

IGNAZIO J. DIGEROLAMO, ET AL.,

Appellants

v.

BOROUGH OF ROSELLE,

Respondent.

Decided December 13, 1979

Initial Decision

SYNOPSIS

Nineteen public employees of the Borough of Roselle challenge their employer's claim that their layoffs or demotions were necessitated by economic considerations. The employees failed to prove bad faith where the Borough presented proof that the personnel action was taken to preserve a balanced budget and was required under the CAP Law to include within an overall five percent increase over the prior year's expenses; (a) mandatory increases in fixed expenses; (b) an emergency appropriation; (c) roll-over salary increases and the municipality was denied permission to exceed the five percent cap by the State and the voters in a public referendum. Thus, the layoffs and demotions were necessary and motivated by good faith consideration of economy.

Anthony D. Rinaldo, Jr., Esq., for the Appellants (Rinaldo & Rinaldo, attorneys)

Irving F. Sturm, Esq., for the Borough of Roselle

SAMUELS, ALJ:

Nineteen employees of the Borough of Roselle were laid off or demoted from their positions, effective May 4, 1979, for reasons of economy. Eleven of them were police personnel: Richard J. Newallis, Kenneth Hagemann, Edward J. Carey, John E. Hopf, Robert Vincent, Dwight R. Bailey, Robert Bierilo, Jeffrey Gray, Thomas Soban, William J. Dixon, William J. Dixon, Jr.; seven were Fire Department personnel: Ignazio J. DiGerolamo, William P. Harlow, Andrew W. Sivil, James S. Dyson, James T. Moore, Stephen Foster, Robert Myers; and one was a senior clerk typist: Edna M. Servedio.

William J. Dixon, Jr. was not named on the hearing calendar sheet received from the Civil Service Commission. However, all parties agreed and stipulated that he was included in the appeal and that his name was inadvertently omitted because of its similarity to another appellant, William

J. Dixon.

All of the above persons appealed their layoffs or demotions to the Civil Service Commission, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A. 52:14F-1 et seq.* A hearing was held at the Office of Administrative Law in Newark, New Jersey, on October 24, 1979. A post-hearing memorandum was submitted by counsel for the appellants, and the record closed on November 14, 1979. No exhibits were marked in evidence.

Edna M. Servedio did not appear at the hearing and no communication was received from her at any time or from anyone on her behalf.

The sole issue for determination was the respondent's good faith motivation in laying off and demoting the appellants, pursuant to *N.J.A.C. 4:1-16.1 et seq.*

Louis R. Bass, Borough Administrator, Tax Collector and Treasurer of the Borough of Roselle, was the only witness for the respondent. He explained some of the financial problems that affected the Borough in its 1979 budget preparation:

1. Fixed expenses, such as insurance costs, were increased, but had to be included within the budget cap, which limits municipalities to a five-percent overall increase over the previous year. This placed a strain on the amount of money available to be used for other purposes. The total amount of increase available to the Borough under the cap for 1979 was \$180,000.

2. Salary increases paid in 1978 required an emergency appropriation of \$57,000. It is mandatory to recover these funds by appropriating it in the next year's (1979) budget. That extra item placed a further strain on the budget.

3. There was a \$40,000 loss of revenue sharing funds in 1979.

4. There was a roll-over 1978 salary increase to be paid by the Borough in 1979.

Mr. Bass testified that these problems left the Borough in a position where it had to cut five percent across the board on all non-personnel items in order to budget within the five-percent cap, which was used to its fullest extent. There were no funds left to pay any labor increases. However, arbitration was due to get underway on the question of salary increases for employee groups that were negotiating with the Borough, and the governing body anticipated that some increases would be mandated by an arbitration award. Layoff notices were served to protect the budget, which the law requires to be balanced. The layoffs and demotions were made with the understanding that if funds became available, they would be rescinded to the extent of available extra money. Two people were later rehired.

In an attempt to avoid the layoffs, the Borough asked for a one-year wage

freeze and proposed a referendum to authorize appropriations in excess of the budget cap. The latter step was taken after applications to Trenton for the same purpose were rejected. At a meeting with union representatives, the wage freeze request was refused. The Police Department filed for arbitration and the Fire Department joined them. The Borough officials supported the referendum, which contained a four-percent salary increase, but it was defeated by the voters. The Borough did not succeed in obtaining authorization to exceed the five-percent cap.

In cross-examination of Mr. Bass, it was suggested that the governing body could have been more forceful and inventive in its budgetary procedures, in labor negotiations, and in its applications to Trenton to exceed the cap.

John E. Sweeney, a firefighter and President of the Firefighters' Benevolent Association testified to details of the unsuccessful labor negotiations with the Borough. He indicated that the governing body handed them an ultimatum either to agree to a no-increase wage freeze – or to face layoffs. Mr. Sweeney felt they were being treated unfairly and abruptly. He also took issue with the amount actually saved by the layoffs and demotions, after calculating attrition due to retirements. Mr. Sweeney estimated a \$35,000 saving, but the next witness for the appellants, Richard J. Conellon, calculated it at \$58,000. In his testimony, Mr. Sweeney disputed the manner in which the governing body chose to manage the use of personnel; however, he did confirm that the Mayor and Council were in favor of the unsuccessful public referendum.

Richard J. Conellon, a Roselle police officer and state delegate to the P.B.A., was a member of the labor negotiating unit. He stated that the Borough was tough and unyielding in its position that layoffs would result if there were salary increases. According to Mr. Conellon's calculations, the Borough cut back by \$58,000, which was more than necessary because he was willing to accept a package that would increase 1979 wages by \$23,000. Mr. Conellon also felt that the Mayor and Council did not try hard enough to get the referendum passed. During the Conellon testimony, questions were raised regarding the amounts of retained surplus and anticipated revenues in the budget. These questions were answered by further testimony of Louis R. Bass and in the post-hearing budget figures submitted by counsel for the appellants. Mr. Bass stated that for 1979, the Borough appropriated most of their \$531,000 surplus, leaving \$120,000. This is not unreasonable, considering that the total budget is between four and five million dollars. A review of the "current fund - anticipated revenues" summary shows that, based upon actual 1978 receipts, 1979 anticipated revenues were not unreasonably low.

Mr. Conellon made an impassioned statement about the hardships and realities of existence in a municipality where there are not enough policemen to render effective law enforcement and where those who serve get little or nothing for their efforts. In 1974, Roselle had 50 people on the police force. This number has been cut back to 35 by layoffs over the past several years. There is no doubt of Mr. Conellon's sincerity, but a solution to that problem rests ultimately with the citizens of Roselle and is not relevant to the direct issue here.

The evidence adduced by the appellants demonstrated that the Borough is conservative in its budgetary procedures. With the benefit of hindsight and speculative second-guessing, perhaps the governing body could have shifted some of its priorities to lessen the impact of the layoffs and demotions. However, disagreement with management judgment is a long way from bad faith, and no convincing evidence whatsoever was produced to indicate that the layoffs were not motivated by bona fide attempts at economy.

The critical inquiry in this case is whether the respondent-employer was motivated by a good faith belief that the layoffs were necessitated by considerations of economy or efficiency. *N.J.A.C.* 4:1-16.1 *et seq.* On that issue, the burden of proving bad faith is on the appellants. The presumption is one of good faith. Absent an express finding, on adequate proofs, that the respondent acted in bad faith, the layoffs should stand. *Greco v. Smith*, 40 *N.J. Super.* 182, 189 (App. Div. 1956).

Having heard the testimony, observed the witnesses and reviewed the argument of counsel, the court **FINDS** the following facts:

1. Specific facts set forth in the above discussion are incorporated herein by reference.
2. The appellants were employed by the Borough of Roselle in the Police and Fire Departments.
3. Appellant, Edna M. Servidio, a senior clerk typist attached to the Fire Department, did not appear for the hearing and no communication was received from her.
4. In preparing the 1979 budget, the Borough of Roselle was limited by the cap law to an overall increase of five percent above 1978 expenditures.
5. The Borough was compelled to fit mandatory increases in fixed expenses, such as insurance, within the five-percent cap.
6. The Borough was compelled to include a 1978 emergency appropriation of \$57,000 within the five-percent cap.
7. The Borough was compelled to fit contracted 1978 roll-over salary increases within the cap.

DiGerolamo v. Borough of Roselle
Cite as 1 *N.J.A.R.* 1

8. The Borough knew it would lose \$40,000 in revenue sharing funds in 1979.

9. In order to obtain more funds available for budgeting beneath the cap, the Borough cut five percent from all non-personnel appropriations.

10. The Borough had \$180,000 available over and above the 1978 budget to fit into the cap increase for 1979.

11. The foregoing problems caused the respondent to budget all of the increases.

12. The respondent attempted to get permission from the state government to exceed the five-percent cap, but was unsuccessful.

13. The respondent asked labor negotiating groups to accept a wage freeze for 1979 so that layoffs would be avoided. This was refused by the unions, and arbitration was requested by them.

14. The respondent conducted a public referendum to permit the Borough to exceed the cap limitation in the 1979 budget. An affirmative vote was recommended and supported by the governing body, but it was rejected by the voters.

15. Anticipating an arbitration award containing salary increases that would cause the Borough to exceed the cap limitation, the respondent laid off or demoted the appellants in order to avoid a budget deficit.

16. The layoffs were necessary in order to enable the respondent to present a balanced 1979 budget that would be within the five-percent cap restriction.

It is, therefore, **CONCLUDED** as follows:

A. That Edna M. Servidio has abandoned her appeal.

B. That the layoffs and demotions imposed by the respondent were motivated by good faith considerations of economy. The appellants have not proven that the respondent acted in or was motivated by bad faith.

It is, therefore, **ORDERED**:

A. That the appeal of Edna M. Servidio be **DISMISSED** for failure to appear.

B. That the action of the appointing authority in imposing the layoffs and demotions of the appellants be **AFFIRMED** and their appeals **DISMISSED**.

After reviewing this Initial Decision, the Civil Service
Commission on January 23, 1980 issued the following Final
Decision

The Civil Service Commission finds that the action of the appointing authority in laying off appellants was justified. The Commission therefore

DiGerolamo v. Borough of Roselle
Cite as 1 *N.J.A.R.* 1

affirms that action and dismisses the appeal of the aforementioned appellants.

The Commission further Orders that the appeal of Edna M. Servedio be dismissed without prejudice based on appellant's failure to appear at the hearing pursuant to *N.J.A.C.* 4:1-5.9.