

layoff and be unoccupied, but it is not an available vacancy. The position does not become an available vacancy until various personnel actions are performed, and those actions are not done during the layoff. The position of Karen Bone was available to be bumped by an employee with more seniority than Ms. Bone, and her seniority was 32 years, 8 months, and 23 days. The position of Ms. Autenrieth was unavailable, as it was "lined-off" (the appointing authority had indicated that the vacant position would not be filled, thus it was no longer an available position) when she retired. Neither position had been identified as a vacancy in the layoff plan. They were not available to Mr. Spadoni and he had no lateral rights in Hunterdon County.

The appellant was further informed that even if these vacancies existed as available, *N.J.A.C. 4A:8-2.2* does not require the State to offer vacant positions to employees displaced in a layoff. That regulation provides the order in which title rights shall be provided against other employees; while lateral and demotional title rights may be provided from "a vacant position that the appointing authority has previously indicated it is *willing to fill*," (emphasis added) the State is not required to fill any vacancies. See *In the Matter of Gertrude Remsen, Department of Human Services*, A-1126-96T3 (App. Div. January 17, 1997).

The appellant replied that he fails to understand how these vacancies were not identified prior to the layoff as the employees had to file for retirement prior to the reduction in force. He argues that *N.J.A.C. 4A:8-1.3* mandates that the appointing authority assist potentially affected employees in securing alternative employment in pre-layoff actions, and that the positions should have been offered had DHS known they were to become vacant during the layoff.

N.J.A.C. 4A:8-1.3 states that appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;
2. Separating non-permanent employees;
3. Returning provisional employees to their permanent titles;
4. Reassigning employees; and
5. Assisting potentially affected employees in securing transfers or other employment.

CONCLUSION

In an appeal of this nature, it must be determined whether CPM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria in determining layoff rights and the

appellant must specify a remedy. A thorough review of the record establishes that the appellant's layoff rights were properly determined.

At the heart of the title rights determination is the underlying policy to ensure that employees are afforded fair, uniform, and objective title rights without resulting in harm to the public. See *Malone v. Fender*, 80 N.J. 129 (1979). The rights of employees are decided from the highest class code and seniority to the lowest. That is, employees in higher class codes and higher seniority have their rights decided prior to employees in lower class codes and seniority. The individual who bumped the appellant had more seniority than he did.

Regarding vacancies, these individuals could have withdrawn their retirement applications up to the effective dates of their respective retirements. Thus, a position is not available until it is vacated. In addition, the layoff was effective on June 27, 2014, but a layoff of this size takes weeks to administer, and the administration of the layoff occurs prior to the effective date. Ms. Bone's retirement on June 1, 2014 occurred during the layoff and was not lined-off in earlier personnel actions. Thus, her position was available for individuals in higher class codes or with more than 32 years, 8 months, and 23 days who had lateral or demotional rights. Ms. Autenrieth's position was unavailable, as it was lined-off when she retired. In addition, as previously noted, a position does not become an available vacancy until various personnel actions are performed, and those actions are not done during a layoff as staff are actively administering the layoff.

N.J.A.C. 4A:8-1.3(a)5 indicates that the appointing authority shall implement pre-layoff actions including assisting potentially affected employees in securing transfers or other employment. In this case, one position was lined-off upon the employee's retirement, and thus was unavailable. The other position was not available during pre-layoff actions, rather, the employee retired during the layoff. The intent of this rule was not to circumvent the appointing authority's prerogative to decline to fill a vacancy. Instead, it indicates that the appointing authority shall assist employees in finding other employment, for example, at another agency. As noted, even if this vacancy existed, *N.J.A.C.* 4A:8-2.2 does not require the State to offer vacant positions to employees displaced in a layoff. If the appointing authority chooses to fill these positions, it will appoint individuals from the Special Reemployment List (SRL), with the most senior employee eligible to fill the vacancy. In this instance, no error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

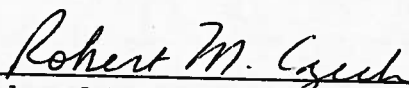
Thus, a review of the record fails to establish an error in the layoff process and the appellant has not met his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal 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 22nd DAY OF OCTOBER, 2014**



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Jacob Spadoni
Robert O. Yeager, CWA Local 1040
Terri Mento
Christina Mongon
Kenneth Connolly
Joseph Gambino