



2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson of the Civil Service Commission or designee;
3. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes;
4. The employee with the greater seniority in the title before a break in service shall have priority;
5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;
6. The employee who ranked higher on the same eligible list for the title shall have priority;
7. The employee with greater continuous service as a provisional, temporary, or interim appointee in the subject title shall have priority;
8. The employee with greater total service, regardless of title or status, shall have priority;
9. The employee with the higher performance rating during the 12-month period prior to the effective date of the layoff shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson or designee;
10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson or designee;
11. Other factors as may be determined by the Chairperson or designee.

## 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.

In this case, the appellant and another employee were tied with 1 year, 1 month and 29 days of employment. The appellant was selected to be laid off, and the other employee remains on the job. The layoff team did an analysis of the employment records of the appellant and this other employee, and the tie breaker factors one through ten were equal, *i.e.*, one employee over another could not be selected based on this criterion. As such, the factor that was used in this instance was number eleven. With all other factors as equal, the layoff team decided that that the choice would be random, and Ms. Majewski's name was selected by chance. Ms. Majewski had a 50% chance of being selected, and she was selected by random chance instead of the other employee.

Although Ms. Majewski believes otherwise, she has not presented a scintilla of evidence showing that this decision was in any way retaliation for filing a discrimination complaint, or her nationality or national origin. In her complaint, filed June 7, 2014, the appellant described three incidents with another employee and concluded that she was disliked due to her national origin. The appellant's discrimination complaint would have been filed with her Equal Employment Opportunity (EEO) officer, who would have conducted an investigation. Given that the appellant filed her complaint 20 days prior to the layoff, and the fact that the appellant has provided no determination regarding her complaint, it is unlikely that the matter had been investigated prior to the layoff date. The appellant has not presented any evidence that the individuals on the layoff team had any knowledge of the filing of this complaint. Further, the layoff team had access to the Declaration forms and the seniority listing for all employees, and the appellant's nationality was not listed in these documents. The layoff team was not personally familiar with the majority of employees, and they did not make any decisions based on discriminatory or disciplinary factors. The appellant's mere assertion that she was chosen based on filing a discrimination complaint, and her national origin, is unsupported and without substance.

No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

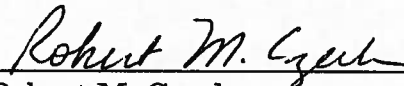
Thus, a review of the record fails to establish an error in layoff process and the appellant has not met her burden of proof in this matter.

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 17<sup>th</sup> DAY OF SEPTEMBER, 2014



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