



STATE OF NEW JERSEY

In the Matter of Gregory Rindosh,
Burlington County, Department of
Human Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-201
OAL Docket No. CSV 06594-22

ISSUED: NOVEMBER 27, 2024

The appeal of Gregory Rindosh, Fiscal Analyst, Burlington County, Department of Human Services, release at the end of the working test period (WTP), effective July 1, 2022, was heard by Administrative Law Judge Robert D. Herman (ALJ), who rendered his initial decision on October 18, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority..

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on November 27, 2024, accepted and adopted the ALJ's Findings of Facts and Conclusions and his recommendation to uphold the release at the end of the WTP.

The Commission makes the following comments. The ALJ's initial decision was thorough, comprehensive and legally correct. Nevertheless, the appellant's exceptions present several arguments. Among these is the contention that the appellant attained permanent status since his provisional appointment spanned longer than 12 months. For all the reasons expressed by the ALJ in his eminently accurate legal analysis of this issue in the initial decision, the Commission rejects this argument. The Commission similarly rejects the appellant's argument that the ALJ did not appropriately analyze his contentions of anti-union animus. In the initial decision, the ALJ found:

As it relates to any allegation that Burlington County acted improperly or with bad faith because of appellant's union activities, there is no evidence to suggest it. To the contrary, Burlington County readily established that appellant was permitted time during regular working hours for union purposes, such as negotiating the CBA and educating

fellow union members. The testimony of Ms. Scelza and Ms. West in this regard was entirely credible. If anyone, the union representative, Ms. Scelza, would be particularly attuned to anti-union/labor activities—none of which she observed. Moreover, the absence of union grievances bolsters Ms. Scelza's observations. Finally, while appellant may have perceived anti-union sentiment—perhaps when looking back—the absence of contemporaneous writings, notes, conversations, and the like, all lead to the inevitable conclusion that, if it existed at all, it did not rise to the level of bad faith.

While the appellant disagrees with the above, he has presented no persuasive evidence that leads the Commission to come to a different conclusion.

Similarly, the Commission rejects the appellant's contention that the ALJ erred in finding the testimony and evidence in equipoise, and therefore, finding that the appellant did not satisfy his burden of proof. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). The Commission finds no persuasive evidence in the record to demonstrate that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

The Commission also rejects the appellant's argument that he was not timely served his WTP release notice, and thus, should be presumed a permanent employee pursuant to *N.J.A.C. 4A:2-4.1(c)*. Regarding the service of the notice, the ALJ found:

With the ninety-day working test period coming to a close, and because appellant was scheduled to begin vacation on Friday, July 1, 2022, a meeting was scheduled for Thursday, June 30, 2022, to discuss his ninety-day evaluation. Appellant, however, called out sick that date.

Subsequently, Mr. Lombardo attempted to effectuate service of appellant's evaluation, termination letter, and notice of the right to appeal, via email—as he was instructed to do from a contact at the CSC—and via the Burlington County Sheriff's Department on July 1, 2022. (R-3; R-4.) Email copies of the documents were sent to appellant's work email and to a private Google Mail (Gmail) account (which appellant claimed no access to the work email and limited examination of that particular Gmail account). On July 8, 2022, when appellant met with Mr. Lombardo and Ms. Scelza, he was personally served the ninety-day evaluation, termination letter, and notice of the right to appeal. (R-5.)

Even assuming, *arguendo*, untimely service, an employee's intentional or unintentional avoidance of service cannot be considered sufficient to trigger the permanent status provisions in *N.J.A.C.* 4A:2-4.1(c). Moreover, per above, the record indicates that the appointing authority made a good faith effort to timely serve the notice. Finally, the presumption found in *N.J.A.C.* 4A:2-4.1(c) can be rebutted where, as here, there is not a preponderance of evidence that the appointing authority effectuated the procedural or substantive aspects of the WTP in bad faith.

ORDER

The Civil Service Commission finds that the action of the appointing authority in releasing the appellant at the end of the working test period was justified. The Commission therefore affirms that action and dismisses the appeal of Gregory Rindosh.

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 27TH DAY OF NOVEMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 06594-22

AGENCY DKT. NO. 2023-201

**IN THE MATTER OF GREGORY RINDOSH,
BURLINGTON COUNTY, DEPARTMENT OF
HUMAN SERVICES.**

Jason A. Rindosh, Esq., on behalf of appellant, Gregory Rindosh (Bedi Rindosh, attorneys)

Margaret E. McHugh, Esq., on behalf of respondent, Burlington County Department of Human Services (Malamut & Associates, attorneys)

Record Closed: June 3, 2024

Decided: October 18, 2024

BEFORE **ROBERT D. HERMAN, ALJ:**

STATEMENT OF THE CASE

Twenty-nine months after provisional appointment, appellant, Gregory Rindosh, was appointed to a competitive Civil Service position and subject to a ninety-day working test period pursuant to N.J.S.A. 11A:4-15. At the conclusion of the working test period, appellant was terminated. Was appellant terminated in bad faith? No. Pursuant to N.J.A.C. 4A:2-4.3(b), appellant had the burden of proof to establish he was terminated in bad faith by respondent, Burlington County Department of Human Services (Burlington County), by a preponderance of the evidence. Appellant failed to meet this threshold.

PROCEDURAL HISTORY

On July 1, 2022, appellant was terminated by Burlington County at the conclusion of his ninety-day working test period pursuant to N.J.S.A. 11A:4-15. Appellant filed a timely appeal consistent with N.J.A.C. 4A:2-1.1 et seq. On August 3, 2022, the matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

After extensive discovery and numerous case conferences, an in-person, plenary hearing was conducted over three days: October 25, 2023, October 26, 2023, and December 22, 2023. After receiving final submissions of the parties, oral argument was conducted by Zoom on June 3, 2024, following Burlington County's objection to the admission of certain evidence by appellant. At the conclusion of oral argument, the record in this matter was closed. Two orders of extension were granted, the first on July 31, 2024; and the second on September 10, 2024.

FINDINGS OF FACT

By way of background, following high school, appellant attended the College of New Jersey. Subsequently, he worked a couple of years as a "security evaluations officer" on Wall Street and, after that, as a jumbo loan mortgage underwriter for several mortgage banks. In November 2017, appellant began working at Rowan College, Burlington County, (Rowan) as a grant accountant involving Workforce Development.

Workforce Development grants are provided through the New Jersey Department of Labor. Essentially, they provide funding streams at the state level and from the federal government. The grants are dispersed in accordance with the guidelines of the specific grants and are under the Workforce Development Boards of each county. At Rowan, appellant's day-to-day responsibilities included processing invoices, submitting a monthly local area report to the state, and addressing and assisting with any issues in the department, including the preparation of budgets. Though he was working for

Rowan, appellant's immediate supervisor at the time was Kelly West, Director of the Workforce Development Board and supervisor of the Employment and Training Division, Human Services, Burlington County. At the time, and though working for Rowan, appellant's office was adjacent to Ms. West's office at the Burlington County Human Services building.

In early Fall 2020, appellant was notified that Workforce Development Grant administration was being transferred from Rowan and would be directly administered by Burlington County. Appellant was offered—then accepted—provisional employment with Burlington County as a financial analyst. Appellant viewed this new position as a “lateral transfer.”

On October 15, 2020, Burlington County sent appellant an employment letter. The letter specifically reflected that appellant's position was provisional, explaining that, “[w]hen announced, you will be required to file an application for the examination prior to the deadline date. For permanent appointment, you must place within the first (3) interested individuals on the certification list, provided there are no interested veterans are disabled veterans.” (P-6 at 1.) Appellant's Burlington County position was “competitive,” meaning that others from around the state could seek to fill the position once the Civil Service Commission (CSC) published the position. Potential hires for competitive positions are subject to ranking based on education, experience, and CSC ranking. Colloquially, this is referred to as the “rule of three.” CSC ranking is also based on prior military status, with disabled veterans and veterans (in that order), receiving priority status.

As a fiscal analyst, appellant was actively involved with administration and payment of grant funding and the Workforce Development Board, including examination of proposals, processing of payments, and direct involvement with state audits. Much of appellant's work for Burlington County was similar—if not identical—to his position with Rowan.

At Burlington County, appellant was active with the employee union, Communication Workers of America (CWA) Local 1036. As a member of the “union

negotiating team,” as the union worked towards a new Collective Bargaining Agreement (CBA), appellant was permitted time off during working hours to participate in negotiations and educate union members about CBA discussions. While appellant claimed adverse treatment based on union membership or as part of the union negotiating team, no such ill conduct was observed by, nor were concerns raised to, Billie Scelza, CWA Local 1036 Staff Representative. Further, appellant did not file any union grievances alleging mistreatment or retaliation.

From inception and overall, while a provisional employee, appellant's work with Burlington County was competent and mostly unremarkable. The work relationship between appellant and his supervisor, Ms. West, was at times strained, but they appeared to work closely, if not successfully, together. This is exemplified in part with Ms. West recruiting appellant to work for Burlington County contrasted with the rare, barbed email between them. (P-13.)

On January 24, 2022, the CSC certified a list of five eligible individuals for the Burlington County fiscal analyst position. (R-7 at 1.) Two were disinterested or unresponsive and three others, all equally ranked, were retained for interview. Appellant was one of these three. Following an interview with Ms. West and Richard (“Rick”) Lombardo, Burlington County Director of Human Resources, appellant was hired on March 31, 2022.

Appellant's first day of his ninety-day test period began on April 1, 2022. At the conclusion of his first thirty days, on May 2, 2022, appellant was evaluated by Ms. West as is required pursuant to N.J.S.A. 11A:4-15. Since beginning as a provisional employee in October 2020 to this point, appellant's performance was not formally evaluated. Appellant's first evaluation was “imperfect” but not particularly troubling. In it, appellant's work product, compliance with policies and procedures, and “Communication skills with co-workers/supervisors,” were all marked as “meets expectation.” The standouts were “Attendance/Punctuality,” in which appellant was rated “below standard” with comments that he arrives late to work and frequently returns late from breaks. The evaluation also contained the following “Additional Comments”:

Need to work on time management. Frequently behind on processing billing. At times waiting until the last minute to process the monthly report on the day that it is due (the 15th of each month) can lead to issues when unexpected events occur (illness, server issues, etc.).

[R-1 at 1–2.]

Appellant took particular umbrage with Ms. West's evaluation. This is reflected in a May 6, 2022, email from appellant to Mr. Lombardo (verbatim):

Good Morning Rick,

I hope you are doing well. I would like to know what the process is for writing a formal rebuttal to my 30 day performance evaluation. I need to do this because the evaluation I received on 05/02/2022 was not accurate. It was given after the 30 day window to me at 3 PM on 05/02/2022. Having seen the review, I am concerned about the negative comments about my performance since this happened only after I complained to Kelly about her interpretation about my sick time calculation. I feel that I am being retaliated against for pointing out to Kelly that she does not treat all personnel sick time consistently amongst others in the department. I want to document that the negative comments on my evaluation were done in retaliation for pointing this out to Kelly, and I would like to set the record straight in regard to my evaluation since it is going to be put into my personnel file. The evaluation is not reflective of my work over the prior 30 days, nor does it reflect the work product I have produced for many years on behalf of the County.

For these reasons, I request you please let me know what the process is to formally rebut the evaluation as I would like my personnel file to accurately reflect the circumstances and my work product. Please feel free to reach out to set up a time to further discuss.

Thank you,

Greg Rindosh

[P-26 at 2.]

Following the thirty-day review, appellant's punctuality and work product noticeably improved. In his sixty-day evaluation, Ms. West graded appellant's "Attendance/Punctuality" as "Outstanding," noting "your [appellant's] punctuality has been great the last 30 days." (R-2 at 2.) Further, Ms. West increased appellant's "Compliance with policies & procedures" from "Meets expectations" to "Above standard." (Id. at 1.) During her testimony, Ms. West expressed that the written notations in the "Quality/Accuracy of Work" section demonstrated marginality; however, the grading of "Meets Compliance" negates any such significance. (R-1 at 1–2.)

Between the sixty-day review and the ninety-day review, there were a series of emails starting June 8, 2022, demonstrating that the supervisor-employee relationship became acrimonious. (P-30; P-32.) The June 15, 2022, email from Ms. West to appellant appears demonstrative of this final decline (verbatim):

Greg:

I will not be providing day to day correspondence to you in writing. However, we spoke about your lack of time management skills in your last review. You need to be able to manage your time better. Especially since we are not very busy due to the Job Center customer flow being very low.

You need to be able to answer questions from the vendors and make the fiscal decisions in accordance to financial guidelines issued by the State and Federal governments. I do not make arbitrary decisions, I abide by those guidelines.

If you would like to discuss further, please do not email, communicate in person.

Kelly West

[P-32 at 1. Emphasis added.]

Just prior to the July 1, 2022, ninety-day review, a series of emails exchanged on June 28, 2022, and June 29, 2022, further demonstrated that appellant's and Ms. West's relationship had fully devolved. (R-12 at 1–4.) On June 28, 2022, appellant

re-sent a comprehensive email initially sent to Ms. West on June 8, 2022, which she apparently overlooked. In response, Ms. West retorted (verbatim):

Greg:

I will reiterate again that you should have brought to my attention this email. As you know I generally reply timely to emails. You waited 21 days and when I was out of the office at a meeting to resend which is not acceptable.

My answers are in blue below.

Regards,

Kelly West

[R-12 at 1.]

Where the sixty-day review denoted a significant, noticeable increase in appellant's rating, appellant's ninety-day review was inapposite. In every section—with the exception of "Attendance/Punctuality"—appellant's rating was "Below standard." The written comments in each section are instructive (verbatim):

Quality/Accuracy of Work (Below standard)

Below were the 60 day comments and there was no improvement

- Review of subrecipient invoices
- Ensuring that all charges are allowable prior to giving to Supervisor to sign
- Making sure that all charges include back up and the back up includes all of the information that is needed (e.g. hours/attendance/work experience job descriptions etc.)

Compliance with policies & procedures (Below standard)

- Did not get the year end roll over completed by June 30
- Did not set up the WIOA data base for the new Program Year that begins July 1st.
- Did not research previous billing as requested by supervisor in order to answer a vendors question regarding a purchase for current Program Year that ended June 30, 2022

- Still need to help with answering the telephones and the door (was part of the 60 day review)

Attendance/Punctuality (Meets expectations)

- Timeliness is better – arriving to work and from breaks has improved

Communication skills with co-workers/supervisors (Below standard)

Communication skills with supervisor, coworkers and vendors is at best poor at times. Does not take responsibility for fiscal decisions and “blames” the supervisor for taking disallowed costs off a vendors bill. Additionally, does not follow up with emails and requests of vendors nor with Supervisor.

Additional Comments

Still need to work on time management. At times waiting until the last minute to complete a project (State Audit Response) can lead to issues when unexpected events occur (illness, server issues, etc.). Need to take responsibility for your job and not tell vendors that you would pay the invoice without question but “Kelly will not pay on these”. We are a team and we do not throw anyone under the bus. There are still many duties of the fiscal analyst that have yet to be done and are currently being done by the supervisor (e.g., budget and contract preparation for the state).

[R-3 at 1–2. Emphasis added.]

With the ninety-day working test period coming to a close, and because appellant was scheduled to begin vacation on Friday, July 1, 2022, a meeting was scheduled for Thursday, June 30, 2022, to discuss his ninety-day evaluation. Appellant, however, called out sick that date.

Subsequently, Mr. Lombardo attempted to effectuate service of appellant’s evaluation, termination letter, and notice of the right to appeal, via email—as he was instructed to do from a contact at the CSC—and via the Burlington County Sheriff’s Department on July 1, 2022. (R-3; R-4.) Email copies of the documents were sent to

appellant's work email and to a private Google Mail (Gmail) account (which appellant claimed no access to the work email and limited examination of that particular Gmail account). On July 8, 2022, when appellant met with Mr. Lombardo and Ms. Scelza, he was personally served the ninety-day evaluation, termination letter, and notice of the right to appeal. (R-5.)

Upon review and with due consideration, it appears relatively clear there were difficulties between appellant and Ms. West, particularly in June 2022. The testimony from each seems incomplete regarding their contretemps and perhaps the reasoning for it, but I am limited to what was presented and reasonable inferences that may be drawn therefrom.

Between appellant and Ms. West, I find appellant to be only marginally more credible than Ms. West. That is not to say I find Ms. West to be incredible, but at times she appeared overly nervous, more so than one would expect under the circumstances. Likewise, I noted changes to what I perceive to be her baseline behaviors, her voice, pattern of speech, and intonation, when discussing appellant by name and during certain, critical testimony. Overall, I would characterize Ms. West's testimony as "generally credible," but I am left with the impression that certain facts or details were omitted in her answers and that her explanation of appellant's reactions—such as claiming appellant "laughed hysterically" when going over the thirty-day review with him—to be hyperbolic.

Appellant's testimony was not perfect either. My impression is that appellant genuinely believed what he was saying; however, his response to the situation colored his perception, particularly in hindsight. As to the two remaining witnesses, Ms. Scelza and Mr. Lombardo, having listened closely to their testimony, observed their body language, and examined their answers, I find them both to be credible.

CONCLUSIONS OF LAW

This matter is governed by the New Jersey Civil Service Act (the Act) and the administrative regulations promulgated thereto. N.J.S.A. 11A:1-1 et seq.; N.J.A.C. 4A:1-1.1 et seq. As explained in In re Compano:

The Act details all the employees' rights and duties during employment. The Act was created as an inducement to attract qualified individuals to public service and is liberally construed toward the attainment of merit appointments and broad tenure protections. When an individual is hired for a civil service position, the individual enters a working test period which is designed to be a part of the examination process "to permit an appointing authority to determine whether an employee satisfactorily performs the duties of a title." N.J.S.A. 11A:4-15. During the working test period the employee must perform the duties of the title for which the employee was hired. This enables the employer to evaluate the employee's fitness through observed job performance under actual working conditions. Cipriano v. Department of Civil Service, 151 N.J. Super. 86, 89 (1977). For local service employment . . . , the length of the working test period is three months or ninety days. N.J.S.A. 11A:4-15(a). []

[Pursuant to the Act,] [t]he employer is required to provide a progress report on the employee "at such times during the working test period . . . and a final progress report at the end of the entire working test period." N.J.S.A. 11A:4-15(b). The appointing authority must prepare a progress report at the end of two months and a final report at the conclusion of the working test period. N.J.A.C. 4A:4-5.3(a). []

At the end of the working test period, an employer may release an employee from his position for unsatisfactory performance during the working test period. N.J.S.A. 11A:4-15(c). The employee who appeals the release from employment during the working test period has the burden of proof to establish that the employer's action was done in bad faith. N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee shall be entitled to a new working test period. N.J.A.C. 4A:2-4.3(c). Therefore, the employer must have exercised good faith when it determined that the employee was not competent to satisfactorily perform the duties of the position. Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), citing Devine v. Plainfield,

31 N.J. Super. 300 (App. Div. 1954) and Lingrell v. Civil Service Commission, 131 N.J.L. 461, 462 (Sup. Ct. 1944).

Good faith has been generally defined as "honesty of purpose and integrity of conduct" regarding a given subject. Smith v. Whitman 39 N.J. 397, 405 (1963). Thus, "bad faith" can be defined as something that has been done dishonestly, and an individual has acted with a state of mind of having ill will. Lustrelon Inc. v. Prutscher, 178 N.J. Super 128, 144 (App. Div. 1981). The test of bad faith is therefore a subjective standard and must be determined by the facts in each case. Ibid.

[In re Compano, 2024 N.J. CSC LEXIS 191, **7–9.]

The positions of the respective parties are as follows. Appellant asserts three main arguments with respect to his position, along with several subparts: 1) Appellant should be deemed a permanent employee; 2) The County wrongfully deprived appellant of permanent employee status; and 3) Appellant can be awarded all requested remedies including attorney's fees. Respondent essentially asserts that it complied with the Civil Service working test period requirements and that appellant has failed to demonstrate bad faith.

Preliminarily, there is one issue appellant raised which, on its face, appears problematic for respondent. More specifically, N.J.S.A. 11A:4-13b states:

Provisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification, if the appointing authority certifies that in each individual case the appointee meets the minimum qualifications for the title at the time of appointment and that failure to make a provisional appointment will seriously impair the work of the appointing authority. In no case shall any provisional appointment exceed a period of 12 months.

[N.J.S.A. 11A:4-13b. Emphasis added.]

Further, appellant cites to Melani v. Cnty. of Passaic, 345 N.J. Super. 579 (App. Div. 2001), claiming similarity with the matter at bar. However, appellant's reliance is misplaced.

While N.J.S.A. 11A:4-13b appears to state quite clearly that provisional appointments may not exceed twelve months, the New Jersey Supreme Court explained that where provisional appointments exceed the twelve month-prescription, it does not create an automatic conversion from provisional appointment to permanent. O'Malley v. Dept. of Energy, 109 N.J. 309, 316–17 (1987) (“[W]e are persuaded that the legislative goal of appointments based on merit and fitness is the paramount consideration. With respect to provisional employees, that goal is met by competitive examinations, not by holding a position beyond the time prescribed by the Legislature.”). Moreover, the remedy, as expressed in both O'Malley and Melani, where an appointment exceeded the twelve months set forth in N.J.S.A. 11A:4-13b, to the extent it may exist, is not automatically becoming a permanent employee in that position. O'Malley at 318 (“To permit a provisional employee to retain such an appointment pending an examination would subject governmental employment to the subterfuge and circumventions that the civil service system was designed to prevent.”). Cf. Kyer v. City of East Orange, 315 N.J. Super. 524, 525 (App. Div. 1998) (“Department of Personnel . . . has the authority to grant a retroactive competitive examination or waiver thereof, to declare her status as a permanent and protected employee, and to fashion an appropriate remedy”).

At a minimum, however, appellant would be required to establish some form of neglect by the governmental entity and reliance by appellant—neither of which appear in the instant matter. See, e.g., Kyer at 525 (“provisional employee in the municipal classified service who is denied the opportunity to become a permanent employee by reason of the municipality's negligence and her own unawareness of merit system requirements”).

Here, appellant received a letter from Burlington County on October 15, 2020. (R-6.) In the letter, appellant was advised that the financial analyst position with Burlington County was “provisional” and that it was subject to appointment from a list

generated by the CSC, whose website appellant was required to monitor for the posting of the permanent position. Further, the letter stated that permanent employment is conditioned on appointment from the CSC list and the completion of a ninety-day working test period. At no point and in no instance did appellant state that the instructions set forth in the October 15, 2020, letter did not apply to him. Quite the opposite, as appellant applied for the position following the CSC's publication of the position in January 2022. (P-15.) Moreover, appellant filed an appeal with the CSC relating to his score on the CSC list. (R-8.) There is no proof provided that appellant claimed he was anything other than provisionally employed at the time. (Ibid.)

Add to this, there is an absolute dearth of facts adduced that appellant reasonably believed that he was in a permanent position or that he was not subject to the working test period. If anything, appellant's May 6, 2022, email to Mr. Lombardo demonstrates his then belief that the financial analyst position was provisional at the time of this thirty-day review. (P-26 at 2.) Plus, at the time of appellant's provisional employment with Burlington County, the state of New Jersey was still dealing with the Covid-19 pandemic. It is within the base of collective experience for those living in the state at that time, modifying expectations, that it was wholly common for timelines to be extended as a result of the pandemic.

Accordingly, I do not find appellant's argument that Burlington County failed to act within twelve months pursuant to N.J.S.A. 11A:4-13b to be persuasive. Therefore, I **CONCLUDE** that appellant failed to establish he should be entitled to relief pursuant to N.J.S.A. 11A:4-13b.

With that said, I now turn to the main focus of this matter: whether appellant has proven, by a preponderance of the evidence, that Burlington County acted in bad faith—whether they acted in an arbitrary or capricious manner or with improper motive or design—in terminating appellant at the conclusion of appellant's ninety-day working test period. While with some facility I was able to conclude that appellant was not entitled to relief pursuant to N.J.S.A. 11A:4-13b, the question of motive or bad faith is not quite so clear cut.

That is not to say that all such determinations are difficult. As it relates to any allegation that Burlington County acted improperly or with bad faith because of appellant's union activities, there is no evidence to suggest it. To the contrary, Burlington County readily established that appellant was permitted time during regular working hours for union purposes, such as negotiating the CBA and educating fellow union members. The testimony of Ms. Scelza and Ms. West in this regard was entirely credible. If anyone, the union representative, Ms. Scelza, would be particularly attuned to anti-union/labor activities—none of which she observed. Moreover, the absence of union grievances bolsters Ms. Scelza's observations. Finally, while appellant may have perceived anti-union sentiment—perhaps when looking back—the absence of contemporaneous writings, notes, conversations, and the like, all lead to the inevitable conclusion that, if it existed at all, it did not rise to the level of bad faith.

June 2022 marked the end of a four-and-a-half-year work relationship between appellant and Ms. West. As noted above, I am constrained to the facts presented and the reasonable inferences available therefrom. On one hand, appellant's thirty-day evaluation was not particularly bad; and his sixty-day evaluation demonstrated marked improvement and that he exceeded expectations in certain areas. Appellant's ninety-day evaluation is altogether a different story. The June 2022 emails are certainly problematic for appellant—particularly as they appear to demonstrate a lack of decorum (for example, Ms. West stating, "I do not make arbitrary decisions[.] I abide by those guidelines."). (P-32 at 1.)

The burden here is upon appellant. For the most part, the facts are in equipoise. On one hand, there are the credibility findings noted above as well as the reasonable inferences that may be drawn. Provided Ms. West's written response, it is more probable than not appellant spoke with various third-parties and, in Ms. West's language, "threw her under the bus," so to speak. Is that sufficient? Maybe, maybe not. As oft occurs, there are two versions of events. According to appellant, he was a model employee, one who ensured absolute compliance, and who was provided Herculean tasks, setting him up to fail. According to Ms. West, appellant was a difficult employee, one who, by the end of his working test period, could not be trusted and could not

complete the tasks assigned. The truth—and whatever additional facts which were not adduced—lies in-between.

Because the facts as adduced are in equipoise and the burden here is on appellant to show bad faith, I am unable to state on the record before me that appellant has met his burden of persuasion by a preponderance of the evidence. For lack of better terms, it is a close call and even factually. Accordingly, I **CONCLUDE** that appellant's appeal shall be and hereby is **DENIED**.

ORDER

Based on the foregoing, it is hereby **ORDERED** that appellant, Gregory Rindosh, be terminated from his position as a Financial Analyst with the County of Burlington.

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.

October 18, 2024

DATE



ROBERT D. HERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

RDH/dc

APPENDIX

Witnesses

For appellant:

Gregory Rindosh

Billie Scelza, Staff Representative Union, CWA Local 1036

For respondent:

Kelly West, Supervisor, Employment and Training Division, Human Services,
Burlington County

Richard Lombardo, Director of Human Resources, Burlington County

List of Exhibits

For appellant:

- P-2 Email chain (May 14, 2019) (1 page)
- P-3 New Jersey Department of Labor Workforce Development FY 2020 Final Report (April 30, 2020) (5 pages)
- P-4 Email chain (June 30, 2020) (1 page)
- P-5 Email (August 31, 2020) (1 page)
- P-6 Burlington County letter with offer of employment (October 15, 2020) (2 pages)
- P-7 Burlington County Human Resources form (2 pages)
- P-8 Email (November 10, 2020) (1 page)
- P-9 Email (December 4, 2020) (1 page)
- P-11 Email (June 23, 2021) (2 pages)
- P-12 Email (December 1, 2021) (1 page)
- P-13 Email (January 10, 2022) (3 pages)

- P-14 Letter Civil Service Commission (March 9, 2022) (2 pages)
- P-15 New Jersey Civil Service Eligible Appointment List for Burlington County Fiscal Analyst position (January 24, 2022) (2 pages)
- P-16 Email (March 31, 2022) (1 page)
- P-17 Email (April 4, 2022) (3 pages)
- P-18 Email (April 22, 2022) (1 page)
- P-19 New Jersey Department of Labor Workforce Development FY 2022 Draft Report (April 28, 2022) (8 pages)
- P-20 Email (April 29, 2022) (1 page)
- P-21 Email (April 29, 2022) (1 page)
- P-22 Burlington County working test period thirty-day review (May 2, 2022) (2 pages)
- P-23 Email (May 2, 2022) (1 page)
- P-24 Email (May 4, 2022) (1 page)
- P-25 Email (May 6, 2022) (5 pages)
- P-28 Handwritten note and emails (May 24, 2022) (5 pages)
- P-29 Burlington County working test period sixty-day review (June 1, 2022) (2 pages)
- P-30 Email (June 8, 2022) (4 pages)
- P-32 Email (June 15, 2022) (8 pages)
- P-33 Email (June 16, 2022) (1 page)
- P-35 Burlington County working test period ninety-day review (July 1, 2022) (2 pages)
- P-36 Burlington County termination letter (July 1, 2022) (1 page)
- P-42 Burlington County attendance report (January 1, 2020–May 13, 2022) (9 pages)
- P-44 New Jersey Department of Labor Workforce Development FY 2023 Final Report (June 13, 2023) (7 pages)

- P-45 Email (July 7, 2022) (2 pages)
- P-46 Burlington County Board of Commissioners Organizational Chart (1 page)
- P-47 State of New Jersey, Civil Service Commission, fiscal analyst job description (2 pages)
- P-48 Burlington County Organizational Chart (1 page)
- P-49 Burlington County Workforce Development Organizational Chart (1 page)

For respondent:

- R-1 Burlington County working test period thirty-day review (May 2, 2022) (2 pages)
- R-2 Burlington County working test period sixty-day review (June 1, 2022) (2 pages)
- R-3 Burlington County working test period ninety-day review (July 1, 2022) (2 pages)
- R-4 Burlington County termination letter (July 1, 2022) (1 page)
- R-5 Burlington County termination letter (July 1, 2022); hand-delivered notation (July 8, 2022) (1 page)
- R-6 Burlington County provisional employment letter (October 15, 2022) (2 pages)
- R-7 New Jersey Civil Service Eligible Appointment List for Burlington County Fiscal Analyst position (January 24, 2022) (2 pages)
- R-8 Letter Civil Service Commission (March 9, 2022) (2 pages)
- R-9 Email (June 8, 2022) (4 pages)
- R-10 Email (June 9, 2022) (3 pages)
- R-11 Email (June 15, 2022) (8 pages)
- R-12 Email (June 29, 2022) (5 pages)
- R-13 Email (May 11, 2022) (3 pages)
- R-14 Email (May 6, 2022) (5 pages)
- R-15 Email (June 27, 2022) (1 page)

R-16 Email (July 7, 2022) (4 pages)