



STATE OF NEW JERSEY

In the Matter of Cindy Norcross
Winslow Township
Department of Public Safety

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FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2014-2525
OAL DKT. NO. CSV 6343-14

ISSUED: SEPTEMBER 2, 2015 BW

The appeal of Cindy Norcross, Public Safety Telecommunicator, Winslow Township, Department of Public Safety, good faith layoff effective May 31, 2014, was heard by Administrative Law Judge John Schuster, III, who rendered his initial decision on August 4, 2015. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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 September 2, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

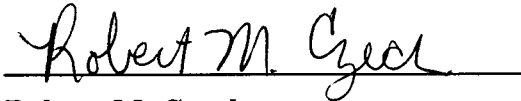
ORDER

The Civil Service Commission therefore grants the motion for summary decision and upholds the good faith layoff and dismisses the appeal of Cindy Norcross.

Re: Cindy Norcross

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
SEPTEMBER 2, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a solid 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
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSV 6343-14

AGENCY DKT. NO. 2014-2525

**IN THE MATTER OF CINDY NORCROSS,
TOWNSHIP OF WINSLOW,
DEPARTMENT OF PUBLIC SAFETY.**

Matthew S. Wolf, Esq., for appellant

Eric J. Riso, Esq., for respondent (Platt & Riso, P.C., attorneys)

Record Closed: August 4, 2015

Decided: August 4, 2015

BEFORE **JOHN SCHUSTER III**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter Cindy Norcross (appellant) appeals the May 31, 2014 termination of her employment as a result of a layoff plan submitted by the Township of Winslow (respondent or Township) to the Civil Service Commission who approved that plan on January 17, 2014. On July 6, 2015 respondent filed a notice of Motion for Summary Decision requesting that appellant's appeal be dismissed. Appellant filed an opposition

to respondent's motion on July 22, 2015 and a subsequent brief was submitted by respondent in opposition to appellant's brief.

DISCUSSION

In respondent's motion it argues that summary decision should be granted because there are no material issues of fact in dispute. Respondent says the Township prepared and submitted a layoff plan to Civil Service Commission on January 13, 2014 which provided that the Winslow Township's police dispatch operations would be eliminated as it would be taken over by the Camden County Communication Center at no cost to the Township. The elimination of the dispatch operations would save the Township approximately \$570,000 for fiscal year 2014. The plan also stated that Camden County would provide the same services to the Township that the local dispatch office would provide at no additional cost to the Township. The layoff plan also stated the only employees affected would be the police department's communication personnel. The layoff plan was approved by the Civil Service Commission on January 17, 2014 and in the correspondence approving the plan the Commission made note that the Township was in substantial compliance with the provisions of N.J.A.C. 4A:8-1.4.

Appellant responded she objected to the layoff and an Order granting summary decision should not be issued based on multiple arguments. First appellant argues that she was incorrectly classified as a Public Safety Telecommunicator and instead of a clerical title. Appellant argues if she were classified as a clerical instead of as a Public Safety Telecommunicator she would have had bumping rights as she had more seniority than other employees.

Respondent responds to that argument by saying that appellant's classification is not properly before this court. It argues that appellant's dispute is with the State Department of Personnel and that issue had already been decided by the Division of Classification and Personnel Management which determined that appellant had no displacement title rights available for her. As such, the only issue before this court is

whether the layoff plan was effectuated for purposes of economy, efficiency or other related reasons and not some illegitimate purposes commonly referred to as “bad faith.”

Appellant next argues that after her layoff was effective certain part-time employees were given full-time positions. In addition, there were certain positions that were vacant at the time of the layoff, but were filled after the layoff and appellant argues that she should have had one of those positions. Respondent counters that argument by stating that promoting personnel or having them assume additional duties is not an act of bad faith and there is no statutory or case law to support appellant’s position. Finally, appellant argues that summary decision should not be granted because respondent did not comply with the layoff alternatives listed in N.J.A.C. 4A:8-1.2(c). Those specified by appellant are options such as granting leaves of absence without pay, granting voluntary furloughs to employees, allowing voluntary reduction in work hours and providing employees with optional temporary demotional titles which were never offered to appellant. Respondent argues the pre-layoff actions required by that section are all things that are done before the layoff plan is submitted to the Civil Service Commission for approval. Since the layoff plan has been approved by the Commission appellant’s argument is not appropriately before this court. Again it argues that the only issue before this court is whether appellant has presented specific facts to overcome the presumption that the layoff was implemented in good faith.

LEGAL ANALYSIS

Motions for summary decision procedure are governed by N.J.A.C. 1:1-12.5(a), (b). This regulation, similar to the judiciary R. 4:46-1 Motion for Summary Judgment is

“the determination [of] whether there exists a genuine issue with respect to a material fact challenged . . . that requires a consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact-

finder to resolve the alleged disputed issue in favor of the non-moving party.”

Brill v. Guardian Life Ins., 142 N.J. 520, 523 (1995).

In the present case I **FIND** there are no issues of material fact remaining between the parties as there are only allegations of misclassification, procedural deficiencies, and inappropriate actions concerning township personnel. Those allegations do not concern the central issue in this matter, that being whether the action of the Township in eliminating the dispatcher services of the police department was designed for reasons other than economy and efficiency. It is a most difficult burden to prove that an annual budgetary savings of over a half a million dollars is not designed in the interest of economy and efficiency.

The Civil Service Act provides that “a permanent employee may be laid off for reasons of economy, efficiency or other related reasons.” N.J.S.A. 11A:8-1; N.J.A.C. 4A:8-1.1(a). However, such action by an appointing authority is permitted only where it represents a “good faith” effort to achieve governmental economy and efficiency. Prosecutors, Detectives and Investigators Ass’n of Essex County v. Board of Freeholders, 130 N.J. Super 30, 43 (App. Div. 1974). Procedurally an employee who was laid off may appeal the good faith of the layoff. In such an appeal the former employee must prove by a preponderance of the evidence that the layoff was for reasons other than economy, efficiency or other related reason. N.J.S.A. 11A:8-4; N.J.A.C. 4A:8-2.6(c). This burden on the former employee is a substantial one since he must overcome the presumption of validity or good faith attached to the appointing authority’s action. Greco v. Smith, 40 N.J. Super 182, 189 (App. Div. 1956). See also Schnipper v. North Bergen Twp., 113 N.J. Super 11, 14-15 (App. Div. 1951). Even if the motive for the removal is tainted by improper considerations the action will be upheld if the position is unnecessary and can be abolished without impairing departmental efficiency. Santucci v. Paterson, 113 N.J.L. 192 (Sup. Ct. 1934). It is not enough that the layoff was apparently the result of mistake of policy or judgment. Reimer v. Mayor and Counsel of Allendale, 123 N.J.L. 563, 567-568 (Sup. Ct. 1939). It

is also not enough that a reviewing agency may have had a different preference for achieving unit savings or that the employer could have chosen other alternatives to the layoff. Acchitelli v. Dep't of Env't'l Protection and Energy, 93 N.J.A.R.2d (CSV) 716. In order to prevail, the former employee must demonstrate illegitimate reasons for the layoff such as spurious justifications, improper political considerations, or personal hostility towards the employee. In short, the appointing authority need not demonstrate good faith. Instead the former employee must demonstrate bad faith on the part of the appointing authority. Greco, supra, 40 N.J. Super at 189.

I conclude that appellant has not demonstrated the Township has acted in bad faith when it eliminated one section of its workforce. Appellant does not deny that she was a dispatcher with the job title of Public Safety Telecommunicator. She also does not dispute that her position was totally eliminated. She does not dispute that eliminating that unit of the Township's workforce saved the Township over \$550,000 a year. Appellant cannot claim that her classification was incorrect at this juncture. If she wanted a clerical job title she should have appealed for that job title prior to the layoff. She does not dispute that she did in fact work as a dispatcher with the Civil Service job title of Public Safety Telecommunicator. To say now that she was misclassified does not indicate bad faith on the part of the Township. As to appellant's argument that there were misstated facts in the layoff plan approved by the Civil Service Commission are and nothing more than unsupported allegations. The fact there may have been hirings and promotions after the layoff was implemented does not demonstrate bad faith, only the reorganization of municipal personnel. Appellant never argues that she applied for any positions and were denied for inappropriate reasons. She only argues that she had seniority over some other employees with different job titles and she should have had bumping rights which is not the case. Finally appellant argues that there was not compliance with the first four sections of N.J.A.C. 4A:8-1.2(c). While it is unclear what negotiations took place between respondent and the union representing the appellant, it is clear that the Civil Service Commission was satisfied with the comprehensive plan proposed by respondent to which it gave approval.

CONCLUSION

For the reasons set forth above I **CONCLUDE** that summary decision should be **GRANTED** in this matter.

ORDER

I **ORDER** that summary decision to be **GRANTED** to respondent and appellant's appeal 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, DIVISION OF APPEALS AND REGULATORY AFFAIRS, 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.

August 4, 2015 _____

DATE



JOHN SCHUSTER III, ALJ

Date Received at Agency:

August 4, 2015 _____

Date Mailed to Parties:

August 4, 2015 _____

/cb