



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>RD</sup> DAY OF JUNE, 2020

*Deirdre L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
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Civil Service Commission  
P. O. Box 312  
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Attachment

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION – SUMMARY**

**DECISION**

OAL DKT. NO. CSV 11092-15

AGENCY REF. NO. CSC 2016-564 et al

**IN THE MATTER OF JAMES BAIR, ET. AL.,  
CITY OF ATLANTIC CITY,  
DEPARTMENT OF PUBLIC WORKS.**

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**James R. Glowacki, Esq.,** for petitioners, James Bair, Timothy Martin, and Eric Mason (Willig, Williams & Davidson, attorneys)

**Charles E. Schlager, Jr., Esq,** for respondent, City of Atlantic City, Department of Public Works, **Frank Guaracini, III, Esq,** on the brief, (Blaney & Karavan, P.C., attorneys)

**BEFORE ELAINE B. FRICK, ALJ:**

Record Closed: March 30, 2020

Decided: April 15, 2020<sup>1</sup>

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<sup>1</sup>On March 19, 2020, the Office of Administrative Law (OAL) ceased normal operations due to the COVID-19 crisis, pursuant to the Governor of New Jersey's Order. OAL staff began remotely operating from home, with limited access to ordinary office resources and procedures, beyond the control of the OAL administration and staff. As such, some decisions have been delayed in their processing and submission to the parties and transmitting agencies.

## **STATEMENT OF THE CASE**

Appellants, boiler operator employees, James Bair, Timothy Martin, and Eric Mason (the employees), were laid off by their employer, the City of Atlantic City, Department of Public Works, (the City) for alleged reasons of efficiency and economy. The employees appealed their layoffs, alleging the City acted in bad faith. The City filed an initial Motion for Summary Decision, which was denied, as there remained a genuine issue of material fact in dispute, regarding the circumstances of alleged raises given to City Directors, without the Civil Service Commission's (CSC) knowledge, when the CSC approved the layoff plan. The City has renewed its motion for Summary Decision, providing additional documentation and information regarding the disputed fact. The employees oppose the motion, contending the matter should proceed to a hearing.

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## **PROCEDURAL HISTORY**

The procedural history of this matter is pertinent, given the age of the case, and is set forth in detail herein. The City laid off the appellant employees, effective June 26, 2015. The employees appealed, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on July 23, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13. The matter was held in abeyance due to the State of New Jersey takeover and monitoring of the City.

The OAL was advised in 2017 that the appeal could proceed, although the City no longer was a Civil Service employer. The matter was assigned to other Administrative Law Judges (ALJs), who determined they had conflicts. The file was subsequently assigned to the undersigned ALJ, and hearing dates were scheduled. Those hearing dates were adjourned at the request of the City to file a Summary Decision Motion. Extensions for the submission of briefs were provided. Briefs were submitted by the parties with substantial documentation. Oral argument was heard on April 1, 2019. The motion was denied by Order, dated June 17, 2019. The hearing dates were rescheduled.

Thereafter, counsel for the City advised it intended to renew its Summary Decision Motion, having obtained additional information regarding the factual issue identified as being in dispute, which resulted in the denial of the first Motion for Summary Decision. A briefing schedule was set. Extensions were given for the submission of briefs. Oral argument was heard on January 27, 2020. This is the initial decision on the City's renewed Motion for Summary Decision.

### **FACTUAL DISCUSSION AND FINDINGS**

The following undisputed facts were confirmed in the prior Order regarding the initial Motion for Summary Decision, and from the submissions of the parties, or otherwise confirmed during oral argument, which I adopt and **FIND** as **FACTS**: The employees were employed as boiler operators for the City. The City communicated with the New Jersey Civil Service Commission (CSC), by correspondence, dated April 17, 2015, seeking approval to implement a layoff plan. The City asserted it was required to implement the layoffs for reasons of economy and efficiency.

Approximately 456 employees were slated to be laid off from various City departments: Administration; City Clerk; Health and Human Services, Public Safety-both Police Division and Fire Division; Licenses and Inspections; and Public Works. The three employees in this matter were among six boiler operators identified by the City, as part of the more than four hundred personnel to be laid off. The City advised the CSC that "[d]uring the course of this layoff action, the Business Administrator (BA) has implemented a hiring and salary freeze absent extraordinary circumstances."

The City laid off the employees effective as of June 26, 2015.<sup>2</sup> The employees were offered, and accepted, temporary positions as boiler operators in October 2015.

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<sup>2</sup>The Individual Notices of Layoff indicate the layoffs were effective the close of the working day on June 26, 2015. A letter to the CSC from the President of AFSCME Local 2303 refers to the employees having received notices scheduling them to be laid off on June 26, 2015. The CSC "Final Administrative Action of the Civil Service Commission" cites the layoff date as June 26, 2015. Any references in the record to June 25, 2015, as the layoff date are typographical errors.

The City BA was notified by correspondence, dated November 10, 2015, from the CSC, that the layoff plan set forth in the BA's letter of October 27, 2015, regarding contemplated layoffs of twenty-one employees, complied with state regulations. The layoff plan was approved.

Appellants provided a copy of City Resolution Number 511, entitled "Resolution to Level Salaries of Directors," which is dated as adopted on June 24, 2015, although the document does not have the then City Clerk's signature. That resolution approved raises for the directors of three departments, including the Director of Public Works. Appellants obtained this document from their former union. The current City Clerk has certified she reviewed the document submitted by the employees as Resolution Number 511 and can unequivocally state that there is no record of the document in the official records of the City. There is no evidence of the terms of that resolution document ever being acted upon by the City and is not the official resolution adopted by the City.

The City has now provided a document, certified as a true copy by the current City Clerk, as City Resolution Number 511, also entitled "Resolution to Level Salaries of Directors," which is dated as adopted on June 24, 2015, and includes the signature of the City Clerk at that time. The current City Clerk has certified this is an authentic and true copy of Resolution Number 511 on file with the City.

The certified copy of Resolution Number 511 differs from that which had been previously submitted by appellants. The certified copy identifies the current salary for three directors and acknowledges that the salaries of directors of other City departments "are significantly above those paid" to the three directors. The resolution indicates that there should be a "measure of parity between the Department Directors in order to encourage fairness and equity." The certified copy does not have the clause approving salary raises for the three directors, as does the unsigned copy of the resolution provided by appellants.

The current payroll supervisor for the City has certified that she reviewed the City's payroll records and obtained documentation from the City's e-files confirming that the three directors for the City who were named to receive salary increases in the copy of the resolution provided by the employees in this matter, never received salary increases. The

payroll supervisor has certified that each of the three directors identified in the resolution provided by the employees here, never had a change in their salaries from their date of hire. She attached copies of the e-files confirming the information in her certification that the salaries of the three directors remained the same and none of the three ever received a salary increase as that which appears in the copy of Resolution Number 511 submitted by the employees for this matter.

**Arguments of the parties:**

The City contends the layoffs were required due to reasons of efficiency and economy. The CSC approved the layoff plan and thus the layoffs were done in good faith, and there is no factual issue in dispute. It contends that although there was discussion regarding parity for all city directors' salaries during the meeting of June 24, 2015, and Resolution Number 511 reflects that information, raises were never provided to the three directors. Thus, the City contends there is no factual dispute regarding the circumstances of the alleged salary increases, so there is no bad faith demonstrated on the part of the City as if they did provide raises to directors while the CSC approved the layoff plan, which plan had no information about raises while asserting financial information to support the layoffs.

The employees assert that the City has failed to put forth sufficient evidence to show the absence of a genuine issue of material fact concerning alleged raises given to city directors prior to the challenged layoffs. The employees contend the City acted in bad faith. The City advised the CSC it was implementing a hiring and salary freeze, yet the copy of the resolution appellants had obtained authorized raises to three city directors, including the Public Works Director, a few days prior to the layoff of the employees. Appellants assert the City's recently submitted documentation does not demonstrate that appellants' copy of the resolution is "illegitimate." Rather, appellants believe a disputed fact remains regarding the procedures taken by the City and City Council related to the challenged layoffs.

## LEGAL ANALYSIS AND CONCLUSION

A party in an administrative law matter, “may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). The motion “shall be served with briefs and with or without supporting affidavits” and the decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). If the non-moving party is able to “set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding,” that party will prevail, and the motion shall be denied. Id.

This standard is set forth in New Jersey Court Rule 4:46-2, regarding a motion for summary judgment, which is substantially equivalent to an administrative law summary decision motion. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court stated:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

Brill, 142 N.J. at 540.

“The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540, citing Anderson v Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision in an administrative law proceeding, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial.” Brill at 530, citations omitted. “An evidentiary hearing is mandated only when the proposed administrative



action is based on disputed adjudicatory facts.” In re Farmers’ Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

The Civil Service Act authorizes a civil service municipality to institute layoff actions “for economy, efficiency, or other related reasons.” N.J.A.C. 4A:8-1(a). At least thirty days prior to issuing layoff notices, the civil service municipality shall submit a detailed layoff plan to the CSC. N.J.A.C. 4A:8-1.4(a). An employee who has been laid off has the right to file a “good faith” appeal, based upon a claim that the employer laid off the employee “for reasons other than economy, efficiency, or other related reasons.” N.J.A.C. 4A:8-2.6(a). “The burden of proof is on the appellant.” N.J.A.C. 4A:8-2.6(c).

The regulation presumes that a layoff plan has been implemented in “good faith.” N.J.A.C. 4A:8-2.6(a); see, Greco v. Smith, 40 N.J. Super. 182, 189 (App. Div. 1956). An employee challenging the layoff plan has the burden to “show bad faith.” Greco, 40 N.J. Super. at 189.

In this matter, the City asserts there are no genuine issues of fact in dispute because it had the approval of the CSC to implement its layoff plan and thus, the layoffs were appropriately done in good faith for reasons of economy and efficiency. The employees contend the City acted in bad faith by advising the CSC there would be a hiring and promotional freeze during the implementation of its layoff plan, yet then proposed providing raises to directors a few days before the employees were laid off. The newly provided certified documentation and certifications, demonstrate that the proposed raises to the three directors never occurred. The witness certifications confirm those directors never received raises, as confirmed by the payroll documentation. The CSC approved the lay off plan, which did not include raises for the directors. The employees contend that their version of the resolution demonstrates that a disputed fact remains regarding the procedures taken by the City and City Council related to the challenged layoffs

I **CONCLUDE** that the version of Resolution Number 511 submitted by the City is the true and correct version of the resolution acted upon by the City, a few days prior to the employees’ layoffs. The certifications from the current City staff members, along

with the supporting documentation, supports this conclusion. The version of the document submitted by the employees, as obtained from their former union, may have been an initial draft of the resolution. The City Counsel may well have changed the language of the drafted resolution in light of the fact that the layoffs were going to occur.

Even if the City had passed a resolution to raise the three directors' salaries, the evidence presented now unequivocally demonstrates the fact that the directors who were identified in the employees' version of the resolution, never received salary increases. Thus, I **CONCLUDE** there is no disputed material fact regarding whether the directors' proposed salary increases were known to the CSC when the CSC approved the City's layoff plan.

The regulations presume that a layoff plan has been implemented in good faith, and the appellants bear the burden of demonstrating bad faith. The fact the appellants were relying upon to demonstrate bad faith on the part of the City, was the City approving directors to receive salary increases, and alleged that the CSC must not have known of the approval of the salary increases when it approved the layoff plan. Even when viewing the facts most favorably for the appellants, there is nothing presented to dispute or otherwise overcome the witness certifications and certified and authenticated documentation that the salary increases never occurred. Hence, I **CONCLUDE** there is no indication that the City acted in bad faith by implementing its layoff plan.

Having concluded that there is no disputed fact regarding this issue of the resolution and whether the City provided salary increases to directors on the eve of the employees' layoffs, and did not advise the CSC of such information prior to the CSC's approval of the layoff plan; and having concluded that there is no indication that the City acted in bad faith, I must **CONCLUDE** that the Motion for summary decision shall be granted, as there is no material fact in dispute regarding appellants' position that the City acted in bad faith.

### **ORDER**

It is **ORDERED** that the City's Motion for Summary Decision is **GRANTED**.

I hereby **FILE** my initial decision with the **NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS** for consideration.

This recommended decision may be adopted, modified or rejected by the **NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**, which by law is authorized to make a final decision in this matter. If the New Jersey Department of Community Affairs 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 LOCAL GOVERNMENT SERVICES, NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS AND CHAIRMAN OF THE LOCAL FINANCE BOARD, 101 S. BROAD STREET, PO Box 803, Trenton, New Jersey 08625-0803**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 15, 2020  
DATE

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**ELAINE B. FRICK, ALJ**

Date Received at Agency:

04/15/2020

Date Mailed to Parties:

04/15/2020

EBF/dm

**APPENDIX OF EXHIBITS**

**For appellants:**

Appellants Brief in Opposition to Respondent's Renewed Motion for Summary Decision (received January 3, 2020)

Exhibit A: Uncertified copy of No. 511, Resolution to Level Salaries of Directors, dated as adopted, June 24, 2015, unsigned by then City Clerk

**For respondent:**

Notice of Motion with Respondent's Brief in support of Motion for Summary Dismissal (received November 15, 2019)

Certification of City Clerk, Paula Geletei, executed October 8, 2019

Certification of City's Payroll Supervisor, Donna Herbert, executed October 8, 2019

Payroll Documentation/Screen shots

Resolution of the City of Atlantic City, Number 511, certified true copy by city clerk

**Prior Submissions:**

Exhibit A: July 10, 2015, Letters to Civil Service Commission (AC3-7)

Exhibit B: Final Administrative Action of CSC (AC18-20)

Exhibit C: Individual Notices of Layoff/Demotion (AC10-15)

Exhibit D: April 17, 2015, letter to Kenneth Connolly, Director of CPM, CSC, from Arch Liston, Business Administrator

Exhibit E: Request for Personnel Action (AC024-027)

Exhibit F: Job Advertisement Request, Memorandum (AC029-031)

Exhibit G: November 10, 2015, letter to Arch Liston from Kenneth Connolly

Exhibit H: Log Book excerpts

Exhibit I: City Hall Boiler #1 information

Exhibit J: City Hall Boiler #2 information

Exhibit K: AC Public Safety Building Boiler #1 information

Exhibit L: AC Public Safety Building Boiler #2 information

Exhibit M: Certification of Paul Jerkins, Public Works Director

Response Brief to Petitioners' Opposition for Summary Decision (received January 7, 2020)