

continuous permanent service **only in the current permanent title and any other title that has lateral or demotional rights to the current permanent title.** [emphasis added] She provides the names of seven individuals who are Charge Nurses 12 Months, and one Staff Nurse 12 Months (who was also bumped in the prior layoff from the Charge Nurse 12 Months title), who she states "changed titles to Registered Nurses way after I was hired fulltime. I watched them do orientation as Registered Nurse when I was fulltime RN." She states that this "violation" was unclear to her until the recent bumping. She declares that the nurses she names worked for the State prior to their current title, in titles they cannot demote to, but have been "treated as [her] seniors" in both layoffs. She argues that, had they been treated as per their seniority in relation to her hire date, and their change to RN dates, she would not have been impacted twice in the bumpings. As an example, the appellant names a ninth individual, a Charge Nurse 12 Months, who has been demoted in the current layoff to Staff Nurse 12 Months. She argues that this individual was hired at the same time as she was, but was not affected by the prior layoff. She requests employment at Greystone Park Psychiatric Hospital in "the correct seniority order observed."

The appellant then submitted a petition for interim relief. In this request, the appellant states that she does not have information regarding the permanent hire dates of the other individuals. She indicates that these individuals became nurses after her provisional appointment to Charge Nurse 12 Months in January 2011, but have been given more seniority. She claims one individual was part-time at first, becoming full-time at the end of 2013. She states that another individual was a Human Services Assistant and Human Services Technician when she was a Charge Nurse 12 months full-time. In addition to interim relief, she requests seniority and back pay as a Charge Nurse 12 Months since her demotion in the first layoff. She also requests an appeal "sitting date."

The following factors are provided by *N.J.A.C. 4A:2-1.2(c)* in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Pursuant to *N.J.A.C. 4A:2-1.5*, back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. This rule further provides that in all other cases, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Civil Service Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the

employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

CONCLUSION

At the outset, the appellant is expecting a "sitting date." In this regard, these appeals are treated as reviews of the written record. See *N.J.S.A.* 11A:2-6b. Hearings are granted in those limited instances where the Civil Service Commission (CSC) determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). No material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

As to the merits of 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. In this case, a stay is not necessary as the merits of the appeal are addressed herein.

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 appellant cites a portion of *N.J.S.A.* 11A:8-1(b). The entire citation reads, "Permanent employees in the service of the State or a political subdivision shall be laid off in inverse order of seniority. As used in this subsection, 'seniority' means the length of continuous permanent service in the jurisdiction, regardless of title held during the period of service, except that for police and firefighting titles, 'seniority' means the length of continuous permanent service only in the current permanent title and any other title that has lateral or demotional rights to the current permanent title. Seniority for all titles shall be based on the total length of calendar years, months and days in continuous permanent service regardless of the length of the employee's work week, work year or part-time status." The appellant has misquoted this statute, referring to seniority as determined for police and firefighting titles. Since she is not in a police or firefighting title, seniority for her is the length of continuous permanent service in the jurisdiction, regardless of title held during the period of service. Further, seniority is based on total calendar years, months, and days regardless of work week, work year, or part-time status. See also *N.J.A.C.* 4A:8-2.4.

In the original layoff, the Charge Nurse 12 Months who bumped into Greystone Park Psychiatric Hospital and displaced the appellant had 9 years, 11 months and 12 days of seniority. The appellant's date of entry into permanent service is April 12, 2012, and at that time, her seniority was 2 years, 2 months and 16 days. All of the individuals named by the appellant have an earlier date of entry into permanent service. Thus, they have more seniority than the appellant does. In the current layoff, the Charge Nurses 12 Months are in a higher class code. As such, their seniority is not a factor, and does not need to be compared with the appellant's seniority. The other Staff Nurse 12 Months mentioned by the appellant has greater seniority due to an earlier date of entry into permanent service. As mentioned, seniority is accrued regardless of full- or part-time status. Lastly, an individual's status as a Registered Nurse is irrelevant, as layoff rights are based on titles, not licenses or certifications. No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established for the appellant in either layoff, and a thorough review of the record establishes that the appellant's layoff rights were properly determined.

As to the matter of appellant's request for back pay, the record in this case establishes that there was no action by the Department of Human Services as a result of bad faith or some invidious reason. These circumstances do not present a case in which back pay is recoverable. *See In the Matter of Marveinia Kitchen and the Department of Law and Public Safety, A-6402-91T1* (App. Div., February 7, 1994); *In the Matter of Kathryn E. Clark v. New Jersey Department of Personnel, A-5448-93T2* (App. Div. April 28, 1995).

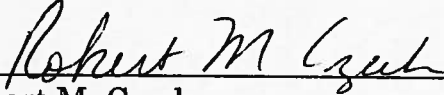
Since the Commission has denied the appellant's appeal on the merits, her request for interim relief is rendered moot.

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 3rd DAY OF DECEMBER, 2014



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