

B-15



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joanne Fletcher
and Adrienne Reyes, Clerk 1,
Atlantic City

CSC Docket Nos. 2016-191
2016-190

Layoff Appeals

ISSUED: **SEP 17 2015** (RE)

Joanne Fletcher and Adrienne Reyes, former Clerks 1 with Atlantic City (City), represented by Robert F. O'Brien, Esq., appeal the determinations of their layoff rights by the Division of Agency Services (DAS). These appeals have been consolidated due to common issues.

By way of background, effective June 26, 2015, the appellants were laid off from the permanent title of Clerk 1 with the Public Works Department in Atlantic City. It is noted that the appellants have filed good faith layoff challenges which have been transmitted to the Office of Administrative Law for review. Thus, only the matter of the title rights challenges will be reviewed in this decision.

On appeal, Ms. Fletcher argues that she is more senior than incumbent Keyboarding Clerks 1. She states that the appointing authority filled the position for Keyboarding Clerk 1 without posting it, and then did not target that title. She believes that some employees, who she does not identify, bumped into positions outside of their department. She argues that Clerk 1 should have lateral title rights to the Keyboarding Clerk 1 title.

Ms. Reyes argues that she has worked for the City since 2001 and is performing duties similar to Keyboarding Clerks 1. She argues that she has the training and qualifications to perform the duties of a Keyboarding Clerk 1. She also states that the incumbent Keyboarding Clerks 1 do not spend over 50% of their time typing. Ms. Reyes also requests bumping rights to a Clerk 1 position in the Administration Department, and she requests that various employees be reassigned

to other departments in which they used to work. She argues that the title Lifeguard has lateral rights to Parking Enforcement Officer, and these titles have little in common. As such, she maintains that a Clerk should be able to bump a Keyboarding Clerk. Ms. Reyes suggests that two other individuals, Kevin Hall and Lamont Thomas, were moved to different departments to protect them or others from the layoff. Lastly, Ms. Reyes believes that she has lateral title rights to Sanitation Inspector.

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.*, and through a comparative analysis of the Civil Service Commission's job specifications. A lateral right is 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 affected title of the employee.

Usually, in an appeal of this nature, it must be determined whether DAS 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 appellants' layoff rights were properly determined. In this case, the appellants want bumping rights to another title. Pursuant to *N.J.A.C. 4A:8-2.1(a)*, for lateral rights purposes, in pertinent part, the selected title must have substantially similar duties and responsibilities; the education and experience requirements for the titles must be the same or similar; there shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and 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.

The definition and requirements portions of the job specifications for Clerk 1 and Keyboarding Clerk 1 are set forth as below:

CLERK 1

Definition: Under close supervision, performs routine, repetitive clerical work involving the processing of documents in a variety of functions; does other related duties as required.

Note: Incumbents may be required to utilize keyboard equipment to input and/or retrieve information on a computer console, typewriter or other key entry device used by the agency. Keyboarding/typing duties may or may not be assigned, depending on the needs of the employing agency. Incumbents are not expected to perform keyboarding/typing tasks with the speed and accuracy required of a Keyboarding Clerk.

Requirements:

License:

Appointees will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle, rather than employee mobility, is necessary to perform essential duties of the position.

KEYBOARDING CLERK 1

Definition: Under close supervision, performs routine, repetitive clerical work involving the processing of documents in a variety of functions; formats and key enters/types correspondence, documents, reports, charts and other materials on a computer console, typewriter, or other key entry device used by the agency; does other related duties as required.

Note: Keyboarding clerks typically spend a majority of their work time (more than 50%) typing or operating keyboard equipment. Speed and accuracy are essential for all keyboarding positions.

Requirements:

Note: Applicants will be required to demonstrate proficiency in keyboarding or typing.

License:

Appointee will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle, rather than employee mobility, is necessary to perform the essential duties of the position.

The fundamental difference between the titles is that the Keyboarding Clerk 1 title requires a special skill which is not required for the Clerk 1 title, *i.e.*, proficiency in keyboarding or typing. Thus, the requirements exceed those of Clerk 1, and as such, the Clerk 1 does not have lateral displacement rights to Keyboarding Clerk 1. In a layoff situation, employees who assume new job titles must be able to immediately perform required duties in a satisfactory manner without having to prove merit and fitness through normal merit system examination processes, such as a test and working test period. Thus, comparability of job specifications is crucial in layoff circumstances. Also, out-of-title work is not a basis for title rights as defined in Title 4A of the Administrative Code. The job

specification is the basis: neither the individual's qualifications, the duties of a particular position, nor the organizational structure, is used in determining layoff rights.

Further, the Keyboarding Clerk 1 title is in the noncompetitive division, and whether or not the position was posted has no bearing on this determination. Also, in local jurisdictions, the layoff unit is a department, and employees do not displace others outside of their department. As previously mentioned, the titles are dissimilar, with differing requirements, and there is no error in the determination of layoff rights in this circumstance.

As to Lifeguard and Parking Enforcement Officer, first, 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 DAS 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).

Lifeguard and Parking Enforcement Officer are in the same occupational group, Occupations in Protective Services (36). As they are in the same occupational group, and Parking Enforcement Officer has no requirements, this is an appropriate lateral title for Lifeguard. This is dissimilar from the Keyboarding Clerk 1 and Clerk 1 titles, which are in the same occupational group, Occupations in Stenography, Typing, Filing, and Related Fields (20), but for which the Keyboarding Clerk 1 title has higher requirements than the Clerk 1 title.

Also, Sanitation Inspector is in the occupational group, Occupations in Inspections and Investigations (17). Clerk 1 does not have lateral rights to this title. Any two titles can be compared in the County and Municipal Personnel System (CAMPS), but this is not evidence that one title has title rights to the other. Rather, the comparison screen is a tool for analysis purposes.

Ms. Reyes requests bumping rights to a Clerk 1 in the Administration Department, and that various employees be reassigned to other departments in which they used to work. In reply, layoffs are based on class code, title, and seniority as of the effective date, and in local jurisdictions, the layoff unit is a department. Ms. Reyes works for the Public Works Department and does not have

rights to the Administration Department. Thus, it is immaterial to the appellant's bumping rights to suggest that employees in other departments be reassigned to differing departments, as any such action would have no effect whatsoever on the appellant's rights.

Ms. Reyes also suggests that employees from other departments are performing clerical duties in the Department of Public Works. If this is in fact true, the appointing authority should cease this practice immediately or face sanctions. Nevertheless, this has no effect on Ms. Reyes' title rights, which are not determined based on duties performed. Similarly, title rights are not based on an employee's ability to perform the duties of position. As such, whether or not Ms. Reyes can meet the experience requirement for Keyboarding Clerk 1 is not a factor in the determination of title rights.

As to Ms. Reyes' suggestion that two other individuals, Kevin Hall and Lamont Thomas, were moved to different departments, official records indicate that neither individual moved into another department. Mr. Hall has been in the Department of Health and Human Services for three years, and Mr. Thomas has been employed in the Department of Health and Human Services for 22 years. Records for both do not indicate that either individual was moved from that department at the time of the layoffs, and both positions were rescinded from the layoff. Both individuals are still in the Department of Health and Human Services.

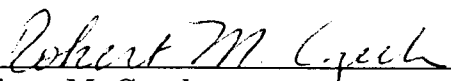
A review of the merits fails to establish that Mss. Fletcher and Reyes' layoff rights were determined incorrectly and the appellants have not met their burden of proof in these matters.

ORDER

Therefore, it is ordered that these appeals 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 16th DAY OF SEPTEMBER, 2015



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and
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