



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE  
ACTION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Eric McKenzie and  
Kimberly Suarez, North Jersey  
Developmental Center

CSC Docket Nos. 2014-2766  
2014-2769

Layoff Appeals

ISSUED: **SEP 18 2014** (RE)

Eric McKenzie, represented by Robert Yaeger, CWA Local 1040, and Kimberly Suarez, North Jersey Developmental Center, request relaxation of the uniform regulatory criteria in *N.J.A.C. 4A:8-2.1 et seq.* in order to provide them with layoff rights to the title Assistant Supervisor of Resident Living, Developmental Disabilities (ASRL).

By way of background, the Department of Human Services submitted a layoff plan to the Commission to lay off employees in various titles at the North Jersey Developmental Center, effective June 27, 2014, for reasons of economy and efficiency and many positions were impacted across facilities in the Department of Human Services. The positions of the appellants were targeted in the layoff. As a result, Mr. McKenzie was displaced from his permanent title of Assistant Supervisor of Professional and Residential Services Developmental Disabilities (ASPRS) to his prior held title, Head Cottage Training Supervisor. Ms. Suarez, a permanent ASPRS, was laid off.

On appeal, each appellant states that ASPRSs should have rights to the ASRL title, since the incumbent ASPRS supervises ASRLs, and performs their duties in their absence. Ms. Suarez argues that the titles have substantially similar duties and responsibilities. Specifically, she states that the ASRL supervises residential services and the ASPRS supervises professional services critical to client care, that both titles are responsible for enforcement of regulations and policies; have similar duties in planning and organizing work and in supervising; participate in staff and other conferences regarding problems and progress; supervise the

activities of residents, make tours of residential units, and provide discipline and prevent disorder within units; make assignments of staff and clients to residential units and coordinate residential schedules; and use the same decision making and problem solving processes. She states that both titles are required to possess a Bachelor's degree, and neither requires specialized skills, licenses, certifications or registrations.

## CONCLUSION

There are three types of displacement rights, two of which are title rights, lateral and demotional; the third right is a demotional right to a previously held title (or prior held right). Lateral and demotional title rights are determined in accordance with *N.J.A.C. 4A:8-2.1 et seq.* A demotional right is the right of a permanent employee to exercise displacement rights against the least senior employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee.

In an appeal of this nature, it must be determined whether the Division of Classification and Personnel Management (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. The record establishes that the Division of Classification and Personnel Management (CPM) correctly utilized a uniform and objective automated system to determine layoff rights and did not disregard the criteria found in *N.J.A.C. 4:8-2.1*. It is noted that the use of occupational group categorizations, as recognized by the United States Department of Labor, was a reasonable and objective method for identification of job similarities as required in *N.J.A.C. 4A:8-2.1* title rights criteria and the same criteria were uniformly applied to all titles in the State Classification Plan. Further, the use of the Dictionary of Occupational Titles (DOT) by CPM as a starting point for the development of 39 broad occupational groupings to enable the appropriate categorization of State job titles was appropriate, and these were customized to account for the uniqueness found in occupations in the Merit System. Moreover, Civil Service Commission job specifications were used as the basis for the categorization into occupational groups. *See In The Matter of State Layoff Title Rights*, (Commissioner of Personnel, decided May 24, 1996), affirmed, A-5847-95T3 (App. Div. Dec. 9, 1997).

The record further establishes that for purposes of layoff rights and determinations, CPM operationalized the *N.J.A.C. 4:8-2.1* layoff title rights criteria. The layoff rights determination process was automated so as to ensure objectivity and uniformity in the process of determining rights, which were determined based on a comparative analysis of job specifications and application of *N.J.A.C. 4A:8-2.2(a)* and (b) title rights criteria. The determination of lateral and demotional

rights was based on a comparative analysis of this agency's job specifications and application of *N.J.A.C.* title rights criteria as follows:

1. The affected and designated title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code or lower;

2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;

3. There shall be no special skills, licenses, certifications or registration requirements which are not also mandatory for the affected title(s);

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

For example, in order to categorize functions or duties which are substantially similar, based on the Definition and Examples of Work portions of job specifications, all titles were slotted into one of the 39 occupational groups as recognized by the U.S. Department of Labor in the DOT which categorizes all known jobs. Titles were further categorized into occupational families within the occupational groups based on the differences in main functions of titles in each group after further review of job specification language. Thus, occupational groups and families are utilized as a means of categorizing titles based on assigned duties and responsibilities.

In the present matter, the appellants want title rights to the ASRL title, which is in the occupational group Occupations in Direct Care and Related Personal and Health Services (35), which is in the broader group of Service Occupations. Their permanent title is ASPRS, which is in the occupational group Occupations in Medical and Health Services (07), which is in the broader group of Professional /Technical/Managerial Occupations. As such, the titles are not functionally similar. The requested title involves direct care, while the appellants' permanent title is managerial in focus.

The ASPRS title assists in the management and administration of all aspects of residential services within the units assigned, including the supervision of personnel and the integration and coordination of programs within the units assigned. In comparison, the ASRL title has charge of the operation of the cottages and the resident living program, including the care, custody, and protection of the resident population housed therein, or serves as "Institutional Officer of the Day" on an assigned shift. It is noted that title rights are established based on analysis and a comparison of the titles and not an evaluation and an appraisal of employee qualifications. Whether the appellants *are* performing the duties of a title, or *can*

perform the duties of the title, are classification, examination, certification and appointment issues and are not germane to the issue of displacement rights. As such, the performance of the duties of a ASRL in their absence by their supervisor has no bearing on demotional rights, as these duties are considered to be "acting" duties, distinct and separate from the primary function of the permanent title ASPRS. The fact that the ASPRS supervises ASRL also is immaterial, as supervisors are not limited to supervising only those titles which are substantially similar. The primary duties and responsibilities are not substantially similar as the ASPRS is responsible for management and administration of residential services, while the ASRL has charge of the operation of cottages and the resident living program, including direct care, custody and protection of the population.

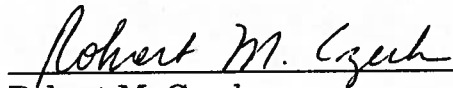
As such, there is no basis to relax the criteria in *N.J.A.C. 4A:8-2.1 et seq.* in order to provide the appellants with demotional layoff rights to the ASRL title, as no good cause has been shown.

### ORDER

Therefore, it is ordered that these requests 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 17<sup>th</sup> DAY OF SEPTEMBER, 2014

  
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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: Eric McKenzie  
Kimberly Suarez  
Robert Yaeger, CWA Local 1040  
Chanda Curtis  
Christina Mongon  
Kenneth Connolly  
Joseph Gambino