



STATE OF NEW JERSEY

In the Matter of Diamond Johnson,
Department of Human Services

CSC Docket No. 2015-17

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**FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION**

Layoff Appeal

ISSUED: SEP 18 2014

(RE)

Diamond Johnson, a former Human Services Assistant with the Department of Human Services, Woodbine Developmental Center, appeals the determination of her layoff rights.

By way of background, the Department of Human Services submitted a layoff plan to the Division of Classification and Personnel Management (CPM) to lay off employees in various titles, including employees of Division of Developmental Disabilities, due to the closure of the North Jersey Developmental Center, effective June 27, 2014. Numerous positions in various titles at several institutions were affected. A review of official records indicates that Ms. Johnson was bumped from her position as a Human Services Assistant, and she was laid off.

On appeal, the appellant argues that the person who bumped her did not come to work at Woodbine Developmental Center, but resigned instead. She states that it is not right that she be laid off and hourly workers, or temporary employment services (TES employees), are still employed. She inquires how she was laid off and requests to be reemployed at Woodbine Developmental Center.

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 appellant had 4 months and 6 days of seniority as of the June 27, 2014 layoff date. All employees were advised of the layoff and final interview processes and provided with resources to answer questions before the layoff was administered. They received a 45-day Layoff Notice, and impacted employees were required to attend a general employee briefing, and a Declaration Form session which may or may not have occurred at the same time as the general briefing. As such, the appellant had ample opportunities to inquire as to the layoff procedure. There were over 1900 Human Services Assistants on the seniority listing, and the appellant was bumped from her position as she had less seniority than other Human Services Assistants affected by the layoff.

The appellant was displaced by a Human Services Assistant with more seniority from North Jersey Developmental Center. If an employee who displaces another employee does not report to work, resigns, or retires, then the position is vacant and will be filled by a certification of a Special Reemployment List (SRL), and the most senior employee on the SRL would be eligible to fill the vacancy. Once a bumping action has been completed and the process moves forward, the action cannot simply be reversed or considered as though it did not occur. In addition, a position does not become an available vacancy until various personnel actions are performed, and those actions are not done during a layoff. In any event, even if this vacancy 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). If the appointing authority is willing to fill the vacancy, it will do so from the SRL.

The appellant maintains that individuals who are hourly workers, TES employees, are still working. In this regard, TES employees do not have Civil Service positions, and the appointing authority is not their employer. As such, when referring to TES employees, there is no position to bump. No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

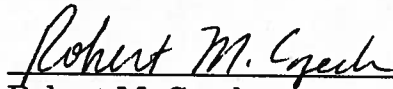
Thus, a review of the record fails to establish an error in the layoff process and the appellant has not met her burden of proof in this matter.

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 17th DAY OF SEPTEMBER, 2014



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