission order.

In its September 4, 2013 decision, the Commission ordered Trenton to immediately reinstate Morris to the title of Senior Security Guard. Specifically, the Commission ordered that "In the event that Trenton has not made a good faith effort to comply with this decision within 10 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 11<sup>TH</sup> day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000." In this regard, the Commission notes that there is no argument or evidence that Trenton unreasonably delayed in restoring Morris to his position. With regard to the back pay award, the Commission's decision merely indicated

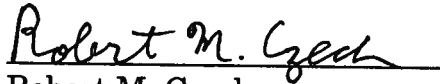
that a good faith effort be made in resolving that matter. In this regard, the Commission does not find that five months to settle a back pay award is unreasonable in the present matter. The process in making a significant back pay award in a City such as Trenton involves numerous decisions and approvals which take some time to make. In the absence of any actual evidence that Trenton purposefully delayed the back pay award, the Commission finds no reason to fine Trenton in this particular matter.

### ORDER

Therefore, it is ordered that Michael Morris' request that the City of Trenton be fined is 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 16TH DAY OF JULY, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries	Henry Maurer
and	Director
Correspondence	Division of Appeals and Regulatory Affairs
	Written Record Appeals Unit
	Civil Service Commission
	P.O. Box 312
	Trenton, New Jersey 08625-0312

#### Attachment

c: Jack A. Butler, Esq.  
Steven Glickman, Esq.  
David Minchello, Esq.  
Michael Morris  
Terry McEwen, Business Administrator  
Joseph Gambino

B-67



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Morris,

CSC Docket No. 2013-~~2554~~<sup>2927</sup>

Request for Reconsideration &  
Request for Enforcement

ISSUED: SEP 04 2013 (EG)

The City of Trenton (Trenton), represented by Vincent M. Avery, Esq., petitions the Civil Service Commission (Commission) for reconsideration and a stay of the attached final administrative decision, rendered on April 3, 2013, in which the Commission rescinded the layoff of Michael Morris and ordered that he be returned with seniority and benefits to the position of Senior Security Guard. Additionally, Morris, represented by Jack A. Butler, Esq., petitions the Commission for enforcement of the April 3, 2013 decision, and also requests back pay and counsel fees.

As background, Morris, a Senior Security Guard with Trenton's Recreation and Natural Resource Department, was laid off effective September 16, 2011 pursuant to a layoff plan. Morris appealed, claiming his title rights had been violated. He contended that Robert Mendez was hired as a part-time provisional Senior Security Guard on March 24, 2011 but that he was working as a full-time Senior Security Guard. He also asserted that James Moses had been hired as a Senior Security Guard in 2011. Morris claimed that he should have had title rights to the positions occupied by Mendez and Moses as he had more seniority than both of these employees. Further, Morris argued that Trenton was attempting to circumvent Civil Service layoff rules by keeping Mendez in a part-time provisional title while he performed the duties of a full-time Senior Security Guard. Trenton, despite numerous opportunities and requests, did not submit any arguments for the Commission to review other than the employment history for Moses and Mendez.

In reviewing the matter, the Commission, in the attached decision, initially found that Morris had not raised any bad faith arguments or provided any evidence of bad faith concerning his *current* layoff effective September 16, 2011. All of his bad faith arguments concerned the layoff that occurred in November 2010 and thus, any such arguments were untimely. See *N.J.A.C. 4A:8-2.6(b)*. With regard to the September 16, 2011 layoff, the Commission found that Morris had not been properly laid off. It determined that the seasonal appointment of Mendez exceeded the six month limit for employment in a temporary position. See *N.J.S.A. 11A:4-13(c)*. It also found that Mendez was still employed and per Morris' undisputed allegations, performing the same duties that Morris performed. Therefore, the Commission found that Trenton improperly utilized a seasonal position where a permanent appointment appeared to be needed. Accordingly, the Commission ordered the temporary appointment of Mendez be terminated and the appointment of Morris from the special reemployment list for Senior Security Guard. In this regard, the Commission ordered the immediate reinstatement of Morris with back pay accruing from the 31<sup>st</sup> day after the decision date. No other remedies were ordered.

In the present matter, Trenton takes exception with the Commission's statement that it had been contacted numerous times but failed to respond. It argues that its counsel was never contacted nor provided with a copy of Morris' appeal. Additionally, it claims that the notice letter was not sent to its Business Administrator but to a Mayor's Aide. Further, it asserts that the only person contacted by the Commission's staff was a low level human resources employee. Trenton argues that the Commission should have contacted its counsel or a higher level official to obtain a proper response. Moreover, Trenton argues that it cannot comply with the Commission's order in the prior decision because Mendez is serving as a Seasonal Security Guard, not as a Senior Security Guard. It maintains that a Seasonal Security Guard is different than a Senior Security Guard in that incumbents are paid hourly, are not part of the pension system, and do not receive any health benefits. Trenton claims that the Commission was under the mistaken belief that Mendez was serving as a Senior Security Guard when he was not. In addition, it contends that it has taken steps to remedy its error concerning seasonal employees working in such titles in excess of six months.

In response, Morris contends that Trenton had clear and ample time to respond to his appeal. In this regard, he asserts that Trenton was affirmatively involved in providing information to the Commission as it did provide employment records for Mendez and Moses. Additionally, Morris argues that Trenton created a *de facto* permanent position for Mendez. He argues that Mendez was a seasonal hourly employee on paper only. Morris contends that a review of Mendez's earnings, which he submits, shows that Mendez worked substantial over-time and in fact earned more than Morris would have in the same time period. Further, Morris asserts that Trenton has not met the standard for reconsideration or a stay.

Furthermore, Morris argues that the Commission should reconsider its determination not to grant him back pay or counsel fees based on new information. In this regard, Morris submits a certification from former Trenton Business Administrator William Guhl, which indicates that in July 2010, he had a conversation with the Trenton Mayor in which the Mayor stated that he wanted to reward Mendez for political contributions and wanted to lay off Morris from his supervisory position so he could install his own person. Guhl explained that such actions would violate Civil Service rules. Morris claims that after Guhl's resignation, the Mayor followed through with his plan. Further, Morris claims that the statements it submitted from former Trenton employee Maria Richardson should not be limited to the prior lay off action as the Commission found. Morris claims that the statement the Mayor made declaring the he would "fire every motherfucking ranger before I bring that nigger back" demonstrates the animus the Mayor had for him. This animus clearly extended to the next layoff action and shows the Mayor's intent on removing him at any cost. Finally, Morris requests that if the Commission finds insufficient evidence to support bad faith, he be granted a hearing at the Office of Administrative Law on the issue of Trenton's motivation.

Although provided the opportunity, Trenton did not respond to Morris' claims as set forth above.

### CONCLUSION

*N.J.A.C. 4A:2-1.6(b)* sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. Based on the above regulations, Trenton has not presented a sufficient basis for reconsideration.

Initially, the Commission notes that the initial notice of Morris' appeal was sent to whom the Commission believed was Trenton's Business Administrator at the time of the appeal. Notices of appeals of layoff title rights matters are generally sent to an appointing authority and not directly to the appointing authority's counsel. While Trenton claims that the notice letter was addressed to a Mayor's Aide, it provides no explanation as to why the Mayor's Aide did not forward this matter to the Business Administrator for a response. It is not incumbent upon Commission staff to ensure that whatever protocols established by a specific appointing authority to respond to such appeals are followed. Further, Commission staff properly contacted Trenton's human resource office for information to request a response. Nevertheless, the present matter provides an opportunity for Trenton's

counsel to address Morris' arguments on appeal and its arguments on reconsideration will be addressed by the Commission.

Trenton asserts that it cannot comply with the Commission's order because Mendez is serving as a Seasonal Security Guard and not as a Senior Security Guard. The Commission is not persuaded. Mendez was employed year-round, not for any particular "season." Thus, the record evidences that Mendez was serving as a seasonal employee on paper only. It is clear that Trenton's intent was to keep Mendez permanently in the Security Guard position. Additionally, the fact that a seasonal employee does not receive health benefits or pension credit is not determinative in this matter. Trenton's use of a seasonal employee in such a manner is an obvious attempt by Trenton to circumvent Civil Service laws and rules by utilizing an employee with no status when a permanent civil service employee should have been utilized. Had the information provided by Trenton on reconsideration been provided in the original matter, the Commission would not have classified the present situation as a mere administrative error. It is clear that Trenton was purposefully violating Civil Service laws and regulations. Moreover, whether Trenton classified Mendez as a Seasonal Security Guard or Senior Security Guard is irrelevant. It is clear that he was serving as a Senior Security Guard. Trenton has not denied that Mendez performed such duties. Therefore, the Commission denies Trenton's request for reconsideration and a stay, and orders that Michael Morris' layoff be rescinded and he be returned with seniority and benefits to the position of Senior Security Guard from a special reemployment list effective September 17, 2011.

In addition, Morris requests back pay and counsel fees based on new information. The new information is a certification from former Trenton Business Administrator Guhl, which indicates that the Mayor wanted to reward Mendez with a position for his political contributions and that he wanted Mendez to be Morris' superior. Trenton has not disputed this claim or any of Morris' claims of bad faith. In this regard, the Commission notes that *N.J.A.C. 4A:2-1.5(b)*, in all appeals other than disciplinary and good faith layoff appeals, allows back pay and/or counsel fees to be granted as a remedy where an appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation. *See e.g., In the Matter of Anthony Hearn*, 417 *N.J. Super.* 289 (App. Div. 2010). *See also, In the Matter of Kathryn E. Clark*, Docket No. A-5548-93T2 (App. Div. April 28, 1995), *cert. denied*, 142 *N.J.* 457 (1995). In the present matter, the Commission finds that Trenton did in fact take adverse action against Morris in bad faith and/or with invidious motivation. The record evidences that Trenton purposefully violated Civil Service laws and rules to place Mendez in a position which should have been Morris'. Further, the certifications of Guhl and Richardson show a clear animus

towards Morris and a desire to give Mendez a position at any cost. Again, Trenton has not denied any of these claims. Therefore, based on these particular circumstances, the Commissions find the awarding of back pay and counsel fees is appropriate. Thus, Morris is entitled to back pay from September 16, 2011 to the date of his actual reinstatement.

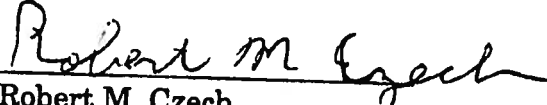
ORDER

Therefore, it is ordered that Trenton's request for reconsideration be denied and that Trenton immediately reinstate Morris to the title of Senior Security Guard. In the event that Trenton has not made a good faith effort to comply with this decision within 10 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 11<sup>th</sup> day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000.

Further, the Commission orders that Morris be granted back pay, benefits and seniority from September 16, 2011, through the date of his actual reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. The Commission further awards reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*. Proof of income earned and an affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of Morris to Trenton within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and/or counsel fees. However, under no circumstances should Morris' reinstatement be delayed pending resolution of any potential back pay and/or counsel fees dispute.

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 4TH DAY OF SEPTEMBER, 2013



Robert M. Czech  
Chairperson  
Civil Service Commission



**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312**

**Attachment**

**c: Vincent M. Avery, Esq.  
Caryl Amana, Esq,  
Jack A. Butler, Esq.  
Michael Morris  
Robert Mendez  
Sam Hutchinson, Business Administrator  
Kenneth Connolly  
Joseph Gambino**



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Morris,  
City of Trenton

Layoff Rights

CSC Docket No. 2012-1733

ISSUED: ~~APR 0 3 2013~~ (EG)

Michael Morris, a Senior Security Guard with the City of Trenton's Recreation and Natural Resource Department, represented by Jack A. Butler Esq., appeals the attached determination of his layoff rights by the Division of State and Local Operations (SLO).<sup>1</sup>

By way of background, Trenton submitted a plan to SLO to lay off employees in various departments including the Recreation and Natural Resource Department. The plan was approved and notices were required to be sent to the affected employees. On September 7, 2011, SLO issued a letter to the appellant advising him of his layoff rights. In that letter, SLO advised appellant that he had no displacement rights and would be laid off effective September 16, 2011. The appellant was laid off and his name was placed on the appropriate special reemployment lists. Further, the record evidences that the appellant, who was previously a Supervising Security Guard, had accepted a demotional title right to Senior Security Guard in a prior layoff action initiated in November 2010.

In the instant appeal, the appellant contends that his title rights were violated. He claims that Robert Mendez was hired as a part-time provisional Senior Security Guard on March 24, 2011. He also alleges that James Moses was also hired as a Senior Security Guard. Additionally, the appellant claims that Mendez was paid as a full-time employee. In support of this contention, the appellant submits copies of Mendez's pay statements. The appellant claims that he should

<sup>1</sup> SLO is now the Division of Classification and Personnel Management.

have had title rights to the positions occupied by Mendez and Moses as he had more seniority than both of these employees. In this regard, the appellant indicates that his employment began in 2004. Further, the appellant argues that the appointing authority is attempting to circumvent Civil Service layoff rules by keeping Mendez in a part-time provisional title while he performs the duties of a full-time Senior Security Guard. Moreover, the appellant argues that his layoff was in bad faith. In this regard, the appellant provides a witness statement concerning the prior November 2010 layoff action and derogatory comments made by the Mayor regarding the appellant. This witness statement also indicated the rate of pay for Mendez as a "Seasonal" Security Guard.

The appointing authority, despite numerous opportunities and requests, did not submit any arguments for the Civil Service Commission to review. However, it did provide the employment history for Moses and Mendez which had not been entered into the County and Municipal Personnel System (CAMPS) as required.<sup>2</sup> The appointing authority indicated that Moses had worked as a Seasonal Security Guard from April 21, 2011 until October 1, 2012. It also indicated that Mendez was hired as a Supervising Security Guard on July 9, 2010 and separated from this position on September 23, 2011. Mendez was then hired as a Seasonal Security Guard on May 24, 2011 and is still employed in that capacity.

### CONCLUSION

In an appeal of this nature, it must be determined whether SLO properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria. *N.J.A.C. 4A:8-2.1(a)* provides that a lateral title right means the right of a permanent employee to exercise displacement rights as set forth in *N.J.A.C. 4A:8-2.2* against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. *N.J.A.C. 4A:8-2.1(b)* states that a demotional title right means the right of a permanent employee to exercise displacement rights as set forth in *N.J.A.C. 4A:8-2.2* against an employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. *N.J.A.C. 4A:8-2.2(d)* lateral and demotional title rights shall be provided to a position held by a provisional employee who does not have permanent status in another title.

Initially, the Commission notes that the appellant did not raise any bad faith arguments or provide any evidence of bad faith concerning his *current* layoff effective September 16, 2011. All of his bad faith arguments concern the November 2010 layoff. Thus, any such arguments are untimely. See *N.J.A.C. 4A:8-2.6(b)*.

With regard to the present layoff, it is noted that SLO correctly determined the appellant's layoff rights based on the information it had at the time. However, in

---

<sup>2</sup> There is evidence that the Division of Classification and Personnel Management's predecessor required only a bi-annual reporting of seasonal employees.

reviewing the matter now, it is clear that the appellant was not properly laid off. *N.J.S.A. 11A:4-13(c)* provides that temporary appointments may be made to temporary positions established for a period aggregating not more than six months in a 12-month period as approved by the Commission. These positions include, but are not limited to, seasonal positions. Thus, it is clear that a seasonal position is a temporary appointment and the appointment of Mendez exceeds these limits. Further, Mendez is still employed and per the appellant's undisputed allegations, performing the same duties that the appellant performed. Based on the foregoing, the Commission finds that the appointing authority has improperly utilized a seasonal position where a permanent appointment appears to be needed. Therefore, the Commission orders the temporary appointment of Mendez be terminated. Further, the appointment of the appellant from the special reemployment list for Senior Security Guard is ordered. SLO should reconstruct his personnel record accordingly.

With regard to remedy, *N.J.A.C. 4A:2-1.5(b)*, in all appeals other than disciplinary and good faith layoff appeals, allows back pay and/or counsel fees to be granted as a remedy where an appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation. *See e.g., In the Matter of Anthony Hearn, 417 N.J. Super. 289 (App. Div. 2010). See also, In the Matter of Kathryn E. Clark, Docket No. A-5548-93T2 (App. Div. April 28, 1995), cert. denied, 142 N.J. 457 (1995).*

In evaluating the underlying merits of the appellant's case, the Commission finds that other sufficient cause is not evident in this case. The record does not evidence that the original determination of layoff rights for appellant was done in bad faith or with invidious motivation. Therefore, the instant matter is akin to administrative error and generally, no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service, 151 N.J. Super. 86 (App. Div. 1977); O'Malley v. Department of Energy, 109 N.J. 309 (1987); HIP of New Jersey v. New Jersey Department of Banking and Insurance, 309 N.J. Super. 538 (App. Div. 1998).* Therefore, based on the specific merits of this case, sufficient cause has not been established for an award of back pay or counsel fees.

Finally, to maintain a complete and accurate record of Civil Service employees and to ensure that Civil Service laws and regulation are adhered to, the Commission orders that the appointing authority enter all temporary appointments, such as seasonal employees, into CAMPS. Further, the Commission recommends that the Division of Classification and Personnel Management remind all local jurisdictions that all temporary appointments, such as seasonal employees, are to be entered into CAMPS.

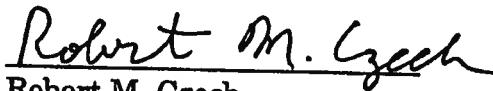
**ORDER**

Therefore, it is ordered that this appeal regarding the determination of layoff rights be granted and Michael Morris's layoff be rescinded and he be returned with seniority and benefits to the position of Senior Security Guard, which is currently held by Robert Mendez, from a special reemployment list effective September 17, 2011. The appellant is not entitled to any other remedies, such as back pay or counsel fees. However, if appellant is not reinstated within 30 days of the date of issuance of this decision, he shall be entitled to differential back pay beginning on the 31st day to the date of actual reinstatement.

It is further ordered that Robert Mendez be removed from his seasonal Security Guard position.

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

**DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3RD DAY OF APRIL, 2013**



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

**Attachment**

c: Jack A. Butler Esq.  
Michael Morris  
Robert Mendez  
Sam Hutchinson, Business Administrator  
Kenneth Connolly  
Joseph Gambino

