



B-40

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher White,
Division of Rate Counsel,
Department of the Treasury

CSC Docket No. 2015-2599

ISSUED: APR 20 2015 (SLD)

The Superior Court of New Jersey, Appellate Division has remanded the matter of Christopher White's appeal of the Civil Service Commission's (Commission) decision denying his appeal of his reassignment, to allow the parties to submit additional information for the Commission to consider. Copies of the Appellate Division's March 17, 2015 order and the Commission's decision, *In the Matter of Christopher White* (CSC, decided November 20, 2013), are attached hereto and incorporated herein.

The facts of this matter are thoroughly discussed in the Commission's attached decision. In the Commission's previous decision, it denied the appellant's appeal of his reassignment, finding that he had not established that his reassignment was made in bad faith. It also found that he had not established that the Director of the New Jersey Division of Rate Counsel (DRC) was the sole individual with the authority to authorize the relocation of the division or that the Director of the DRC had even disputed the relocation. The appellant appealed that decision to the Appellate Division. Thereafter, the appellant requested an opportunity to supplement the record. As a result, the Appellate Division remanded the matter on March 17, 2015 to the Commission to consider the parties' additional documents and to determine if the information is relevant to the issues on appeal. The Appellate Division further ordered that the proceedings be completed within 45 days.

On remand, the appellant submits e-mails, for the time period of January 25, 2013 to February 20, 2013, from the Division of Property Management (Property

Management), Department of the Treasury (Treasury), which the appellant argues establish his reassignment was made in bad faith. It is noted that the e-mails refer to the logistics of moves of multiple offices and/or staff, including the Casino Control Commission, Gaming Enforcement, Racing Commission, Department of Health, the Division on Civil Rights, Office of the Medical Examiner, DRC, and the resulting Information Technology (IT) and/or facilities needs. In this regard, he maintains that the e-mails establish that Treasury's argument that Property Management was responsible for making the decision to relocate the DRC was false. Rather, the appellant asserts that the e-mails prove that the decision to relocate the DRC was made by the Governor and Treasury and that the Director of the DRC had no involvement or input and was not even informed of the move until February 12, 2013. For example, an e-mail dated February 12, 2013 noted that the DRC was notified that day that "they need to be relocated to Trenton in the next 8 weeks," that there was a "need to work quickly to get this Governor/Treasurer initiative accomplished," that the "Rate Payer will be coming down on Friday morning to look at the space" and where the DRC network switches and servers could be "hosted," including 50 West State Street or the New Jersey Network (NJN) building.¹ Several of the e-mails, including one from February 7, 2013, reference that the Governor wanted an "unnamed" office of 30 to 40 staff members moved the first or second week of April, but the name of the office was not yet public information. A January 25, 2013 e-mail noted that there were "some potential move initiatives coming down from the admin [sic]" and they were "trying to assess availability within our portfolio in Trenton and 140 Front is a candidate." A February 20, 2013 e-mail referenced the move of the Racing Commission and other offices and noted that it was "the Administration's initiative to bring the Ratepayer Advocate to Trenton."

The appellant also contends that Treasury's assertion that the move was a cost saving measure was not originally a factor in the move and thus, cannot be considered now as a reason for the move, except to establish that his reassignment was made in bad faith. In a February 12, 2013 e-mail, the former Director of Communications with Treasury indicated that the move was:

. . . being made to bring Rate Counsel's people closer to the BPU [Board of Public Utilities] offices, which were also relocated from Newark to Trenton in 2011, and to have their operations more centrally located within the [S]tate.

It is not a cost saving move.

¹ In a February 13, 2013 e-mail, it was noted that one of the advantages of using the NJN building was that it was a State-owned facility and that the short and long term needs and what investments had already been made to make the best business decision in determining where to locate the IT equipment as a result of multiple moves of State offices.

Additionally, the appellant asserts that pursuant to *N.J.S.A. 52:27EE-47*,² only the Director of the DRC has the authority to appoint, hire or remove employees of the DRC, and thus, Treasury cannot be considered the appointing authority and consequently, did not have the authority to relocate the DRC. Finally, the appellant argues that the evidence establishes that the relocation of the DRC “violates *N.J.S.A. 52:27EE-46*”³ and the legal requirement that Rate Counsel by law is independent of any supervision or control by the department or by any board or officer thereof [sic].” The appellant maintains that this violation constitutes bad faith and that the inaction of the Director of the DRC “cannot negate the explicit provisions of *N.J.S.A. 52:27EE-46* or cure the violation of law.”

In response, the DRC and Treasury argue that the additional documents submitted by the appellant should not affect the Commission’s determination that the appellant’s reassignment was not made in bad faith. In this regard, they note that the New Jersey State Constitution, Article 5, Section 1 vests the State’s executive power in the Office of the Governor, and Section 5 of Article 5 outlines a scheme of authority wherein the principal officers of State departments and agencies are under the supervision of the Governor. Thus, the Governor has the ultimate authority to determine the location of the offices of all State agencies, offices and departments. Moreover, they assert that nothing in *N.J.S.A. 52:27EE-46* through *N.J.S.A. 52:27EE-55* specifically grants the Director of the DRC the authority over the location of the physical offices, rather, those sections merely provide the Director with the authority to determine how the public’s interest should be served, and ministerial functions including funding the expenses of the office. Additionally, they argue that even assuming, *arguendo*, that the Director of DRC does have the authority to determine the location of the offices, the appellant’s evidence does not establish that the relocation of the DRC was a source of disagreement between the Director of the DRC, Treasury and/or the Governor. Further, they maintain that none of the evidence submitted by the appellant

² *N.J.S.A. 52:27EE-47* provides:

- a. The Director of the Division of Rate Counsel shall be an attorney-at-law of this State, appointed by the Governor.
- b. When exceptional circumstances arise, the Director of the Division of Rate Counsel, with the approval of the State Treasurer, may on a temporary basis retain such expert assistants as are necessary to protect the public interest, pursuant to a reasonable fee schedule established in advance by the Treasurer.
- c. Cases shall be assigned to staff attorneys or to attorneys hired on a case by case basis calculated to provide competent representation in the light of the nature of the case, the services to be performed, the experience of the particular attorney, and other relevant factors.

³ *N.J.S.A. 52:27EE-46* provides, in part, “There is hereby established in the Department of the Treasury the Division of Rate Counsel to be under the supervision of the Director of the Division of Rate Counsel . . . the division shall be independent of any supervision or control by the department or by any board or officer thereof.”

establishes that they acted in bad faith. Rather, the e-mails pertain to discussions among the staff of Property Management to present a palatable relocation package that addressed all fundamentals necessary to an office move.

Additionally, they argue that the relocation of the offices of the DRC did not deprive the appellant of any recognizable civil right. Rather, the decision to relocate the office, whether or not a cost savings may be apparent, was nothing other than a business decision to locate the DRC near to the BPU, the agency before which the duties and caseload of the DRC correspond. The relocation also placed the DRC within proximity of the Department of Banking and Insurance (DBI), as there are also overlapping responsibilities between DRC and DBI. They argue that it is commonplace for public bodies to determine the best sites to conduct their affairs, considering available resources, proximity to customers and/or demands, and other relevant factors, and that such a determination is an inherent managerial prerogative. Furthermore, they assert that the appellant's argument would strip this inherent managerial prerogative from the Governor and the highest ranking cabinet officials, and instead place the authority into the hands of an employee who claims to be disadvantaged as a result of a reasonable business decision. Finally, they note that the additional documentation submitted by the appellant does not establish that they acted unlawfully, unethically or outside the statutory scheme creating the DRC.

In response, the appellant reiterates that the new evidence establishes that Treasury misled and provided inaccurate and false statements to the Commission, that those actions establish that it has no credibility, and that the Commission should disregard its response. Moreover, the appellant maintains that Treasury's arguments are mere hearsay unsupported by any affidavit or documentary evidence and thus, his appeal should be granted. The appellant argues that the Commission cannot consider Treasury's prior submission absent providing him with due process to challenge the assertions made, and since no process was afforded, its submission should not now be considered. Therefore, the appellant contends that his new evidence shows that the decision to relocate the office of the DRC was contrary to the law. Furthermore, he maintains that DRC and Treasury's assertion that it could ignore the explicit provisions of *N.J.S.A. 52:27EE-46* and *N.J.S.A. 52:27EE-47* are contrary to recent rulings of the Court. For example, he cites *Berg v. Christie*, 436 *N.J. Super.* 220 (App. Div. 2014) where the appellants challenged a statute which suspended the cost of living increases for current and future public employees who would receive pension benefits. Finally, the appellant argues that the Governor's involvement only strengthens his position, since the Governor has no authority to direct where the office of the DRC is located.

CONCLUSION

Initially, it is noted that the Appellate Division remanded the matter to the Commission to allow additional submissions and to consider whether the appellant's additional documents were relevant to the issues on appeal. However, while the Commission finds the submissions helpful inasmuch as it strives to have a complete record to review, it does not find the additional documents persuasive in any way with regard to the issue, namely, whether the appellant's reassignment was made in bad faith. Although the documents submitted indicate that the Governor's Office was involved in the determination to move the offices of the DRC, none of the documents establish that the appellant's reassignment was made in bad faith. In this matter, in order to successfully establish that the appellant's reassignment was in violation in *N.J.A.C. 4A:4-7.2*, the appellant would have to establish that the relocation of the office of the DRC was a pretext in order to affect him personally. Without such a showing, he cannot establish that his reassignment was made in bad faith. Moreover, none of the evidence submitted by the appellant even establishes that the relocation was an attempt to penalize any employee of the DRC. Rather, the relocation of the DRC was merely one of a series of office relocations made to centralize and share facilities among State agencies. Furthermore, as noted in a February 12, 2013 e-mail, the move of the DRC was to bring the DRC closer to the BPU offices, which were also relocated from Newark to Trenton in 2011.

Additionally, the Commission does not find the appellant's argument that *N.J.S.A. 52:27EE-47* provides *only* the Director of the DRC with the authority to appoint, hire or remove employees. *N.J.S.A. 52:27EE-47(b)* provides that "the Director of the Division of Rate Counsel, *with the approval of the State Treasurer*, may on a temporary basis retain such expert assistants as are necessary to protect the public interest, pursuant to a reasonable fee schedule established in advance by the Treasurer (emphasis added)."

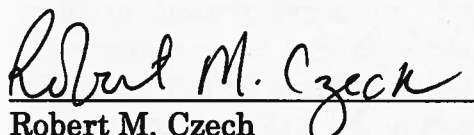
Finally, the Commission does not find the appellant's arguments persuasive that the Governor did not have the authority to initiate the relocation of the DRC. Moreover, even if the Governor did not have the authority to initiate the relocation, only the Director of the DRC could raise such a challenge. However, the record is devoid of such information. As noted by the DRC and the Treasury, the New Jersey State Constitution, Article 5, Section 1 vests the State's executive power in the Office of the Governor, who has the ultimate authority to determine the location of the offices of all State agencies, offices and departments.

ORDER

Therefore, the Commission finds that none of the additional arguments and documentation changes its prior decision. Accordingly, it reaffirms its previous November 20, 2013 decision on this matter.

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 15TH DAY OF APRIL, 2015**



**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**

Attachments

**c: Christopher White
Douglas Ianni
Stephanie A. Brand
Kenneth Connolly
Joseph Gambino
Todd Widger, DAG
Clerk, Appellate Division, Superior Court**

FILED, Clerk of the Appellate Division, Mar 18 2015, A-001819-13,

ORDER ON MOTION

IN RE CHRISTOPHER WHITE,
DIVISION OF RATE COUNSEL,
DEP'T OF TREASURY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001819-13T3
MOTION NO. M-004971-14
BEFORE PART B
JUDGE(S): JEROME M. ST. JOHN
GARRY S. ROTHSTADT

MOTION FILED: 02/27/2015
ANSWER(S) FILED: 03/11/2015

BY: CHRISTOPHER J. WHITE
BY: NEW JERSEY CIVIL SERVICE
COMMISSION

SUBMITTED TO COURT: March 16, 2015

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 17th day of MARCH, 2015, HEREBY ORDERED AS FOLLOWS:

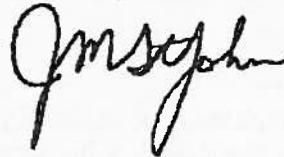
MOTION BY APPELLANT

MOTION TO ADD NEWLY DISCOVERED
EVIDENCE TO THE RECORD

DENIED AND OTHER

SUPPLEMENTAL: Limited remand to the Civil Service Commission to determine if appellant's proffered material is relevant to the issues on appeal and for a determination by the Commission of whether to supplement the record by the taking of additional evidence. The Commission's decision shall be made within forty-five days. We retain jurisdiction.

FOR THE COURT:



JEROME M. ST. JOHN, J.A.D.

B-6



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

**In the Matter of Christopher White,
Division of Rate Counsel,
Department of the Treasury**

Administrative Appeal

CSG Docket No. 2013-2286

ISSUED: NOV 26 2013

(SLD)

Christopher White, a Deputy Public Advocate 2, New Jersey Division of Rate Counsel (DRC), in but not of, the Department of the Treasury (Treasury), appeals the decision of the Treasury to relocate the office of the Division of Rate Counsel, effective April 8, 2013.

By way of background, the DRC was located in Newark, New Jersey. In a February 12, 2013 letter from the appointing authority¹ to the CWA union representative, it was indicated that the office for the DRC would be moved April 8, 2013 from Newark to Trenton. Specifically, it was explained that because employees of the DRC represent ratepayers as a party to every proceeding before the Board of Public Utilities (BPU) and the BPU was already relocated from Newark to Trenton, the DRC would also be relocated.

On appeal, the appellant initially argues that the reassignment of the office of DRC violates *N.J.A.C. 4A:4-7.2*.² Specifically, he asserts that since the

¹ Personnel records indicate that the appointing authority for DCR and Treasury is the same.

² The appellant also appeals the denial of his request to telecommute and/or to participate in an alternate workweek program, and he requests that the Civil Service Commission (Commission) find that the DCR may implement such programs. However, *N.J.A.C. 4A:6-2.7(a)* provides that an appointing authority may establish alternative workweek programs to accommodate operational and/or employee needs. Therefore, since the appointing authority has not established such programs, the Commission will not review the appellant's complaints with regard to those issues. The appellant has also requested an accommodation pursuant to the Americans with Disabilities

reassignment was not made by the Director of the DRC or in consultation with the Director of the DRC, the reassignment violates *N.J.A.C. 4A:4-7.2*. Specifically, he asserts that despite his request through the Open Public Records Act (OPRA) he has been provided no documentation which indicates that the Director of the DRC requested the relocation, and thus, the relocation of DRC is inappropriate. Moreover, he maintains that the basis for the relocation will not improve the efforts to represent ratepayers and thus it was made in bad faith and was an abuse of managerial discretion. The appellant claims that the relocation will increase the costs paid for office space and operations. Moreover, he maintains that the relocation improperly allows the inappropriate use of the DRC's assessment funds. Additionally, the appellant argues that the relocation of the DRC office is a *de facto* transfer pursuant to *N.J.A.C. 4A:4-7.1(c)* and therefore should require the employees' consent. Finally, the appellant asserts that the relocation is a *de facto* demotion since the increased commuting costs will effectively decrease his pay with no corresponding increase in pay to cover the commuting costs. In this regard, he notes that the commute from Newark to Trenton is 60 miles.

In response, Treasury initially indicates that although the DRC is in but not of Treasury, Treasury provides Fiscal and Human Resources services to DRC for which DRC reimburses the Treasury. By way of background, Treasury explains that the DRC represents ratepayers as a party to every proceeding before the Board of Public Utilities (BPU) in which a utility seeks to alter its rates or services. The DRC is charged with being "devoted to the maximum extent possible to ensuring adequate representation of the interest of those consumers whose interest would otherwise be inadequately represented in matters within the jurisdiction of the [DRC]." Moreover, it asserts that the physical move of the DRC from Newark to Trenton follows the move of the BPU from Newark to Trenton, and thus will improve the DRC's efforts to effectively fulfill its mandate to represent the State's ratepayers Statewide.

Additionally, Treasury asserts that the Division of Property Management and Construction (DPMC), is a division within Treasury and it is responsible for acquiring and disposing of interests and real estate on behalf of "any department, division, office, board, commission, council, or bureau in the Executive Branch of State Government." See *N.J.S.A. 52:18A-191 et seq.* and *N.J.A.C. 17:11-1.1 et seq.* *N.J.A.C. 17:11-4.1* specifically provides that the DPMC "will establish the appropriate catchment area for the agency's space requirements in order to maximize competition." Thus, Treasury asserts that the power to decide on the location of any State agency office, including DRC, ultimately resides with the DPMC. Moreover, Treasury asserts that according to the DPMC, there is a definite cost savings in relocating the DRC. Specifically, the DRC went from a leased space

Act. However, that matter is still pending at the departmental level and will not be addressed herein.

of 13,800 square feet to 11,718 square feet and the base rent went from \$387,871 in Newark to \$207,409 in Trenton, with an annual savings of \$180,462. Furthermore, it asserts that by relocating the DRC from Newark, it was able to have the Public Defender's Office take over the lease, resulting in an additional \$135,223 in savings, for a total savings of \$315,685. Finally, Treasury argues that even if the appellant is correct that the power to decide the location of where DRC employees work resides exclusively with the Director of the DRC, the Director did not invoke that authority at any time.

In response, the appellant disputes Treasury's assertion that DPMC has the authority to relocate the DRC. Rather, he reiterates that the Director of the DRC is the sole individual able to request the relocation, and that no such request was made. In support, he submits a number of redacted e-mails which he claims support his argument that the DRC was "kept in the dark" about the relocation. Moreover, he asserts that the Commission must require unredacted copies of those emails prior to making a decision in this matter. Additionally, the appellant argues that, pursuant to the residuum rule, the Commission cannot accept the appointing authority's assertions that there was a significant savings in the move or that it enabled the DRC to more easily perform its duties, without some type of supporting evidence. Therefore, the appellant asserts that he has presented sufficient evidence for "summary judgment" in his favor, since he has established that the relocation was made in bad faith, and was otherwise arbitrary, capricious and an abuse of its discretion. In this regard, he maintains that the relocation has led to a decreased efficiency of the DRC and resulted in substantial physical and financial hardships for most of the DRC staff.

CONCLUSION

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

In the instant matter, the appellant initially argues that the relocation of the DRC office is a *de facto* transfer pursuant to *N.J.A.C. 4A:4-7.1(c)* and therefore should require the employees' consent. The Commission does not agree. *N.J.A.C. 4A:4-7.1(a)* provides that a permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction. *N.J.A.C. 4A:4-7.1(a)1* defines an organizational unit as an appointing authority. Therefore, since the DRC did not change organizational units, the relocation cannot

be considered a transfer. Accordingly, the consent of any employee was not required.

Additionally, the appellant argues that the reassignment of the DRC office from Newark to Trenton was done in "bad faith." Specifically, he maintains that the basis for the relocation will not improve the efforts to represent ratepayers, will increase costs for office space and operation and was an abuse of managerial discretion. However, other than his mere allegations, the appellant has failed to present any evidence in support. Although the appellant appears to argue that it is the appointing authority that has the burden of proof in this matter, the Commission notes that *N.J.A.C. 4A:4-7.7* applies and specifically provides that when an employee challenges the good faith of a reassignment, the burden of proof is on the employee. Additionally, *N.J.A.C. 4A:4-7.2* provides that reassignments are to be made at the discretion of the appointing authority, and do not require the consent of an employee. In this regard, Treasury has provided legitimate business and operational reasons for the appellant's reassignments. Other than his bare allegations, 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 the entire DRC office in bad faith. Moreover, in order to sustain a claim of a bad faith reassignment, he would have to establish it was effected specific to him. Such was not the case as the entire Division was relocated.

Additionally, the Commission does not agree with the appellant that only the Director of the DRC had the authority to authorize the relocation of the DRC office. In this regard, personnel records indicate that the appointing authority of the DRC is Treasury. Moreover, despite the appellant's arguments to the contrary, he has provided no evidence that the DRC does not have an agreement with Treasury, making it the appointing authority for DRC. Finally, although the appellant claims that the Director is the only authority able to reassign employees, he has submitted no evidence which indicates that the Director disputes the relocation. Accordingly, the appellant has failed to establish by a preponderance of the evidence that the relocation of the DRC office was made in bad faith.³

ORDER

Therefore, the Commission orders that this appeal be denied.

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

³ The remainder of the appellant's arguments are either specious, irrelevant or misapplied to a proceeding decided on the written record. Accordingly, they merit no further discussion.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF NOVEMBER, 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 08625-0912**

**c: Christopher White
Douglas Ianni
Kenneth Connolly
Joseph Gambino**