



STATE OF NEW JERSEY

In the Matter of Alejandro Alicea-Lopez, *et al.*
City of Paterson

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2011-4133 *et al.*

OAL DKT. NO. CSV 9882-11

ISSUED: MAY 20, 2015 BW

The appeals of Alejandro Alicea-Lopez, Sharon Allen, Elbert Arroyo, Kamesea Cannon, Lamar L. Colclough, Audrey C. Cooley, Pablo Andrzej Cynarski, J. Del Valle, Daria L. Destefano, Theresa Dunphy, Stacie Ellis, George Garcia, Steve Gernant, Desiree S. Griffin, Ruth Hillas, Tina D. Hines, John Howe, Mercedes Kolomer, Douglas Laylor, Erika Lee, Charles Mawhinney, Eric McKenzie, Gicelle Metaxas, Rosemarie Ocasio, James Ona, Melinda Powell, Matthew Roussos, Michelle Roy, Robert Scott, Victor Stewart, Richard Stoll, Daniel Vega, and Robert Zeidler, Emergency Medical Technicians, City of Paterson, Department of Fire, of the good faith of their layoffs effective May 16, 2011, for reasons of economy and efficiency, was heard by Administrative Law Judge Mumtaz Bari-Brown, who rendered her initial decision on April 14, 2015. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on May 20, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

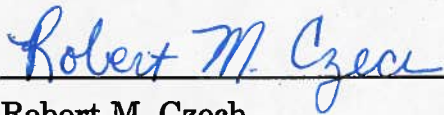
ORDER

The Civil Service Commission finds that the action of the appointing authority in laying off the appellants for reasons of economy and efficiency was justified. The Commission therefore affirms that action and dismisses the appeals of Alejandro Alicea-Lopez, et al.

Re: Alejandro Alicea-Lopez, *et al.*

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
MAY 20, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 9882-11

AGENCY DKT. NO. 2011-4133

**IN THE MATTER OF ALEJANDRO ALICEA-
LOPEZ, ET AL.,¹ CITY OF PATERSON.**

Mark I. Silverblatt, Esq., for appellants (Bisceglie & Associates, P.C., attorneys)

Steven S. Glickman, Esq., for respondent City of Paterson (Ruderman & Glickman, attorneys)

Record Closed: February 27, 2015

Decided: April 14, 2015

BEFORE **MUMTAZ BARI-BROWN, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellants appeal their layoffs from the position of emergency medical technician (EMT) by respondent City of Paterson (respondent, Paterson or the City), effective May 16, 2011. Appellants allege that the layoffs were based on bad faith. Respondent

¹ Appellants are Alejandro Alicea-Lopez, Sharon Allen, Elbert Arroyo, Kamesea Cannon, Lamar L. Colclough, Audrey C. Cooley, Pablo Andrzej Cynarski, J. Del Valle, Daria L. Destefano, Theresa Dunphy, Stacie Ellis, George Garcia, Steve Gernant, Desiree S. Griffin, Ruth Hillas, Tina D. Hines, John Howe, Mercedes Kolomer, Douglas Laylor, Erika Lee, Charles Mawhinney, Eric McKenzie, Gicelle Metaxas, Rosemarie Ocasio, James Ona, Melinda Powell, Matthew Roussos, Michelle Roy, Robert Scott, Victor Stewart, Richard Stoll, Daniel Vega, Robert Zeidler.

maintains that the layoff action was based upon reasons of good faith, economy and efficiency.

On August 17, 2011, the director of Merit System Practices and Labor Relations transmitted the matter to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Hearings were held on May 22, 2013; April 9, April 30, May 30, and June 2, 2014; and January 15, 2015. Upon receipt of written summations, the record closed on February 27, 2015.

ISSUE

The issue is whether appellants' layoff was motivated by bad faith, rather than reasons of economy and efficiency. Appellants have the burden of proof. N.J.S.A. 11A:8-4; N.J.A.C. 4A:8-2.6(c).

FINDINGS OF FACT

Based on the relevant evidence, I **FIND** as **FACT**:

1. Appellants were employed by the City of Paterson as emergency medical technicians (EMTs) and were members of the Paterson Emergency Medical Technicians Association.
2. On or about March 2011 appellants received notices of their layoff, effective May 2011, and they not been rehired by respondent.
3. Paterson's Emergency Medical Services Division (EMS Division or ambulance services) was staffed by firefighters and EMTs, employees of the Paterson Fire Department (Department).
4. The EMTs consisted of both full-time and part-time civil-service employees.

5. At the time of the layoff action, there were thirty-three full-time and part-time EMTs employed by the Department.
6. The EMS is a revenue generator for the City.
7. In September 2004, battalion chief Joseph A. Murray issued the "Proposed Transition of Emergency Medical Services to a Uniformed Position of the Paterson Fire Department."
8. Chief Murray proposed to lay off the EMTs (sixty-six) and assign the functions of the EMTs to the firefighters.
9. The proposal also included hiring fifty firefighter positions and five fire captains.
10. The last EMT was hired in 2005, and thereafter the number of EMTs decreased to thirty-three through attrition. (P-3.)
11. In 2005, the Department's chief, Michael Postorino, issued "2005 Facilities Status Report & EMS Reorganization," which claimed that the Department's manpower was insufficient to staff the four ambulances in the EMS Division.
12. Postorino's report further claimed that the Department could increase "substantially" the revenue from its EMS Division if additional firefighters were hired, ambulance fees increased, and delinquent accounts paid.
13. Chief Postorino further proposed to hire sixty-six firefighters to cover four ambulances at all times, and assign the sixteen full-time EMT employees to cover two additional ambulances from 8:00 a.m. to 4:00 p.m., and 4:00 p.m. to midnight.

SUMMARY OF TESTIMONY

Victor Stewart

Victor Stewart served as an EMT from 1987 to 2011, and also served as president of the union. In 1987 Paterson employed nearly eighty-five full-time and part-time EMTs, who along with firefighters covered four ambulances. Many part-time EMTs held full-time positions in other professions, such as police officer or teacher. The number of EMTs gradually decreased to twenty-nine. For several years, until 2010, EMTs worked without a renewed contract. (P-17.) Stewart described the salary of EMTs as "low wages," and consequently there was low morale.

Daniel Vega

Daniel Vega was a part-time EMT from 2001 to his layoff in 2011. He also held the position of treasurer of the union. Vega testified that part-time EMTs received no benefits and were unfairly and consistently criticized in the media. Often, schedule conflicts were due to the EMTs' commitments to their primary employment, e.g., police officer, nurse, teacher. Moreover, the Department was aware of each EMT's primary employment and his/her schedule. Vega explained that when the Department called an EMT who was unavailable to cover an EMS shift due to, e.g., a schedule conflict, the Department incurred overtime costs because a firefighter, whose wages were higher than those of an EMT, would cover the shift. The EMTs were subjected to criticism and unwarranted disciplinary actions.

Vega further testified that the cost of staffing the City's ambulances with firefighters was greater than the cost of staffing them with EMTs. (P-22.) He presented a hypothetical "cost calculation" based on apportioning 50 percent of the firefighters' scheduled shift assigned to the ambulances, rather than the actual amount of shift time assigned to the ambulances, which was 25 percent. His analysis omitted the federal government's Staffing for Adequate Fire and Emergency Response ("SAFER") Grant, which offset firefighter salaries, and did not compute the increased revenues regained from the need to employ mutual aid from neighboring municipalities.

Anthony Zambrano

Anthony Zambrano, chief financial officer for Paterson, testified about the City's overall financial operations. In fiscal year 2010 (July 1, 2009, to June 30, 2010), the City faced a fiscal crisis due, in large part, to reductions in revenues, revaluations, and tax appeals. Therefore, Zambrano applied for \$51 million in State aid/transitional aid. (R-5.) The application identified prior years' revenue decreases and predicted layoffs if transitional aid were not received. (R-5.) State aid was approved in the amount of \$27 million. Additionally, Paterson was required to sign a Memorandum of Understanding implementing a hiring and salary freeze. Also, the State directed Paterson to review all personnel and determine whether a layoff or other personnel reduction was feasible and in the best interests of the City. (R-6.)

Zambrano further testified that Paterson's fiscal condition worsened in fiscal year 2011. Indeed, the City experienced a \$7 million shortfall in revenue. Specifically, the difference in revenues between the 2011 budget and the 2010 budget totaled \$25 million. (R-7.) Zambrano acknowledged, however, the increases in salary for police in the amount of \$8.8 million, the health-insurance premiums of \$3.6 million, and police and fire pension payments of \$3.6 million. Zambrano also acknowledged increases for Fire Department salaries, municipal debt service, State tax refunds, judgments and a reserve for uncollected taxes. Nevertheless, Zambrano calculated the City's shortfall of \$48 million "even after receipt of transitional aid." (R-7.)

For fiscal year 2011, Zambrano applied for \$70 million in State aid, \$19 million more than requested in 2010. (R-8.) Zambrano believed that without the grant of transitional aid, layoffs would likely occur in several departments, including Community Development, Human Services, Legal, Public Works, Administration and Finance, and Police and Fire. (Ibid.) The application for State aid was approved in the amount of \$28 million: \$22 million in transitional aid, and a \$6 million loan. (R-9.) Additionally, to reduce the 2011 budget shortfall, Paterson increased taxes by \$27 million, approximately 28 percent. (R-7.) Zambrano calculated that \$20 million was required to "close the gap."

Charles Thomas

Charles Thomas, Paterson business administrator, testified that as of July 1, 2010, the City experienced a budget deficit of \$77 million. Several options were considered to reduce the deficit, including refinancing the debt service, layoffs, and increasing certain fees. Consequently, the City imposed a 29 percent tax increase and applied for transitional aid, which was approved in the amount of \$28 million. Further, as alternatives to layoffs, the City proposed a hiring freeze, implemented a ten-day voluntary furlough, terminated all nonessential provisional employees, and deleted 124 vacant positions. (R-11.) Notwithstanding discussions between the City and EMT union members, a mutual agreement could not be reached, and the City proposed a layoff plan that would eliminate thirty-three EMTs. The Civil Service Commission requested that the City submit a more comprehensive layoff plan. In response, the City submitted a reduction-in-force plan to lay off 204 employees, including appellants. The Commission approved the layoff plan. (R-12.) Thomas also confirmed that the Commission approved the City's proposal of the layoff and/or demotion of 159 uniformed members of the Police Department. (R-13.) Thomas acknowledged, however, that no layoffs were proposed for firefighters because the City could not obtain a waiver from the SAFER Grant restrictions for the Fire Department.

Thomas explained that he requested that each department submit a plan describing necessary services to the residents and savings to the City. He also acknowledged that Chief Postorino's plan limited the layoff to the EMTs and required firefighters to assume the duties of the EMS. While the Police Department made a successful effort to modify a federal grant to allow a reduction in police staff, Thomas could not recall or provide documentation that the Fire Department requested a modification of the federal government's SAFER grant to allow a reduction in Fire Department staff. Further, Thomas could not recall any other data he received from Chief Postorino to determine the amount of additional overtime or personnel required to compensate for the loss of EMTs. Thomas maintained, however, that the "finance team" conducted an analysis of costs required to prevent the layoffs of EMTs. Thomas further maintained that his review of the New Jersey Department of the Treasury's 1999

"Local Government Budget Review" supported the City's determination to eliminate civilian EMTs and train the firefighters to assume EMS responsibilities.

Michael Postorino

Chief Michael Postorino testified about the operational history of the EMS. Some Department firefighters and EMTs have always provided emergency medical services, but in 2001 all firefighters were required to obtain EMT certification. However, the Department has experienced "excessive absenteeism" among the civilian EMTs. On several occasions, the Department had to employ "mutual aid" from neighboring towns to cover ambulance calls. This resulted in a depletion of Paterson's firefighting staff "to dangerous levels" and reduced revenues. For example, in one year, the City was unable to respond to approximately 1,800 calls, and over a five-year period the City experienced a revenue loss of \$300,000. (P-1.) Consequently, in 2004 the Department prepared a plan to transition EMS from a civilian to a uniformed service. The proposal addressed the staffing problems and offered a better system for the provision of ambulance services. (Ibid.)

Postorino further explained the "Facilities Status Report & EMS Reorganization," which included the hiring of sixty-four firefighters, who would also perform emergency medical services. (R-1.) Postorino noted that a SAFER Grant would offset a significant percentage of the cost, but could not be used to hire civilian EMTs. Postorino further noted that the reorganization would allow the Department to meet all calls, increase revenues, and resolve attendance and overtime problems. Postorino further asserted that the reorganization would increase revenues significantly more than the cost of the additional firefighters, while providing enhanced firefighting abilities and greater emergency medical services to the community. Consequently, in June 2005, Postorino applied for the SAFER Grant. (R-2.) The Grant required firefighters to be trained for EMS certification within twenty-four months. In January 2006, Postorino prepared a "SAFER Grant Presentation" upon receiving a SAFER Grant in the amount of \$6,374,080. (R-3.) Postorino maintained that the benefits of the SAFER Grant included proper staffing of the Fire Department and EMS, an increased level of services, additional revenue, reduced reliance on mutual aid, and better control of operations.

DISCUSSION

Public employees enjoy the unique protection of their jobs by operation of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6. The objective of the Act is to achieve an efficient public service by merit appointments, and broad tenure protection is extended to all appointees. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 145 (1965). Although the Act permits a permanent employee to be laid off for economy, efficiency, or any other related reason, whenever possible the employee should be demoted in lieu of being laid off. N.J.S.A. 11A:8-1. As such, the Act imposes upon public employers a responsibility to assure that personnel actions are taken in good faith and not for improper motives. Wooten v. Hillside Police Dep't, 92 N.J.A.R.2d (CSV) 176, 178. A protected employee may be laid off for economic reasons and her duties may be assigned to other employees. Gianettino v. Civil Serv. Comm'n, 120 N.J.L. 531, 533 (Sup. Ct. 1938). A layoff action based on economic reasons will not meet the test of good faith if it is determined to be a pretext for an improper dismissal not related to economy or efficiency. Prosecutor's Detectives and Investigators Ass'n of Essex Cnty. v. Hudson Cnty. Bd. of Freeholders, 130 N.J. Super. 30, 43 (App. Div.), certif. denied, 66 N.J. 330 (1974); Amodio v. Civil Serv. Comm'n, 81 N.J. Super. 22 (App. Div. 1963).

The employee claiming a bad-faith layoff must prove that the layoff was instituted for reasons other than economy, efficiency, or other related reasons. N.J.S.A. 11A:8-4; N.J.A.C. 4A:8-2.6(a), (c); DiMaria v. Dep't of Human Servs., 92 N.J.A.R.2d (CSV) 238, 239. The actions of the appointing authority are vested with a presumption of good faith. Schnipper v. Twp. of N. Bergen, 13 N.J. Super. 11, 15 (App. Div. 1951). Consequently, the employee must show that there is no logical or reasonable connection between the layoff justification of economy or efficiency and the layoff itself. Kyles v. Paterson, 5 N.J.A.R. 445, 461 (Civil Service 1982). Moreover, if the presumption of good faith is not overcome by sufficient proofs, it is of no consequence that considerations other than economy underlay or played some part in that action. Schnipper, supra, 13 N.J. Super. at 15.

Establishing the connection between economy or efficiency and the layoff decision is a question of fact. Newark v. Civil Serv. Comm'n, 112 N.J.L. 571, 575 (Sup. Ct. 1934), aff'd, 114 N.J.L. 185 (E. & A. 1935). The trier of facts must examine the words, conduct and circumstances in existence at the time of a layoff. Greco v. Smith, 40 N.J. Super. 182, 193 (App. Div. 1956). Where the good faith of the asserted reason of economy is challenged, the issue is not "whether a plan conceived and adopted for the purpose of saving money actually, in operation, attained its 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 . . . without following the [Civil Service Act]." Newark v. Civil Serv. Comm'n, supra, 112 N.J.L. at 574. If there is no showing that bad faith was present, the fact that the reviewing agency or court would have chosen a different method of achieving the needed savings or that the agency had other alternatives available is an insufficient basis for reversing the layoff. Acchitelli v. Dep't of Env'tl. Prot. and Energy, 93 N.J.A.R.2d (CSV) 716, 718.

Here, appellants assert that Paterson "long planned to eliminate the civilian EMTs" and the fiscal crisis in 2010–2011 was a mere pretext. Further, Paterson failed to produce a cost-benefit analysis supporting the layoff of thirty-three EMT employees. I have considered carefully the relevant evidence and the positions of the parties. I am persuaded more by the evidence presented by respondent than that presented by appellants.

In 1999 the New Jersey Department of Community Affairs (DCA) conducted a study of the City's operations, including the Fire Department and the EMS Division within the Fire Department. Based on that study, the DCA issued a report that concluded, in part:

Paterson is to be commended for the cost effectiveness of using part time employees especially when there is a 24 hour, seven day schedule. This enables them to use members of the community including teachers, police officers and fire fighters.

The DCA Report further noted certain problems associated with the use of part-time civilian employees, and suggested that a reduction and consolidation of personnel might improve efficiency.

Respondent asserts that it has reduced costs through the reduction in force. The City appropriated \$33,766,142 for firefighter salaries for fiscal year 2010, and \$31,806,891 for fiscal year 2011. In fiscal year 2012 the City budgeted \$30,378,420, reducing appropriations by another \$1.5 million from fiscal year 2011. In fiscal year 2013 respondent appropriated \$31,353,199 for firefighter salaries, "approximately \$1 million more than appropriated for Fiscal Year 2012, but approximately \$500,000 less than appropriated for Fiscal Year 2011 and \$2.4 million less than appropriated for Fiscal Year 2010, the year before the layoffs occurred." (Respondent's Brief.) Respondent maintained that there was no additional overtime due to the elimination of civilian EMTs.

I have carefully considered the arguments of the parties. Based on the whole of the credible evidence, I **CONCLUDE** that appellants have not demonstrated that respondent's action was motivated by bad faith. I further **CONCLUDE** that the layoff was initiated for reasons of economy and efficiency. I further **CONCLUDE** that respondent acted in good faith in its decision to lay off appellants.

ORDER

Based on the foregoing, it is **ORDERED** that the appeals of appellants Alejandro Alicea-Lopez, et al., be **DISMISSED**.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO 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.

April 14, 2015

DATE

Mumtaz Bari Brown
MUMTAZ BARI-BROWN, ALJ

Date Received at Agency:

4-14-15

Date Mailed to Parties:
dr

APR 15 2015

Laura Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

Presented by Appellants:

Victor Stewart
Daniel Vega
Stacie Ellis

Presented by Respondent:

Charles Thomas
Kevin Hancock
Anthony Zambrano
Michael Postorino

Exhibits

Presented by Appellants:

- P-1 Proposed Transition of Emergency medical Services to a Uniformed Position of the Paterson Fire Department
- P-2 Request of Public records
- P-3 Employee Hire List January 2000-December 2009
- P-4 OPRA-Response
- P-5 City of Paterson Ordinance of Fire Division
- P-6 Reduction in Force Plan 3-1-11
- P-7 19997 NJ Local Government Budget Review
- P-8 2013 Municipal Data Sheet
- P-9 City of Paterson Transition Plan SFY 2012
- P-10 Reduction in Force Plan submitted to Civil Service 1-14-11
- P-11 Budget Summary for Fire Dept.
- P-12 Budget Summary
- P-13 Print of article from Paterson Press 6-14-13
- P-14 City of Paterson OPRA Request

- P-15 2005-2010 Contract between City of Paterson and Paterson Firefighters' Association
- P-16 CBA between City of Paterson and PEMTA 7-1-98 to 6-30-03
- P-17 Memorandum Agreement between City of Paterson & PEMTA 2-17-10
- P-18 Newspaper Article
- P-19 Torres letter to Jacobucci
- P-20 Torres Letter to Jacobucci 3-1-07
- P-21 Postorino Memo on Scheduling Policy 4-16-09
- P-22 Vega Cost Analysis

Presented by Respondent:

- R-1 Postorino Status Report
- R-2 SAFER Grant Application
- R-3 Grant objectives summary
- R-4 Fiscal year 2010 municipal budget
- R-5 Fiscal year 2010 municipal aid
- R-6 Fiscal year 2010 memorandum of understanding
- R-7 Fiscal year 2011 budget
- R-8 Fiscal year 2010 application
- R-9 Fiscal year 2011 memorandum of understanding
- R-10 Fiscal year 2012 municipal budget
- R-11 Layoff Plan
- R-12 Reduction in Force Plan 3-1-11
- R-13 Layoff Plan