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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Mano Ponna,
Newark School District

CSC Docket No. 2015-2657

Request for Reconsideration

ISSUED: MAY 08 2015 (CSM)

The Newark School District requests reconsideration of the attached decision rendered on February 4, 2015, which ordered it to pay Mano Ponna an amount equal to 30 days of pay as a result of its failure to provide him with the required notice of layoff.

By way of background, the school district submitted a layoff plan to lay off employees, effective August 15, 2014. The plan was approved and notices were required to be sent to the affected employees. A 45-day Notice of Layoff was sent as required to those employees whose positions were targeted for layoff. General 45-day Notice of Layoff letters were posted as required. On August 1, 2014, this agency issued letters to the affected employees advising them of their layoff rights. Ponna argued on appeal, *inter alia*, that he never received any notice other than the August 1, 2014 letter containing his title rights. In its prior decision, the Civil Service Commission (Commission) determined that Ponna only received 15 days' notice and that he was entitled to an amount equal to 30 days of pay, which was the difference between his notice date and his layoff on August 15, 2014, and the 45 days' General or Individual Notice of Layoff he should have received.

On reconsideration, the appointing authority states that it conspicuously posted the General Notice of Layoff in all of its facilities and sent an email notification to all managers, secretaries and clerks to post the Notice. Further, it states that it notified all employees in the impacted titles so that as many people as possible were made aware of the layoff. In this case, Ponna's title was not included in the positions that were initially impacted by the layoff and the appointing authority maintains that it had no way of knowing that Ponna's Senior Auditor

position would be affected by the layoff. In this regard, it notes that the position was only affected because another employee, who is a Senior Accountant, bumped into that position. Thus, as bumping rights are not made public by the Commission, the appointing authority maintains that it could not personally notify Ponna that he may be impacted by the layoff. Nevertheless, the appointing authority maintains that Ponna, along with all other potentially impacted employees, were made aware of the layoff via the General Notice of Layoff that was widely distributed throughout the school district.

In response, Ponna, represented by Kevin P. McGovern, Esq., states that the appointing authority simply reargues what it initially presented to the Commission and has not provided any new evidence or additional information in support of its request for reconsideration.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.S.A. 11A:8-1(a) provides, in pertinent part, that a permanent employee shall receive 45 days' written notice, which shall be served *personally or by certified mail*, of impending layoff or demotion and the reasons thereof.

N.J.A.C. 4A:8-1.6(a) provides that:

No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice *personally*, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to [this agency] and affected negotiations representatives.

In the instant matter, the appointing authority has not met the standard for reconsideration. Ponna was laid off from his position effective August 15, 2014. Notwithstanding the appointing authority's arguments that is provided notice to incumbents in all of the titles targeted for layoff and that it disseminated for

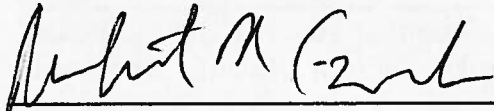
posting the General Notice of Layoff to all of its facilities, *N.J.S.A. 11A:8-1(a)* clearly mandates that permanent employees impacted by a layoff be provided 45 days written notice, either personally or by certified mail. Neither the statute nor the rule provide an exception to this personal service requirement for employees' whose positions are not targeted but may be impacted as a result of another employee excising his or her title rights. Therefore, since Ponna did not receive the required 45 days' notice, he is entitled to an amount equal to 30 days of pay since he was first notified in writing on August 1, 2014.

ORDER

Therefore, it is ordered that this request for reconsideration 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 6TH DAY OF MAY, 2015



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

Attachment

c: Vanessa Rodriguez
Mano Ponna
Kevin P. McGovern, Esq.
Kenneth Connelly
Joseph Gambino



In the Matter of Mano Ponna,
Newark School District

STATE OF NEW JERSEY

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

CSC Docket No. 2015-909

Layoff Rights Appeal

ISSUED: FEB 09 2015 (CAG)

Mano Ponna, Senior Auditor with the Newark School District (NSD), appeals the attached determination of his layoff rights by the Division of Classification and Personnel Management (CPM).

By way of background, the NSD submitted a layoff plan to CPM to lay off employees in the NSD on August 15, 2014. The plan was approved and notices were required to be sent to the affected employees. A 45 day Notice of Layoff was sent as required to those employees whose positions were targeted for layoff. General 45 day Notice of Layoff letters were posted as required. The plan indicates that a meeting was held with union representatives on May 16, 2014. On August 1, 2014, CPM issued letters to the affected employees advising them of their layoff rights.

A review of official records indicates that, as a result of the layoff of Nahid Nipa from her permanent position of Senior Accountant, she was given a lateral seniority displacement right to the position of Senior Auditor held by Ponna. CPM determined that there were no lateral or demotional title rights available for Ponna.

On appeal, Ponna argues that his seniority was not determined correctly. He also argues that he did not receive a 45 day notice from the NSD. In addition, he argues that the person who replaced him did not have the same title or years of experience. Therefore, he requests that he be reinstated to his employment with full back pay and benefits.

The NSD states that General 45 day Notice of Layoff letters were sent to all schools/department heads and the clerks at each location. In addition, a General 45 day Notice of Layoff letter was posted on the general bulletin boards on all the floors.

The record indicates that the NSD did not issue a general 45 day Notice of Layoff letter to Ponna because his position was not targeted, even though he was laid off from his permanent position of Senior Auditor as a result of the layoff. General 45 day Notices of Layoff were posted as indicated above.

It is noted that CPM approved the layoff plan in its letter to the NSD dated June 17, 2014. In its letter, CPM also indicated that, in order to meet the established timeframes of the layoff, the general and individual notices must be issued no later than July 2, 2014.

It is also noted that the appeal of the good faith of appellant's layoff remain pending at the Office of Administrative Law (OAL).

Official records indicate that Nipa was appointed as a permanent Accountant on January 20, 2009; permanently appointed as a Senior Accountant on September 13, 2012; and received a lateral permanent appointment to the title of Senior Auditor on August 15, 2014.

Official records also indicate that appellant was appointed as a permanent Senior Auditor on January 3, 2011; and laid off from his permanent title of Senior Auditor on August 15, 2014.

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. Therefore, the only issues to be discussed in this proceeding are layoff rights issues.

Pursuant to *N.J.A.C. 4A:8-1.5*, layoff units and job locations are described as:

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see *N.J.A.C. 4A:8-2.1(c)li*), or an entire school district.

Pursuant to *N.J.A.C. 4A:8-2.6(a)2*, a determination of rights appeal is based on a claim that an employee's layoff rights or seniority were determined and/or

applied incorrectly. It is noted that the determination of lateral and demotional rights is based on a comparative analysis of Civil Service Commission (Commission) job specifications and application of *N.J.A.C. 4A:8-2.1(a)* and (b). *N.J.A.C. 4A:8-2.1(a)* defines a lateral title right as the right of a permanent employee to exercise displacement rights against an employee in the layoff unit holding a title determined to be the same or comparable to the employee's affected title. Title comparability is determined by the Commission based on the following four factors:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;
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, certification or registration requirements which are not also mandatory for the affected title; and
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.

N.J.A.C. 4A:8-2.1(b) defines a demotional title right as the right of a permanent employee to exercise displacement rights against an employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. The Commission determines demotional title rights on the basis of the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
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.

Moreover, it is noted that the current system for determining title rights was the result of agency policy to automate the determinations consistent with the aforementioned criteria. This policy, which arose out of State layoffs in 1995, was upheld by the former Commissioner of Personnel on appeal and reconsideration and affirmed by the Appellate Division, Superior Court. See *In the Matter of State Layoff Rights* (Commissioner of Personnel, decided July 7, 1995), *recon. denied*, (Commissioner of Personnel, decided May 24, 1996), *aff'd*, Docket No. A-5847-95T3 (App. Div., December 9, 1997). See also, *In the Matter of Emily Graham-Weber* (Commissioner of Personnel, decided June 30, 2000), *aff'd*, Docket No. A-6681-99T5 (App. Div., December 4, 2001).

In *Graham-Weber, supra*, the Appellate Division observed that, because of the above-described system for determining demotional title rights, "an employee with far less seniority may displace another individual when the displacing individual is in a title with duties and responsibilities that are higher but substantially similar to the displaced employee's title." Thus, as the court rightly noted, "a particular individual's qualifications, the functions currently performed by any one individual, and even an individual's special abilities to perform other jobs are not a factor in the Department of Personnel's [now Civil Service Commission] comparative analysis to determine title rights. Rather, the agency focuses only upon a comparison of the responsibilities and duties of the affected title and other designated positions."

Regarding lateral and demotional title rights, the right to displacement, laterally or demotionally, is based on the system of title rights currently in use for local service which, as noted above, applies various criteria in determining title rights. More fundamentally, as is the case in this situation, lateral and demotional title rights cannot be given if there are no opportunities available.

Initially, it is noted that the appellant's layoff rights were correctly determined based on his permanent title. Contrary to Ponna's claims of seniority over Nipa, he does not have seniority since Nipa became permanent in 2009 and he became permanent in 2011. Contrary to the appellant's erroneous claims of seniority, CPM properly determined seniority based on overall seniority in the layoff unit. Regarding Ponna's argument that Nipa did not hold the same title as he held, the title of Senior Accountant has lateral title rights to the title of Senior Auditor.

As to the appellant's claims of lack of notice, *N.J.A.C. 4A:8-1.6(a)* provides that:

No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is

on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to [this agency] and affected negotiations representatives. *See also, N.J.S.A. 11A:8-1(a).*

The appellant argues that he was never served with a General Notice or Individual Notice of Layoff. However, appellant did receive CPM's determination letter dated August 1, 2014. Therefore, since the appellant was required to receive 45 days' written notice of his potential layoff and only received 15 days' notice, he is entitled to be compensated pursuant to *N.J.A.C. 4A:8-1.6(a)*.¹ Accordingly, the appointing authority is ordered to pay the appellant an amount equal to the difference between the required 45 day notice, which should have been issued no later than July 2, 2014, and the date that other affected employees received their notices from CPM, which was August 1, 2014. Specifically, the appointing authority is order to pay appellant an amount equal to 30 days of pay, which is the difference between his notice date and his last date of employment in his position prior to his layoff on August 15, 2014, and the 45 days' General or Individual Notice of Layoff he should have received. *See In the Matter of Robyn Jackson* (CSC, decided May 27, 2009) (Commission awarded 36 days of pay to appellant who did not receive a General or Individual Notice of Layoff); *See also, In the Matter of Robert W. Hartley* (MSB, decided June 20, 2007).

Based on a review of the record, appellant's title rights were properly recorded. As indicated above, there were no lateral or demotional positions in the layoff unit for him to exercise any bumping rights. Layoff rights are based on permanent titles, not the education, experience or work performed by particular individuals as indicated above. Regarding appellant's arguments that his seniority and displacement rights were violated, he has not established that he has title rights to any positions encumbered by any employees in the NSD. Therefore, appellant's seniority is not germane to his layoff rights in this layoff situation. The sole issue in a title rights appeal is whether CPM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. For the reasons presented above, other than the lack of the 45 day Notice, appellant has not established any error or evidence of misapplication of the pertinent uniform regulatory criteria in determining his layoff rights. Although appellant seeks

¹ It is noted that a General Notice of Layoff, if served on an employee, is sufficient to satisfy the 45-day notice requirement and the date of receipt of an Individual Notice of Layoff and CPM's layoff determination generally need not be considered for such purpose. However, the appellant's only written notice of his layoff was CPM's determination letter. Thus, the calculation of the appellant's pay shall be based on that notice. This date corresponds to the date other appellants received CPM's determination letter.

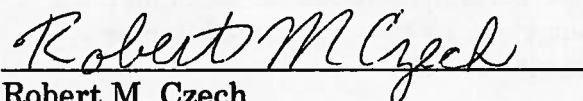
reinstatement to his pre-layoff position, the lack of receipt of his 45 days' General or Individual Notice of Layoff, which has been remedied in this determination, is insufficient for such an award. In this regard, while the Civil Service Commission does not condone the appointing authority's procedural violations in this matter, such errors are insufficient to establish a basis to reverse the layoffs.

ORDER

Therefore, it is ordered that this appeal be granted in part and the appointing authority is ordered to pay Ponna an amount equal to 30 days of pay.

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



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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Attachment

c: Mano Ponna
Kevin P. McGovern, Esq.
Vanessa Rodriguez
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

August 1, 2014

Mano Ponna
[REDACTED]

RE: Layoff from your permanent position of Senior Auditor, Newark School District, effective close of business of August 15, 2014.

Dear Mr. Ponna:

As a result of the layoff of Nahid Nipa from her permanent position of Senior Accountant, she been given a lateral displacement right to the position of Senior Auditor held by you, effective, close of business August 15, 2014.

In accordance with the provisions of N.J.S.A. 11A:8-1 et seq., your layoff from the title, Senior Auditor has been recorded. The New Jersey Civil Service Commission has determined there are no displacement rights that can be afforded to you.

Should the above employee exercise her displacement right, your employment will be terminated effective close of business August 15, 2014 and your name will be placed on the Special Reemployment List for your current permanent title and for other titles that may be deemed appropriate.

Special Reemployment lists will be certified, subsequent to the effective date of layoff, against employees serving on a provisional basis in the above title. If there are no such employees, your name will remain on the Special Reemployment List for certification against future vacancies or provisional employees.

Please note it is the responsibility of each employee whose name is placed on a Special Reemployment List to advise the Civil Service Commission of any present or future change of name or address. Failure to do so may result in not receiving a future employment opportunity or possible removal from the list. You may appeal the determination of your layoff rights or seniority. The burden of proof in such appeals is on the part of the appellant.

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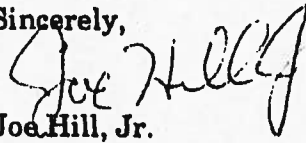
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Mano Ponna
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Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this notice. Layoff rights appeals should be addressed to the Division of Appeals and Regulatory Affairs, Civil Service Commission, Written Record Appeals, P.O. Box 312, Trenton, New Jersey 08625. **No fee is required for layoff rights or seniority appeals.**

You may appeal whether the appointing authority acted in good faith in instituting this layoff plan. The burden of proof in such appeals is on the part of the appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this notice. Pursuant to P.L. 2010 C.26, effective July 1, 2010 there shall be a \$20 fee for good faith layoff appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC. Persons receiving public assistance pursuant to P.L.1947, c.156 (C.44:8-107 *et seq.*), P.L.1973, c.256 (C.44:7-85 *et seq.*), or P.L.1997, c.38 (C.44:10-55 *et seq.*) and veterans as defined by N.J.S.A. 11A:5-1 *et seq.* are exempt from this appeals fee. Good faith appeals should be addressed to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, Unit H, P.O. Box 312, Trenton, New Jersey 08625-0312.

Sincerely,


Joe Hill, Jr.
Assistant Director

C: Vanessa Rodriguez, Appointing Authority

