

B-12



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Damin Parker,
Department of Human Services

CSC Docket No. 2015-1401

Layoff Appeal

ISSUED: FEB + 9 2015

(RE)

Damin Parker, a former Stock Clerk with the Department of Human Services, Vineland Developmental Center, represented by Robert Yaeger, CWA Local 1040, appeals his layoff.

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 due to the closure of the Woodbridge Developmental Center, effective January 9, 2015. Numerous positions in various titles at several institutions were affected. A review of official records indicates that Mr. Parker was laid off.

On appeal, the appellant argued that he should have been offered rights to a vacancy in the Stores Clerk title, created by a retirement in December 2013. Also, he argues that he should have prior-held rights to Residential Services Worker

Commission staff informed the appellant that there was one vacancy in the title Stores Clerk, which was filled by a demoted Senior Stock Clerk, a title in a higher class code. There were no other vacancies. Also, an employee is entitled to displace another individual if the individual is serving in a title to which the employee has rights. The appellant was informed that the titles Stores Clerk and Residential Services Worker are in the same class code (07). According to *N.J.A.C. 4A:8-2.2(f)*, demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. These rights are not provided for a lateral move. The "General

Guide to State Employment Layoffs” was made available to employees for reference and it explained the layoff procedure. Page 11 of this guide indicates that, “Prior held title rights are demotional rights to any title which you previously held on a permanent basis within your current continuous service which has a lower class code than your current permanent title.” It also states that “there are no lateral rights to previously held permanent titles.” Thus, Mr. Parker had no right to displace permanent incumbents in the title Residential Services Worker as his regular appointment is in the same class code.

In reply, the appellant contends that a contractor held a vacancy and was recently released, but will be replaced. He argues that he should have been given this vacancy. He also asserts that he is in a higher pay grade than two other employees, Kirby Rohm and Matthew Soltis, who bumped into Vineland 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). In this case, the sole vacancy available was taken by someone in a higher class code, Kirby Rohm. Additionally, the appellant was bumped by Matthew Soltis. Both Messrs. Rohm and Soltis were Senior Stock Clerks in class code 11, while the appellant was a Stock Clerk in class code 7. The amount of pay received by each is not relevant, as layoff rights are determined by class code, and salaries are predicated on salary step placement.

Even if there had been a vacancy, *N.J.A.C. 4A:8-2.2* does not require the State to offer vacant positions to employees displaced in a layoff. See *In the Matter of Gertrude Remsen, Department of Human Services*, A-1126-96T3 (App. Div. January 17, 1997); *In the Matter of Jason Spadoni, Department of Human Services (CSC)*, decided October 22, 2014; and *In the Matter of Carol Stillo, Department of Human Services (CSC)*, decided September 3, 2014).

Lastly, contractors do not have Civil Service positions, and the appointing authority is not their employer. Contractors do not fill vacancies, and there is no position to bump into. No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

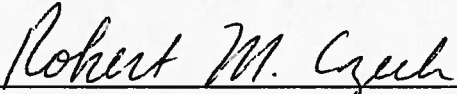
Thus, a review of the record fails to establish an error in layoff process and the appellant has not met his burden of proof in this matter.

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 4th DAY OF FEBRUARY, 2015



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