



STATE OF NEW JERSEY

In the Matters of Alita Carter, <i>et. al.</i> , City of Jersey City	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC Docket Nos. 2021-381, <i>et. al.</i>	:	:
	:	:
	:	Administrative Appeals
	:	:

ISSUED: JANUARY 22, 2021 (JET)

Alita Carter, a Program Monitor, Frank Gilmore, a Clerk Driver, Dan Wiley, a Senior Program Analyst, and Sabrina Harrold, a Supervising Administrative Analyst, represented by Pauline M.K. Young, Esq., and Drake Bearden, Esq., appeal the appointing authority's departmental reorganization plan for its Department of Recreation and Youth Development Services and their resultant transfers to other departments. Since these issues involve similar issues, they have been consolidated herein.¹

As background, on July 17, 2019, the appointing authority's City Council passed ordinance #19-081 which reorganized the Department of Recreation to the Department of Recreation and Youth Development, effective January 1, 2020.² The appointing authority provided the affected employees, including the appellants, with the opportunity to reapply for a position within the Department of Recreation of Youth Development, and it instructed the appellants to submit applications by October 11, 2019. The appellants did not apply for a position with the new department since they believed they were not required to do so pursuant to Civil

¹ The appellants submitted a group appeal to this agency in October 2019, which was withdrawn in order to pursue an action in Superior Court. By a September 29, 2020 order, the Superior Court remanded the matters to this agency for review. It is noted that the appeals of additional appellants, Emerlyn Deline a provisional employee, Joseph Jablonka who is retired, Keesha Taylor who was not transferred, and Antonio Carrerro, Andrew Kemp and Daniel Ali who withdrew their appeals, will not be considered in this matter and are considered closed.

² Ordinance #19-088 was approved which created a Department of Finance, and the appellants argue that employees in the Finance Department were not required to reapply for positions. However, the appellants do not name any employees in support of their claims.

Service law and rules. As a result, the appointing authority transferred the appellants to other departments.

The appellants submitted an October 23, 2019 letter to the Division of Agency Services (Agency Services), requesting a stay of the reorganization and transfers. In its January 15, 2020 reply, Agency Services notified the appellants that reorganizations are conducted at the discretion of the appointing authority. However, the appointing authority had not officially notified this agency of its reorganization plans.³ Agency Services explained that, in accordance with *N.J.A.C. 4A:4-7.1(b)*, if an employee is transferred to a new department and placed in a new title other than the one he/she holds on a permanent basis, the permanent transfer with new duties within the new title shall be subject to promotional, lateral, or voluntary demotional movement procedures. However, Agency Services noted that voluntary demotional or lateral title changes cannot be achieved without employee consent, unless due to layoff or disciplinary action pursuant to *N.J.A.C. 4A:4-7.6(d)* and *N.J.A.C. 4A:4-7.8*. Agency Services indicated that permanent/probationary employees transferred into a new department shall retain their permanent/probationary status in their respective title pursuant to *N.J.A.C. 4A:4-7.11(b)*. Agency Services stated that the reorganization plan would be reviewed in accordance with Civil Service laws and rules at the time it is submitted to this agency.

On appeal to the Civil Service Commission (Commission), the appellants contend that the appointing authority has been planning to remove them since 2018. Specifically, the appellants explain that, following a November 7, 2018 council meeting, their names were removed from the appointing authority's new organizational chart. The appellants contend that on June 24, 2019, the appointing authority provided the reorganization plan to City Council and indicated that various positions would be available in the Department of Recreation and Youth Development. The appellants explain that, by a memorandum dated September 25, 2019, the appointing authority notified them about the establishment of the Department of Recreation and Youth Development, and it issued job postings which were open until October 11, 2019.⁴ The memorandum further indicated that if employees should fail to apply to a job posting by October 11, 2019, its Department of Human Resources would notify them of the next steps including transfers to another department and title changes, and employees would be notified within 30 days of scheduled transfers. The appellants assert that, by way of an October 22, 2019 e-mail, Director McLaughlin notified Department of Recreation employees that she was scheduling interviews for permanent employees who did not apply for a

³ Agency Services indicated that a typical reorganization includes information about each affected employee including transfers, reassignments, and title changes, whether new departments/divisions are being created, and the effective date of the changes.

⁴ The September 25, 2019 memorandum provided that the Department of Human Resources would ensure that the new department was staffed properly, and on September 27, 2019, the appointing authority had 40 vacancies and it posted 27 job postings on its website, which would only be open to current Department of Recreation employees, which were closed on October 11, 2019.

position in the new department. The appellants add that, by way of an October 23, 2019 memorandum to City Council, the appointing authority indicated that it did not plan to implement layoffs as a result of the reorganization, and as such, there was no need to submit a reorganization plan to the Commission to approve pursuant to *N.J.S.A. 11A:8-1* and *N.J.A.C. 4A:8-1*.⁵ The appellants assert that, on February 18, 2020, the appointing authority issued a notice indicating that as a result of an organization review pursuant to ordinance #19-081, it concluded that the appellants' titles did not align with the new Department of Recreation and Youth Development's organizational chart, and as such, it was appropriate to implement transfers within 30-days effective March 24, 2020.⁶

The appellants maintain that, as a result of the transfers, they were singled out and required participate in a process that was not approved by this agency, since the reorganization plan was not submitted to the Commission until after the passage of the ordinances in violation of Civil Service rules. In this regard, the appellants argue that the appointing authority is disregarding this agency's rules, as it has no authority to transfer or demote any employees as a part of its unapproved reorganization plan. The appellants contend that such action constitutes intentional retaliation, political coercion, and harassment, hostile work environment, and disparate treatment in violation of *N.J.A.C. 4A:2-5-1* and 5.2, *N.J.A.C. 4A:3-3.9*, *N.J.S.A. 11A:4-16*, *N.J.S.A. 34:19-1 et. seq.*, the Conscientious Employee Protection Act (CEPA) and the New Jersey Law Against Discrimination (NJLAD). The appellants state that the appointing authority cannot utilize transfers, reassessments, and lateral title changes as a way of implementing disciplinary action, and as such, the reorganization cannot be approved by this agency. The appellants argue that they are performing duties outside of their permanent titles and, as such, are working outside of the established classification plans for their titles. The appellants maintain that the changes occurred without their consent and are experiencing irreparable harm. As such, the appellants request *N.J.A.C. 4A:10-2.3* be enforced, as the appointing authority designed the reorganization plan in order to effectively remove them from the reorganization table in violation of Civil Service laws and rules.

⁵ The October 23, 2019 memorandum provided that, pursuant to *N.J.A.C. 4A:4-7.1*, a permanent transfer requires the consent of the department directors and the approval of the Chairperson of the Commission. The appointing authority indicated that it anticipated utilizing the transfer process for permanent employees who would not be continuing with the new department, and such employees would be finalized by the end of November/Early December. The October 23, 2019 memorandum indicated that the appointing authority may consider a new title change for a transferring employee in light of their new job duties pursuant to Civil Service rules, and if a title change occurs, the employee retains their permanent status. The October 23, 2019 memorandum also provided that the appointing authority cannot demote the employee or force a lateral title change without the employee's consent, and if the transferring employee is found to be ineligible for their new title, the employee shall be returned to his or her permanent title but shall remain with the new department.

⁶ The February 18, 2020 notice indicated that this agency was notified of the transfers.

In support of their claims, the appellants provide copies of news articles with respect to the reorganization plan.

INDIVIDUAL APPEALS

Alita Carter

Carter asserts that she is a 51 year old African American female, and she has been serving as a Program Manager since August 13, 2013. Carter explains that her duties include coordinating grants for programs and managing data and logistics. Carter alleges that, as a result of a federal EEOC complaint filed in November 2014 alleging that she was subjected to retaliation by the appointing authority, she was transferred to the Department of Recreation. Carter states that she did not receive notice of the organizational change until October 21, 2019, when the Director of Human Resources informed her that she could submit an application for a position in the new department. Carter maintains that the reorganization was purposely designed to remove her from the Department of Recreation in order to enable the director to implement retaliatory practices against employees and maintain a political agenda. In addition, Carter asserts that her name and position were excluded from the new organizational chart. Carter states that, although she submitted her application, she informed the Director of Human Resources that she had been discouraged from applying since the director of the new department made it clear that there was no role for her in the new organizational plan. Moreover, Carter maintains that she was discriminated against based on race and age, and subjected to retaliation for filing prior EEOC complaints and for speaking out against the reorganization plan.

Dan Wiley

Wiley asserts that he is 68 years old, an African-American male, and is serving as a Senior Program Analyst. Wiley claims that the appointing authority notified him by a September 21, 2018 e-mail that he was transferred to the Department of Health and Human Services.⁷ Wiley contends that for 10 months, he was not assigned duties consistent with his permanent title, including managing, planning, and administering the summer youth camp. Wiley claims that the appointing authority allowed several employees to remain working in the Department of Recreation, despite that they did not apply for a new position. Wiley asserts that the appointing authority is showing preferential treatment to seasonal employees in the new department, while permanent employees are assigned work in other units.⁸

⁷ The appointing authority's organizational chart does not indicate that Wiley was transferred to the Department of Health and Human Services in 2018.

⁸ Wiley provides no evidence of this claim on appeal. He adds that forcing him to apply for a new position caused him to experience stress, since other employees were not required to reapply for a position.

Wiley acknowledges on appeal that he did not apply for a position in the new department. Further, Wiley contends that he was specifically targeted because he recently filed EEOC complaints against the appointing authority, and the appointing authority's actions against him evidences political retaliation. Wiley states that the appointing authority mailed its reorganization plan to the Commission on the same day it distributed transfer notices to employees, and he requests the Commission to stay the transfer and reorganization pending the outcome of a classification evaluation that he submitted to this agency.

Frank Gilmore

Gilmore asserts that he is an African American male and has been serving as a Clerk Driver for eight years. Gilmore contends that he was notified on March 9, 2020 that he was transferred to the Department of Health and Human Services. Gilmore explains that his duties prior to the transfer included working with basketball programs and serving as a coordinator. Gilmore asserts that he was targeted by the appointing authority because of his vocal objections pertaining to the departmental reorganization and transfer. Gilmore adds that he has been serving in the armory where he cleans toilets or has not been assigned work. Gilmore contends that the appointing authority maintains a hostile work environment and he sought out counseling in order to deal with work stress. Gilmore acknowledges that the appointing authority offered him a position in the new department, however, he did not accept a new position as he enjoys working in the youth program. Gilmore explains that he may tender his resignation as a result of stress from his work situation, as his transfer has continued the hostile work environment as he does not get along with his director. Moreover, Gilmore maintains that his objections to the reorganization and transfer have resulted in him being inappropriately targeted by the appointing authority, and as a result, his resignation would constitute a constructive termination.

Sabrina Harrold

Harrold asserts that she is a 52 year old African American female, and has been serving at the appointing authority for 30 years, and is serving as a Supervising Administrative Analyst. Harrold contends that in 2014, she was assigned as an Assistant Director in the Department of Recreation, however, she was approved for a leave of absence in 2015 due to an illness. Harrold states that the appointing authority had assigned another employee as an Assistant Director in her absence. Harrold asserts that she was notified on February 18, 2020 that her title did not align with the reorganization of the new department. Harrold adds that she is now performing duties that are consistent with those performed by an Employee Benefits Specialist, including overseeing employee benefits plans and designing benefit programs. In addition, Harrold states that she filed CEPA and federal EEOC complaints against the appointing authority, and as a result, the appointing

authority is now subjecting her to retaliation. In this regard, Harrold maintains that the appointing authority's assignment of duties outside of her current title constitutes retaliation, especially since she does not possess any previous experience in the administration of health benefits. Moreover, Harrold asserts that she has been targeted as she vocally objected to the reorganization and transfer at various City Council meetings.

Despite being provided with the opportunity, the appointing authority did not provide any arguments or information in response to the appeal.

It is noted that records from the County and Municipal and Personnel System (CAMPS) do not reflect that the appellants' titles were changed. Rather, such records indicate that they are serving in the same titles that they were in prior to the transfers. Additionally, records reflect that Carter is serving as a Program Monitor and was transferred to the Department of Finance effective September 21, 2020; that Carrero is serving as a Children's Supervisor and was transferred to the Municipal Court effective March 24, 2020; Wiley is serving as a Senior Program Analyst and was transferred to the Department of Housing and Economic Development effective March 24, 2020; Gilmore is serving as a Clerk Driver and was transferred to the Department of Health and Human Services effective March 24, 2020; and Harrold is serving as a permanent Supervising Administrative Analyst and was transferred to the Department of Human Services effective March 24, 2020.

CONCLUSION

N.J.A.C. 4A:4-7.7 provides that transfers, reassessments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

Initially, with respect to the appellants contentions that they were discriminated against, this agency does not have jurisdiction to review discrimination complaints for local employees, and as such, cannot specifically address such issues within the context of this appeal. Moreover, the appellants' have not demonstrated how the asserted discriminatory actions resulted in the appointing authority's decision to reorganize its operations. Accordingly, since the alleged discrimination issues are outside the scope of this matter, they will not be addressed. Rather, as will be discussed more fully below, the reorganization occurred due to the passage of a local ordinance and that the transfers were made for legitimate business reasons.

With respect to the appellants allegations that the reorganization was improper, such arguments are without merit. In this regard, deference is normally given to an agency's choice in organizing its functions, considering its expertise, so

long as the selection was responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., Jan. 10, 1992). As such, neither Civil Service rules and law, nor the appellants' permanent Civil Service status, prevents an appointing authority from reorganizing its departmental makeup. In this matter, the record clearly shows that the appointing authority, in order to provide better services to the community, implemented the reorganization for legitimate business reasons. The record reflects that in July 2019, the appointing authority and its City Council passed ordinance #19-081 reorganizing the Department of Recreation to the Department of Recreation and Youth Development effective January 1, 2020. In this case, there is no Civil Service law or rule that requires a local appointing authority to first obtain permission from the Commission before it reorganizes its operations. Rather, this agency must be notified by an appointing authority that it has exercised its discretion to reorganize its operations. This agency requires such information in order to ensure the proper recording of employee personnel records, and if necessary, to process any resulting lateral, demotional, or promotional title change actions or to determine if layoff procedures should be implemented. The aforementioned reasons constitute why N.J.A.C. 4A:4-7.1(c) requires approval of permanent transfers in local service by this agency. Given the appointing authority's rationale for the reorganization and City Council's resultant passage of the effectuating ordinance, the Commission is satisfied that the appointing authority properly implemented the reorganization and transfers for legitimate business reasons.

Additionally, the record reflects that the appointing authority provided the appellants with sufficient notice, and despite their objections, they acknowledge in this matter that they were provided with the opportunity to reapply for positions in the new department. In this regard, it must be emphasized that in local service, a permanent transfer only requires the consent of both organizational units, and, for purposes of recording the actions and determining if lateral, demotional or promotional title change actions are necessary, the Chairperson or designee of the Commission. *See N.J.A.C. 4A:4-7.1(c)*. The consent of the employee is not required for the permanent transfer of a local employee. In this case, these were permanent, not temporary or emergency transfers, either voluntary or involuntary, for which the 30 day notice is required by N.J.A.C. 4A:7-1(f). The record reflects that, as a result of the reorganization and in order to implement the new department, the appointing authority posted various internal job postings, which were only open to employees in the former Department of Recreation. The appellants were provided with a sufficient amount of time to submit their applications for such positions. If any of the positions were filled via the internal job posting, the appointee still could be required to compete in an open competitive, promotional, or qualifying examination announced and/or conducted by the Commission if the duties of the position did not match the appointee's permanent title. In this regard, there is a preference for opportunities to be made available to existing employees in the same office, department or institution. The appointing authority notified employees, including the appellants, to submit

their applications so that it could properly consider them for a role in the new department based on its legitimate business needs. The appellants clearly state in this matter that they objected to the reorganization, and as such, were not interested in working in the new department. The appellants failure to apply for a position in the new department does not show that the reorganization was improper, nor does it establish that they were singled out at the time of their transfer. Additionally, the appointing authority's request for applications did not violate any Civil Service laws or rules. As noted above, such vacancies may have resulted in Civil Service announcements, and as such, it was appropriate under Civil Service law and rules for the appellants to submit applications for consideration in the new Department.

Further, the appellants have failed to show that they have experienced any objective negative impact as a result of the reorganization, as they continued to serve in their permanent titles after the transfer occurred. With respect to the transfers, since the appellants did not submit their applications, the appointing authority was unable to consider them for positions in the new department. As such, the appointing authority transferred them to departments where it had a legitimate business need to utilize their permanent titles at the time. Moreover, the record does not reflect that layoffs were contemplated, and the appellants were not demoted from their permanent titles. Further, the appointing authority notified this agency that the transfers would be implemented and, other than mere allegations, there is no substantive evidence in this matter to show that the transfers were effectuated for disciplinary or in reprisal for disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority. *See N.J.A.C. 4A:2-5.1*reasons. Accordingly, since layoffs and demotions were not contemplated by the appointing authority, it was not required to obtain approval for the reorganization from this agency.

With respect to the appellants' claims that the appointing authority improperly removed their positions from the new organizational chart, they have not established their contentions. The record reflects that the appointing authority changed the organizational chart based on the organizational needs of the new department and the applications it received. Since the appellants admit that they did not submit their applications for the new department, the Commission is satisfied that the appointing authority could not include the appellants on the organizational chart for the new department. As noted above, absent a showing that the new organizational chart was issued for reasons other than for legitimate business reasons, the Commission does not have authority to review the departmental makeup of appointing authorities. Moreover, as noted above, there is no evidence that the transfers occurred as a result of any disciplinary actions. Since the record is devoid of such information, the appellants have not established their burden of proof in this matter. *See N.J.A.C. 4A-4.7-7.*

One final matter warrants comment. If the appellants believe they are performing duties outside of those normally performed in their permanent titles, if they have not already done so, they may file a request for a classification evaluation to be conducted by this agency. *See N.J.A.C. 4A:3-3.9.*

ORDER

Therefore, it is ordered that these appeals be denied.

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 20^H DAY OF JANUARY 2021

Dolores Gorczyca

Dolores Gorczyca
Member
Civil Service Commission

Inquiries and Correspondence	Christopher Myers Director Division of Appeals and Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312
------------------------------------	---

c: Alita Carter (CSC Docket No. 2021-381)
Dan Wiley (CSC Docket No. 2020-2331)
Frank Gilmore (CSC Docket No. 2020-2338)
Sabrina Harrold (CSC Docket No. 2020-2333)
Pauline M.L. Young, Esq.
Drake Beardon, Esq.
Brian Platt
Division of Agency Services
Records Center