



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Edward Santiago,
City of Plainfield

CSC Docket No. 2008-3461
OAL Docket No. CSV 05418-08

ISSUED: SEP 03 2014

(SLK)

The appeal of Edward Santiago, former Police Chief with the City of Plainfield, of the good faith of his demotion in lieu of layoff to the title of Police Captain effective April 11, 2008, was heard by Administrative Law Judge Caridad F.Rigo (ALJ), who rendered her initial decision on June 30, 2014. Exceptions were filed on behalf of the appellant and cross-exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on August 13, 2014, accepted the Findings of Fact and Conclusions as contained in the attached initial decision and the recommendation to uphold the appellant's demotion to Police Captain in lieu of layoff.

DISCUSSION

By way of background, the appellant was laid off from his permanent title of Police Chief and exercised his demotional rights to Police Captain effective April 11, 2008. Upon the appellant's appeal to the Commission of the good faith of his layoff, the matter was transmitted to the Office of Administrative (OAL) as a contested case. After the appellant presented his case on multiple occasions between 2009 and 2011, the ALJ granted the appointing authority's motion to dismiss, finding that the appellant did not produce any proof upon which a reasonable fact finder could conclude that the appointing authority engaged in activity contrary to Civil Service law or rules. However, on January 25, 2012, the Commission remanded this matter to the OAL in order for the ALJ to provide her reasoning why the

testimony and evidence presented on behalf of the appellant failed to show that the appointing authority acted in bad faith. In this regard, the Commission noted that the ALJ did not indicate in her initial decision that the appointing authority's motion to dismiss was unopposed and the appellant provided a sworn statement that he mailed his brief opposing the motion, but it was never received by the ALJ or opposing counsel. The record was closed in March 2013 after both parties submitted written closing arguments. Due to the misplacement of pertinent parts of the file and a voluminous caseload, the ALJ requested and was granted 10 *nunc pro tunc* extensions to complete her initial decision.

In the initial decision, the ALJ sets forth the testimony of Donna Albanese-De Mair, a business owner and President of a business association in Plainfield, Brian Schoenberger, a business owner and past President of the same business association in Plainfield, Joesph Hartmann, Coordinator with the Office of County Services, Division of Program and Community Services, for the Department of Corrections, Richard Richardella, who was employed by the Department of Community Affairs-Division of Local Government Services, the appellant, and Martin Hellwig, Police Director for the appointing authority. The business owners indicated that they met with Assemblyman Gerald Green in September 2007 to develop a relationship between the business community and the government. During those meetings, the business owners claim that Assemblyman Green stated that the appellant's position as Police Chief needed to be eliminated. When the business owners did not support the Assemblyman's position, they asserted that he would no longer assist them. Mr. Hartmann testified that in June 2007 he discussed the appointing authority's use of Police Aides monitoring detainees in the City Jail without the supervision of a trained Police Officer and that he recommended to the appellant that a Police Aide be under the close supervision of a trained Police Officer. Mr. Hartmann did not recall if he made the initial inquiry or if the appellant called him and posed the question. Mr. Richardella presented that in 2003/2004 he prepared an assessment of the appointing authority's police department at the request of a prior Mayor and, although he found the department to be "top heavy" and recommended the reduction of the number of Police Captains, overall he found the staffing numbers of the police department were consistent with municipalities of similar size and designation.

The appellant testified that he initially had a good relationship with Assemblyman Green between 1999 and 2005. However, after Assemblyman Green asked him to oppose the prior Mayor's new crime plan, to which he responded that it would be inappropriate to get involved in partisan politics, Assemblyman Green would no longer approach him. Further, the new Mayor, who Assemblyman Green backed, had him placed on administrative leave due to a lawsuit he had pending against the previous Mayor. The appellant also reiterated that Richardella's report recommended four, not six Police Captains. However, the plan Director Hellwig presented in 2007 to eliminate the Police Chief position did not make economic

sense since it would increase the number of Police Captains to seven. In this regard, he notes that Police Captains were paid a higher salary than the Police Chief. Thereafter, the appellant filed a lawsuit opposing the plan since the plan would split up the responsibilities of running the day-to-day operations department and there would be issues of proper authority since a Police Captain cannot have "rank" over another Police Captain. Nevertheless, Hellwig's plan was adopted by City Council and the appellant was demoted to Police Captain.

Director Hellwig testified that the Police Chief was responsible for the implementation of policies and day-to-day operations for running the police department. However, in his position, the appellant was never held responsible for his decisions or actions as the Police Chief. Hellwig highlighted that he spent two years examining the police department and identified several areas of concern. However, the appellant refused to implement his plans and suggestions. Consequently, he proposed a re-organization of the police department. Hellwig indicated that no one, including the Mayor, City Administration, Assemblyman Green or anyone else told him or pressured him to eliminate the Police Chief position. Rather, City Council passed an ordinance in March 2008 to adopt the re-organization and since then crime has been reduced. Hellwig admitted that Assemblyman Green as well as the Mayor interviewed him for the Director position, but he denied that Assemblyman Green told him the appellant was not a team player. He indicated that there were no economic savings due to the demotion of the appellant, however, he anticipated several retirements after the re-organization and that since the re-organization, the department has been streamlined and crime has been decreased.

Based upon the testimony and documentary evidence presented, the ALJ found that the prior Mayor in 2004 wanted to review police department staffing, efficiency, effectiveness, and make recommendations for crime fighting strategies. Additionally, after a new Mayor was elected in 2006, Hellwig was hired as the Director of Public Affairs and Safety and that he was responsible for fiscal oversight and management of the fire department, police department, and the office of emergency management. Further, in 2008, the City Council approved Hellwig's re-organization plan which eliminated the position of Police Chief, and resulted in the appellant being demoted to Police Captain. The ALJ noted that the appellant's and the business owners' testimony that Assemblyman Green told them that the appellant was not a team player or that he is not willing to work with the program was not incredible, as there was no evidence to disprove these conversations. However, the ALJ found that those statements alone were not dispositive as to whether the Police Chief position was eliminated in bad faith. In this regard, the ALJ noted that the prior Mayor in 2004 was reviewing and assessing the structure of the police department and the new Mayor did not come into authority until 2006. Further, the business owners' and the appellant's conversations with Assemblyman Green took place in 2005; three years before the re-organization plan took place. As

such, the ALJ concluded that the appointing authority did not eliminate the Police Chief position in bad faith or due to political retaliation.

In the appellant's exceptions to the initial decision, he initially asserts that the ALJ's request for 10 extensions was excessive and not consistent with the OAL's goals of promoting due process, expediting the just conclusion of contested cases, and improving the quality of administrative justice. With respect to the merits of his case, he contends that the testimony and documentary evidence prove that Hellwig's re-organization plan to remove him as Police Chief was in "bad faith." The appellant asserts that the re-organization plan was based on Assemblyman Green's agenda to retaliate against him for not opposing the prior Mayor's crime plan. Specifically, he submits that the new Mayor, who was backed by Assemblyman Green, only six weeks into her serving as Mayor, placed him on administrative leave due to his lawsuit against the former Mayor and that he was reinstated due to judicial intervention. Thereafter, the appellant maintains that Hellwig, who was hired after interviewing with Assemblyman Green, developed the re-organization plan as a second attempt to remove him. He submits that Hellwig admitted that he started working on his re-organization plan as soon as he was hired, which the appellant claims shows that the plan was politically motivated. The appellant argues that the stated reasons behind the re-organization plan, economy and efficiency, are not supported by the facts. Specifically, he presents that the re-organization could not be based on economic reasons, as his salary actually increased when he was demoted to Police Captain and others were promoted to Police Captain. Moreover, he emphasizes that Hellwig admitted that there were not any cost savings by demoting him to Police Captain. Additionally, he states that the plan could not be based on efficiency as crime and traffic were policed better under his management than under Hellwig's direction. Moreover, he notes that a previous independently produced report indicated that the number of Police Captains should be reduced and that there were not any issues with how the police department was operated. The appellant claims that the only reason that the City Council supported the plan was due to the fact that the Councilmembers, who were mostly backed by Assemblyman Green, did not want to lose their positions. In short, the appellant argues that the decision to abolish the position of Police Chief increased costs and that the testimony and evidence do not demonstrate any efficiencies as a result of the re-organization.

In response, the appointing authority states that the appellant's exceptions are unsupported as he does not provide any testimony in the record that was overlooked or set forth any legal argument that contravenes the ALJ's decision. Instead, it maintains that the appellant relies on name-calling and he fails to show any bad faith upon the part of the actual decision makers, the City Council. It submits that the appellant attempts to connect Assemblyman Green's alleged dissatisfaction with the appellant to the actions taken by the City Council. However, the appellant did not call any Councilmembers to testify and explain

his/her motivation for voting for the re-organization ordinance. Instead, he makes unsupported allegations that the Councilmembers were controlled and pressured by Assemblyman Green to adopt the ordinance. However, there is no testimony in the record to support these allegations. Furthermore, even if Assemblyman Green had lost confidence in the appellant, there is no evidence that he took part or authorized the elimination of the position of Police Chief. It notes that the elimination of the position of Police Chief was the sole action of the City Council, and not Assemblyman Green or the Mayor. It reiterates that the appellant has the burden of proof in the matter and he needs to demonstrate, not whether or not the plan actually saved money, but whether the motivation and design of the plan was to accomplish economy and efficiency. It summarizes that the appellant has done nothing more than level allegations at Director Hellwig and attempted to connect Assemblyman Green to the actions of the City Council.

N.J.S.A. 11A:8-4 and *N.J.A.C. 4A:8-2.6(a)1* provide that good faith appeals may be filed based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. When a local government has abolished a position, there is a presumption of good faith and the burden is on the employee to show bad faith and that the action taken was not for purposes of economy. *Greco v. Smith*, 40 *N.J. Super.* 182 (App. Div. 1956); *Schnipper v. North Bergen Township*, 13 *N.J. Super.* 11 (App. Div. 1951). As the Appellate Division further observed, "That there are considerations other than economy in the abolition of an office or position is of no consequence, *if, in fact, the office or position is unnecessary, and can be abolished without impairing departmental efficiency.*" *Schnipper, supra* at 15 (emphasis added). The question is not whether the plan or action actually achieved its purpose of saving money, but whether the motive in adopting a plan or action was to accomplish economies or instead to separate a public employee without following Civil Service law and rules. Thus, a good faith layoff exists if there is a logical or reasonable connection between the layoff decision and the personnel action challenged by an employee. Additionally, it is within an appointing authority's discretion to decide how to achieve its economies. *See Greco, supra*. Further, if the appellant establishes a *prima facie* case, *i.e.*, rebutting the presumption of the good faith basis for the layoff, the appointing authority then assumes the burden of providing preponderating evidence that the layoff would have occurred even when there is evidence of a dual motive. Finally, if the appointing authority provides preponderating evidence of a legitimate business reason, the burden shifts back to the appellant to establish that the legitimate business reason was a mere pretext used to remove the appellant without complying with Civil Service law and rules *i.e.*, bad faith. In this regard, an appeal must fail even in the face of a showing of dual motives, such as economy and efficiency and ill will, if the presumptions of economy and efficiency cannot be overcome. *See e.g., Matter of Bridgewater Tp.*, 95 *N.J.* 235 (1984); *See also Wright Line*, 251 *NLRB* 1083 (1980).

Upon a review of this matter, the Commission finds nothing in the record to demonstrate that the elimination of the Police Chief position, which resulted in the appellant's demotion to Police Captain, was for reasons other than efficiency. Initially, it is noted that clear legislative mandates permits a municipality to opt not to have a Chief of Police and to designate an "appropriate authority" to supervise the police department. See *N.J.S.A. 40A:14-118*. See also, *PBA v. Township of North Brunswick* 318 *N.J. Super* 544 (App Div. 1999). In this case, Hellwig, upon his appointment as Director of Public Affairs and Safety in 2006, essentially examined operations of the police department as permitted by *N.J.S.A. 40A:14-118*, noted several areas that needed improvement, such as the rotation of Police Captains, but the appellant refused to implement them. Due to these operational issues, which impacted public safety, Hellwig recommended a re-organization of the police department to the Mayor and City Council, which was ultimately adopted by ordinance.

While the appellant vehemently insists that the elimination of the Police Chief position was orchestrated by Assemblyman Green for political reasons, he does not point to any evidence supporting this claim. Specifically, the appellant did not call any Councilmember to testify and explain his/her motivation for voting for the ordinance or provide any other evidence connecting Assemblyman Green's alleged desire to remove him from the position of Police Chief and the City Council's actions. Moreover, while the demotion may not have reduced costs, "efficiency" is also a valid basis for such an action, even if the appellant strongly disagrees that eliminating the Police Chief's position improved law enforcement. It cannot be ignored that at least as far back as 2004 and before the appellant and Assemblyman Green allegedly had a falling out in 2005, a former Mayor had commissioned a study of the Police Department to evaluate the staffing, efficiency, effectiveness, and to make recommendations toward crime fighting strategies. It is further noted that the position of Police Chief was not eliminated until 2008, which is three years after allegedly he and Assemblyman Green began having issues and one year after the meeting with the business owners' association. Therefore, there is nothing in the record to demonstrate that the appointing authority acted in bad faith in the way it addressed the operational efficiency of the management of its police department by eliminating the position of Police Chief. Accordingly, the appellant has failed to meet his burden of proof and the appellant's demotion to Police Captain is upheld.

One additional matter needs to be addressed. While the appellant presents criticisms of the ALJ's delay in issuing her initial decision, this does not provide a basis to change the outcome in this case. In this case, the ALJ requested 10 *nunc pro tunc* extensions in order to issue her initial decision due to a voluminous caseload. Although the appellant may be correct that such delays are not consistent with expediting the conclusion of contested cases, he has not provided any evidence that this caused him to be deprived of due process or that he was prejudiced by this

delay. In this regard, had he been successful in his appeal, the appellant would have been awarded back pay, counsel fees, and restoration to his position. However, more significantly, if the Commission had not agreed with the OAL's request to extend the time frame for the ALJ to issue an initial decision, there is no mechanism in the Administrative Procedure Act to finalize the contested matter or provide a remedy to the prevailing party. Rather, the matter would still be unresolved and the Commission could not issue a final determination if it did not have an initial decision to review. Therefore, while the Commission is significantly concerned with the extensive delay in this matter, and does not condone such delay, in this instance, such delays do not change the outcome of this matter.

ORDER

The Civil Service Commission finds that the appointing authority's action in demoting Edward Santiago to the title of Police Captain in lieu of layoff was justified. Therefore, the Commission upholds that action and dismisses the appellant's appeal.

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 13th DAY OF AUGUST, 2014



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Chairperson
Civil Service Commission

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 01366-12

AGENCY DKT. NO. 2008-3461-I

**IN THE MATTER OF EDWARD SANTIAGO,
CITY OF PLAINFIELD DEPARTMENT OF
PUBLIC AFFAIRS.**

ON REMAND

OAL DKT. NO. CSV 05418-08

AGENCY DKT. NO. 2008-3461-I

Stephen Klausner, Esq., for appellant Edward Santiago

David L. Minchello, Esq., for respondent City of Plainfield (Ventantonio & Wildenhain, attorneys)

Record Closed: March 12, 2013

Decided: June 30, 2014

BEFORE **CARIDAD F. RIGO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter concerns appellant, Edward Santiago, who in 1999 was appointed to the position of chief of police for the City of Plainfield. In 2008, the City of Plainfield underwent a re-organization of the police department that led to the elimination of the position of police chief, thereby demoting appellant to the position of captain. Appellant essentially contends that the elimination of the chief of police position was done in "bad

faith” and as retaliation for his refusal to support a mayoral candidate, in other words an act of political retaliation.

Appellant presented his case to the undersigned Administrative Law Judge on April 2, 6, 2009, September 17, 23, 2009, February 22, 2010, June 8, 2010, September 23, 2010, and May 23, 2011. Upon the conclusion of appellant’s case counsel for respondent moved to dismiss appellant’s case, alleging that appellant had failed to carry his burden of proof. Respondent filed the Motion to Dismiss on July 12, 2011. On November 29, 2011, this ALJ granted respondent’s Motion to Dismiss and so ordered. The docket number for this case is CSV 05418-08.

On January 25, 2012, the Civil Service Commission remanded this matter to the Office of Administrative Law (OAL) for additional testimony and proofs. A new docket number was assigned to the remanded hearing to wit: CSV 01366-12. A hearing was held on October 22, 2012. Both sides wanted to submit written closing arguments and February 4, 2013, was the date they requested. Upon the request of both counsel an additional extension was granted to submit closing briefs. The record closed on March 12, 2013, but due to the misplacement of pertinent parts of the file and the voluminous caseload, extensions were necessary to complete this initial decision.

ISSUE

Was the removal of appellant, Edward Santiago from the position of chief of police for the City of Plainfield to that of captain done in “bad faith” and/or as an act of political retaliation?

SUMMARY OF TESTIMONY

Donna Albanese-De Mair

Donna Albanese-De Mair owns a Dairy Queen in the City of Plainfield and was a president of the Plainwood Square Business Association, which is an association made up of various businesses and merchants in a business district of Plainfield. The

purpose of the association was to create a better business district in Plainfield. The association met once a month ten times a year.

Albanese-De Mair testified that she has known Santiago since 1975 when she met him when he was a police officer patrolling the area around her business. She is not a resident of Plainfield.

Albanese-De Mair stated that in 2007 a new administration was in charge of Plainfield and she felt that much of the improvements that were made in the business district were being dismantled. So, sometime in September 2007, the association had a meeting to discuss the dismantling that was taking place and they invited Assemblyman Gerald Green. She furthered that she had been told and it was general knowledge that Assemblyman Greene "runs the City" and if you want anything done you must go through Green first. At the meeting the establishing of a special association to improve the business district using tax dollars was discussed.

Albanese-De Mair testified that during her discussions about Plainfield's business district and the special group Green brought up Edward Santiago. Santiago was and had been the chief of police since 1999 or so. Albanese-De Mair testified that Green said that if this special group was to be successful everyone in town had to be on the same team, or in other words be of like mind. And, that they needed to get rid of Chief Santiago because Santiago was not a team player. Albanese-De Mair said she told Green she would not do that because she found Santiago to be a team player and the opposite of what Green thought. She said Green told her that Santiago does not do what needs to be done. She said since that meeting the association has not received any support with any of their projects.

Under cross-examination Albanese-De Mair reiterated all of the respect she has for Santiago. They have had a professional friendship for over thirty years. At one point there was a community oriented policing (COP) group that was established and Santiago was helpful with that group.

Santiago has always responded to her concerns and requests. She acknowledged that since she does not live in Plainfield she cannot vote in any municipal elections. She stated that she was not pleased with the Sharon Robinson-Briggs administration because of the lack of communication and cooperation with the business district.

Albanese-De Mair stated under cross-examination that she never heard the mayor say that she wanted to remove Santiago from his position. When questioned if she ever heard anyone from the council say they wanted to get rid of Santiago she said no. She never discussed Santiago with Director of Public Affairs and Safety, Martin Hellwig. She never heard Mark Deschield, the City administrator, say he wanted to get rid of Santiago.

Brian Schoenberger

Brian Schoenberger is a business man in Plainfield, he owns the Queen City Diner. He was a past president of the Plainwood Square Business Association. He said the group met in September 2007 with Assemblyman Gerald Green. The purpose of the meeting was to develop a relationship between the business community and City government. At that time he had been a resident of Plainfield for twelve years and he had always been told that if you wanted to get something done in Plainfield you had to talk to Jerry Green. Green was invited to the meeting to begin the process of developing a relationship with the City government.

Schoenberger stated that in discussions with Green, Green suggested that the various business districts and associations consolidate. He told Green that he disagreed with that suggestion and that Green was shocked that he disagreed. At that point, Green brought the subject of Santiago and told him that he wanted to eliminate Santiago's position of chief of police and he wanted his support in that effort.

According to Schoenberger everyone who lives in Plainfield knows that Green runs the town, he has heard that from other business owners. At one time, he went to Green regarding buying a liquor license; he needed a list of licenses that were for sale

in Plainfield. He stated he could not get that information on his own but after speaking with Green he got the information.

He had met with the Mayor but the subject of Santiago never came up.

Under cross-examination he said, on the liquor license matter, that he was happy and grateful for Green's assistance but that he found it odd that he could not get the information by himself. He said that he is not fond of the Sharon Robinson-Briggs administration. He did not find the administration cooperative with the business owners of the city.

Schoenberger said that he had met Green maybe once or twice before that September 2007, meeting. Schoenberger said he has seen Santiago at his diner many times before but never socialized with him. He has also met with Mayor Robinson-Briggs numerous times but the issue of Santiago never came up.

Joseph Hartmann

Joseph Hartmann at the time he testified was the Coordinator with the Office of County Services Division of Program and Community Services for the Department of Corrections. He had been employed by the State of New Jersey for approximately 34.5 years. Hartmann said one of his duties as was to inspect county and municipal detention centers and jails; essentially he inspected detention facilities to make sure they are in compliance with the Administrative Code.

Hartmann identified Exhibit R-12 as a letter he wrote to Santiago on July 2, 2007. Hartmann said he wrote the letter in response to the issue of Plainfield using police aides to monitor detainees while they are being housed in the City jail. Hartmann did not recall if he made the initial inquiry or if Santiago called him and posed the issue. (See Exhibit R-12.)

Hartmann explained that the issue of a police aide monitoring a detainee arose when a detainee committed suicide while being supervised by a police aide. This event

took place sometime in 2007. According to Hartmann, the concern was the use of a police aide monitoring detainees without the supervision of a trained police officer. Hartmann explained that police aides are to work under the close supervision of a trained police officer. At the time the detainee committed suicide there was no police officer present.

Hartmann recalled that Santiago questioned him regarding the use of a police aide versus a police officer. Hartmann said there were no training requirements for a police aide and he recommended that a police aide be under close supervision of a trained police officer. At the time of the suicide incident Plainfield did not have a police officer within close proximity to the detainees or the police aides. Hartmann furthered that the watch commander was not in sufficient view of the area where the detainees were located; that is, he was not in direct eye view.

Under cross-examination Hartmann testified that the Administrative Code does not prohibit police aides from working in jails. He said that when he went to Plainfield to look at the jail he never saw a police aide handling a prisoner. He was only made aware of Plainfield's use of police aides by Santiago. He said he reviewed the jail to see if they were compliant with the code. Hartmann stated he never authorized an inspection of Plainfield's jail; that the inspection was not an inspection per se; and that it was a response to an inquiry by Santiago. Plainfield was never issued a summons for using police aides.

Richard Richardella

Richard Richardella at the time of his testimony was employed by the New Jersey Department of Community Affairs—Division of Local Government Services. Richardella's resume is included at the end of his report that is marked R-1. Richardella testified that in 2003-2004, his department was asked by then Plainfield Mayor Albert McWilliams to do an assessment of Plainfield's police department.

Richardella basically stated he reviewed the areas of concern to the mayor and the council. Richardella was asked to review staffing, the police department's

organizational structure, the deployment of police resources, and to analyze its efficiency and effectiveness in fighting crime and crime patterns. The mayor also wanted him to look at the schedules of the police officers.

Richardella said that the department was top-heavy. The police officers were working twenty-seven hours less than the average officer working in a city like Plainfield.

Under cross-examination Richardella stated that he did not make any recommendations as to the appropriate authority, the efficacy of the authority's chain of command, or on the positions of the Director of Public Safety versus the chief of police. He stated that was solely within the authority of the mayor and the City's governing body. He furthered that the organizational structure of the police department is basically adequate and should be maintained to facilitate management practices and effective control of police operations.

Richardella said when he reviewed the department's structure with regards to the captains versus the chief of police, he said no problems stood out regarding Santiago's running of the department. Looking at the structure he recommended that the department reduce the number of police captains from seven to four, and that the reduction could be done through attrition. He said that he was not aware that in 2008 Plainfield had eight captains. He thought that eight captains for Plainfield were excessive and expensive. At the time he did this review he spoke to Director Lattimore.

Overall, Richardella said the study found that the staffing numbers of the police department were consistent with municipalities of similar size and designation.

Edward Santiago

Edward Santiago at the time of his testimony had worked for the City of Plainfield for thirty-five years. He started as a patrol officer and worked his way up to Director of Public Safety and Affairs and captain within the police department. He was promoted to captain in 1989 and in 1999 after taking the civil service test for chief of police he

became chief in April 1999. He was chief of police until that position was eliminated in 2008, he was then demoted back to captain.

Santiago testified that between 1999 and 2005 he and Assemblyman Green had a very good relationship. For example, they worked on various committees and groups to fight crime; Green made him his contact person for his home alarm. Then around August 2005, during the mayoral campaign he bumped into Green outside a candidate's headquarters and Green asked him to oppose Mayor McWilliams' proposed new crime plan. Santiago said he told Green that it would be inappropriate for him to get involved in partisan politics. Santiago said that Green looked at him strangely. Since that conversation Green has not reached out to him and whenever they met, either privately or publicly, Green has given him the cold shoulder. Green would no longer approach him. Santiago furthered he was not invited to an event Green had for the new mayor when Sharon Robinson-Briggs won the election over McWilliams in November 2005. Santiago said every other department head of the City was invited but him.

Santiago said that he had a very nice relationship with the new Mayor Sharon Robinson-Briggs, in that she awarded him with an award from the NAACP.

Then, on February 14, 2006, he was suddenly and urgently told to go to City Hall and see the mayor. At that meeting the mayor gave him a letter saying he was placed on administrative leave because he filed a lawsuit against the city in 2005. Santiago said the mayor claimed there were "chilling communications" between his office and the mayor's office. However, Santiago furthered that the lawsuit he filed was not against Mayor Robinson-Briggs but against the prior mayor McWilliams. Santiago said he was eventually re-instated when he dismissed the lawsuit.

Santiago said that Mayor McWilliams asked the Department of Community Affairs to do a study of Plainfield's Police Department. (See R-1 the Richardella Report.) According to Santiago, Richardella's report said that Plainfield should have four bureaus and a captain for each bureau. However, in 2004 there were six captains.

In 2007, Director Hellwig presented a plan to the City's administration that eliminated the position of chief of police. (See Exhibit R-6.) Santiago testified that this plan took him completely by surprise because Hellwig never discussed it with him and presented his proposal in a power point presentation before the council. Because of this plan his position as chief of police was eliminated, he was demoted down to captain. According to Santiago, his demotion increased the number of captains from six to seven. Santiago said the increase in captains made no sense because captains made more money than chiefs and directors. He also said that having seven captains was contrary to the recommendations made in Richardella's report and Hellwig's recommendations. He said captains in Plainfield earn \$132,000 (est.) and a chief of police earns \$125,000 (est.). He noted that only one position was abolished and that was the chief of police.

Santiago further explained that in December 2008, just before the re-organization by Hellwig there were five captains. He also pointed out that captains can earn overtime at 1.5 times an hour. He said there were no economic savings by demoting him. He said none of Hellwig's recommendations and re-organizations made economic or administrative sense. He said that a chief of police is responsible for the day-to-day activities of the police department; otherwise the day-to-day running of the department is split in several ways and each department has to be headed by a captain. He said because of the addition of two police captains two new bureaus had to be established; the Community Policing Bureau and the IT Bureau. Santiago stated that Hellwig further ordered that each bureau captain had to be rotated every thirty months.

Santiago said that because he vehemently disagreed with Hellwig's re-organization plan the New Jersey State Chief of Police Association filed a lawsuit, on his behalf, in Superior Court and that the matter (at the time of his testimony) was pending before the Appellate Division.

Santiago furthered that there are certain things the Director of Public Safety cannot do, such as grant gun permits, because he is not a law enforcement official. He said there are three to seven gun applications filed per week in Plainfield.

Santaigo said Captain Ruth Selizar covers for Hellwig while he is away; however, that is improper because a captain cannot supervise another captain because they are of equal rank.

Santiago said that Hellwig presented his re-organization plans to the City council and the council adopted his plan by ordinance in March/April 2008. Santiago noted that the position of Director of Public Safety covers the Police Department and the Fire Department and that the position of fire chief was not removed. He said that he never heard the reason why the chief of police position was eliminated and the fire chief's position was not.

Martin Hellwig

Martin Hellwig is the Police Director for the City of Plainfield. He testified as to his extensive experience in law enforcement spanning over forty-five years. He has been a police officer for the town of Verona, detective in Essex County Prosecutor's office, Director of Essex County Police, warden for the Essex County jails, Director of Security Essex County, and Essex County Director of the Office of Emergency Preparedness and Security. In January 2006, he became the Public Affairs and Safety Director for the City of Plainfield. And, in 2008, he assumed the position of Police Director. Academically, Hellwig is a graduate of the FBI National Academy, has a certificate in criminal justice from University of Virginia, and a certificate graduate of Fairleigh Dickinson University in public administration. (See his resume Exhibit (Remand) R-5.)

According to Hellwig, before the re-organization in 2008, the Director of Public Affairs and Safety was responsible for establishing the policy for the police department. The CHIEF OF POLICE was responsible for the implementation of policies and all of the day-to-day activities necessary for the running of the department. He said under the pre-re-organization system the chief of police's operation of the day-to-day activities was beyond review and was not held accountable for his decisions or actions in this role. Absent a disciplinary action, the Director of Public Affairs and Safety was powerless to ensure the effective implementation of policies as applied by the chief of

police. At that time only the Director of Public Affairs and Safety was accountable to the City administration.

Hellwig testified that he began working for Plainfield as the Director of Public Affairs and Safety on January 1, 2006. At that time the chief of police was head of the police department: there were six to seven captains, and several lieutenants, sergeants, and police officers. He began a thorough review of the entire structure of Plainfield's police department. It took him two years to do what he thought was a thorough examination of the department's policies, activities, management, and personnel. During that two-year review he observed that Plainfield had significant problems with the operation of the Traffic Unit. A large number of pedestrians were being hit by cars. Hellwig said he suggested a plan for better traffic control but Santiago never accepted his plan.

Hellwig stated that under Santiago traffic patrol officers were inside doing administrative work and he thought traffic patrol officers should be outside monitoring traffic. That is, making sure motorists obeyed traffic signs and speed limits. He saw inefficiencies in the response time by the City to victims of assault and poor communication among the several bureaus within the police department.

The crime rate was high, specifically he said there were fifteen homicides in 2005, and that Plainfield needed to take control of the rising crime rate. Hellwig saw that there were inefficiencies within the police department. For example, the response time from the police department to victims of assaults was poor because inter-departmental communications was poor. The drug problem in Plainfield was open and notorious with police officers on patrol but achieving no good results.

Hellwig testified that he told Santiago of his concerns and the areas that needed improvement but that Santiago said he was using "directed patrol" meaning that those high rate crime areas were getting special attention. Hellwig stated that he disagreed with the "directed patrol" method because that method is reactionary and not proactive and preventative. Hellwig furthered that he would speak with Santiago and Santiago

would agree with his plans and suggestions but when Santiago spoke to his officers and staff he would deliver a different plan or message.

Hellwig stated that he thought the captains had too much control; he said each captain had their own "fiefdom." He wanted captains to be better rounded and have cross-training. He wanted a rotation system. Each captain would be rotated every six (6) months. However, Santiago was against it. Santiago refused to do it. Hellwig said Santiago told him the captains did not want to rotate. Hellwig explained that he would not dictate who goes where but that he left that up to Santiago. Santiago appealed that order to the State, which led to a lot of litigation but that he (Hellwig) eventually won.

Hellwig said that he was contacted by the Union County Prosecutor asking for Plainfield's assistance in a special crime unit program; the program would analyze the major crime areas or towns in Union County. The prosecutor required Plainfield to donate an officer to assist in implementing the program. Hellwig said he discussed the program with Santiago and Santiago objected to it. Hellwig said he had the last word on this topic so he directed an officer from Plainfield to the Prosecutor's program because Santiago would not do it. However, Santiago delayed it so that it took over a month to get a Plainfield officer to the Prosecutor's Office.

Under cross-examination Hellwig explained that Santiago sent Officer Maldonado to the Prosecutor's Office but that Santiago felt that Maldonado was not being put to good use because Maldonado was only doing data-entry work on the computers. According to Hellwig this above incident took place in late 2007. As a result he decided to propose a re-organization of the police department. Hellwig said he discussed the re-organization idea with Plainfield's corporate counsel and the mayor at the time Sharon Robinson-Briggs. Hellwig testified that he envisioned the police department re-organized by putting more officers on the street, rotation of the captains, and the removal of the position of chief of police. Hellwig explained that in his opinion Santiago did nothing but stonewall what the City and the Department of Safety wanted to accomplish.

Hellwig testified that he wrote his plan for the re-organization of the Department of Public Affairs and Safety at the end of 2007 or early 2008. (See Exhibit R-6.) Hellwig said no one pressured him to do the re-organization—not the mayor, City administration or anyone else—and no one told him to remove the position of chief of police. Hellwig stated that he had been speaking with the City council, the mayor, and City administrator about his plan to re-organize the Department of Public Affairs and Safety almost since becoming the Director.

Hellwig further testified that he and the City council, the Mayor and City administrator heard from Trenton Police Director Joseph Santiago, who advised them against Plainfield's proposed re-organization plans. Hellwig said that Joseph Santiago explained the difference in having a Police Public Affairs and Safety Director and having a chief of police. Hellwig also said that the City also heard from members of the Police Chief Association who advocated for retention of a police chief. However, at the end of it all, the council voted for his re-organization plan and the plan was approved by the New Jersey Department of Personnel. (See Exhibits (Remand) R-1, R-2, R-3, R-4.)

The re-organization of the Department of Public Safety for Plainfield was approved and passed by the City council and an ordinance was passed on March 28, 2008. (Exhibit P-4.)

Hellwig stated that Assembly Green never pressured him and neither did any other elected official.

According to Hellwig, the Department of Community Affairs/Richardella report was in disagreement with his re-organization plans. (See Exhibits R-1.) However, Hellwig stated that he used that report as a reference because it was written in 2004, even before he assumed the position of Director in Plainfield. He said he was not required to accept that report or recommendations. He also said that things had changed in Plainfield in the interim years.

Hellwig stated that since the re-organization there has been success and crime has been reduced.

Under cross-examination Hellwig established that he had no Bachelor's degree, that he had a certificate from the University of Virginia and certificate in public service administration. His experience in working in urban areas came as a result of his patrolman experience.

Under cross-examination Hellwig furthered that Santiago made \$6,000 a year less as chief of police than as a captain. He also explained that when his re-organization plan came into effect Santiago was reduced to a captain. He stated that in 2008 as Director of Public Affairs and Safety his salary was a bit more than \$90,000 and that his current salary, at time of his testimony, October 2012, he was earning \$104,000.

Hellwig stated that his re-organization plan changed the work hours of the members of the police department. For example, prior to the re-organization, they worked seven days a week patrolling the Plainfield. Under his new plan they used a Pittman schedule, still a seven day a week schedule but it was a staggered schedule. This schedule kept the drug dealers at bay because they won't know when the police were around.

Hellwig testified that Santiago tried to obstruct his vision for the police department.

Hellwig said that when he was interviewing for the position of director he was interviewed by Assemblyman Green and several other people as well as the mayor-elect at the time who was Sharon Robinson-Briggs.

Hellwig denies that Assemblyman Green told him that Santiago was not a team player.

Hellwig acknowledged that he knew Santiago was placed on administrative leave six weeks after he was sworn into office but he denied knowing or doing anything about that. Hellwig said he believes it was because Santiago filed a lawsuit against the prior mayor.

Hellwig testified that about a year later in March 2007 he filed eight disciplinary charges against Santiago.

Hellwig said he received Santiago's rebuttal to his re-organization plan. He recalls receiving via email Santiago's rebuttal plan only hours before going into the council meeting to discuss his re-organization plan.

Hellwig furthered that as a result of the council approving his re-organization plan the position of chief of police was eliminated and that elimination resulted in a lay-off, hence the lay-off Santiago as chief. That lay-off resulted in Santiago being reduced to captain.

According to his re-organization the police department now has seven captains when originally there were five. One of those seven is Santiago, who decided to take the demotion, and Lieutenant Gilliam was promoted to captain. Captains at the time were earning \$111,981.

Hellwig stated that there were no economic savings to the demotion of Santiago. However, Hellwig said that he anticipated that there would be several retirements after the re-organization, the first retirement occurred eighteen months after the re-organization and two more came within three years. Since 2010 Plainfield has had three captains on the payroll.

Hellwig under cross-examination testified about some of the other specific changes he made within the police department. He said he removed several police officers from the jail because those officers were not being efficient. He said he saw officers often doing nothing. He said there had been a jail escape.

He said his re-organization has streamlined the department and at the same time crime has also decreased. He further stated that the re-organization did not only affect the police department but it also involved fire department, public works, urban development and the City's finance department.

Hellwig repeated that Santiago was laid-off as police chief and was demoted to captain.

FINDINGS OF FACT AND DISCUSSION OF LAW

Appellant, Edward Santiago, has challenged the elimination of the position of police chief and his resulting demotion to that of captain alleging that the elimination was done in bad faith and for political retribution. Respondent, Plainfield rebuts by claiming that it had to reorganize the department because the department needed to be restructured so it could work efficiently. Plainfield also contends that it legally implemented the changes by first getting the approval of the Civil Service Commission and then getting the appropriate city ordinance approved and passed.

In these types of matters the appellant has the burden of proof, and said proof must be shown by a preponderance of the credible evidence. The employee laid off or demoted must prove that the layoff or demotion was instituted for a reason other than economy, efficiency or other related reason. N.J.S.A. 11A:8-4 and N.J.A.C. 4A:8-2.6(a)(1) provide that employees who are laid off or demoted can contest the good faith of that layoff or demotion. In a good faith appeal, the employee must prove by a preponderance of the evidence that the layoff or demotion was instituted for a reason other than economy, efficiency or other related reason. The proofs must preponderate. This is a substantial burden because actions of the appointing authority are vested with a presumption of validity. Pellet v. Dep't. of Civil Serv., 10 N.J. Super. 52, 57 (App. Div. 1950); Schnipper v. Twp. of N. Bergen, 13 N.J. Super. 11 (App. Div. 1951). "Under the preponderance standard, 'a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met.' Biunno, Current N.J. Rules of Evidence, comment 5a on N.J.R.E. 101(b)(1) (2005)." Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006).

It is the obligation and responsibility of the undersigned to weigh the credibility of witnesses in this matter in order to make factual determinations. Credibility is the value that a fact finder gives to a witnesses' testimony. The word contemplates an overall

assessment of a witness's story in light of its rationality, internal consistency, and "manner in which it hangs together" with other evidence. Carbo v. United States, 314 F.2d 718,749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor 38 N.J. Super. 6, 24 (App. Div. 1955).

Based upon the testimonial and documentary evidence presented and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following to be the operative **FACTS** in this case:

Edward Santiago was the City of Plainfield's chief of police from April 1999 until April 2008. Edward Santiago is a thirty-five-year plus veteran police officer of the Plainfield Police Department.

On or about August 2004, Mayor Albert McWilliams requested of the State of New Jersey Department of Community Affairs-Division of Local Government Services to review, assess and submit recommendations concerning the Plainfield's police department. Specifically, the mayor wanted the State to review and make recommendations regarding the department's staffing, efficiency, effectiveness, and make recommendations toward crime fighting strategies. The Division of Local Government Services submitted its recommendations in August 2004. This study did not express an opinion on the positions of the Director of Public Safety versus the chief of police.

In January 2006, Plainfield got a new mayor, Sharon Robinson-Briggs, having defeated the prior mayor Albert McWilliams. Under Mayor Robinson-Briggs's directorship Martin Hellwig was hired as the Director of Public Affairs and Safety. Hellwig was responsible for fiscal oversight and management of the fire department, police department and the office of emergency management.

On or about March 2008 Hellwig presented a reorganization plan of the city's police department to the Plainfield City council, mayor and City administrator. The re-

organization plan was approved and subsequently the appropriate ordinances were passed.

The new plan called for the revamping of the police department's organizational table and it removed the title and position of chief of police. The chief of police, being Edward Santiago, was removed and he was placed in a lesser title to that of a captain. Santiago was one of seven captains. Prior to Santiago being demoted there were five captains.

As chief of police Edward Santiago was earning \$125,000 (est.), as a captain he was earning \$132,000 (est.).

The testimony of Edward Santiago, Donna Albanese-De Mair, and Brian Schoenberger with respect to their conversations with Assemblyman Gerald Green regarding Edward Santiago not being a team player, or that he is not willing to work with the program are not incredible. No evidence was presented to disprove those conversations. However, proof of the charges depends not only on the credibility of the evidence but also on its connectivity to the charges. Those statements alone are not dispositive of the ultimate issue as to whether Santiago was demoted or removed from the chief of police position because of bad faith or retaliation politics. Evidence or testimony of unlawful motive alone is not sufficient to satisfy the burden of proof in the face of evidence that the challenged personnel action was designed to effect economy and efficiency. Schnipper, supra, 13 N.J. Super. at 15.

Also of note in regards to the conversations the witnesses had with Assemblyman Green, is that the City of Plainfield as early as 2004 was reviewing and assessing the structure of the police department. And, in 2004 Plainfield was under the helm of Mayor McWilliams, for Mayor Sharon Robinson-Briggs did not come into authority until January 2006. According to Albanese-De Mair, Schoenberger, and Santiago, their conversations with Assemblyman Green took place on or about August, September and October of 2005; three years before the actual re-organization took place and under a different city administration.

The discretion to diminish the size of the work force and the discretion to limit its functions are predominantly managerial functions, State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 88 (1978), and are not to be interfered with in the absence of proofs that they were exercised dishonestly for an improper motive, or because of ill will, or for some other improper reason. See also N.J.S.A. 11A:1-2(b).

There are considerations other than economy in the abolition of an office or position. The fact that the office or position is no longer necessary and can be abolished without impairing departmental efficiency is a legitimate and reasonable position that an appointing authority can take. The motive for the abolition of a useless position is immaterial. Public policy dictates that an appointing authority takes such course. It would be absurd to hold that a needless position must be continued in existence because an ulterior purpose influenced or played some role in its abolition. Hunziker v. Kent, 111 N.J.L. 565, 568 (Sup. Ct. 1933); Santucci v. Paterson, 113 N.J.L. 192 (Sup. Ct. 1934).

The fact that appellant was removed or demoted or that the position of chief of police was eradicated is not proof of bad faith. Bad faith is something that cannot be presumed, an appellant claiming such a charge must prove the alleged bad faith by a preponderance of evidence.

CONCLUSION

Based upon all of the foregoing, and after careful consideration and review of the testimony and documentary evidence presented, I **CONCLUDE** that the City of Plainfield did not demote or remove Edward Santiago from the position of chief of police in bad faith or for political retaliation. I also **CONCLUDE** that Edward Santiago has provided no evidence that he was demoted or removed from the position of chief of police due to the City acting in bad faith or for political retaliation purposes.

ORDER

It is therefore **ORDERED** that the petition filed by Edward Santiago against the City of Plainfield is hereby **DISSMISSED**.

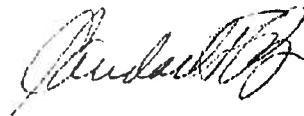
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, P.O. 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.

June 30, 2014

DATE



CARIDAD F. RIGO, ALJ

Date Received at Agency:

June 30, 2014

Date Mailed to Parties:

lr

APPENDIX

WITNESSES

For Petitioner:

Donna Albanese-De Mair
Brian Schoenberger
Joseph Hartmann
Richard Richardella

For Respondent:

Martin Hellwig

EXHIBITS

For Petitioner:

- P-1 Certification of Chief Edward Santiago
- P- 2 Letter dated August 27, 2008, re: Santiago/Discipline Action
- P-3 Notice of Minor Disciplinary Action
- P-4 Plainfield Ordinance No. MC 2008-06 re: Establishing Office of Police Director
- P-5 Superior Court Order denying reinstating Edward Santiago to chief of police
- P-6 List of traffic and criminal cases from 1998 thru 2011
- P-7 Superior Court Appellate Division Decision, Santiago v. City of Plainfield

For Respondent:

- R-1 Department of Community Affairs review and assessment dated August 2004
- R-2 Organization Plan for Police Department, prepared by Martin R. Hellwig
- R-3 Plainfield Police Division Re-organization 2007
- R-4 Chief Santiago's response to Hellwig's re-organization 2007
- R-5 Resume for Martin R. Hellwig
- R-6 Department of Public Affairs and Safety purpose for re-organization
- R-9 Amendment to Ordinance 2008-07

R-10 Additional Amendment to Ordinance 2008-06

R-12 Letter from the Department of Corrections to Santiago dated July 2, 2007

EXHIBITS REMAND

For Petitioner:

P-1 Letter dated August 21, 2006, from Santiago to Director Hellwig

P-2 Department of Public Affairs and Safety Article

P-3 Letter dated August 7, 2008, re: Santiago Disciplinary Action

For Respondent:

R-1 Plainfield Resolution Authorizing a Layoff Plan January 24, 2008