

Additionally, Quwana Price-Couch is a Mail Clerk in Administration, and was laid off on June 26, 2015. She is requesting that she have rights to a Clerk 1 position. Terry Phillips was laid off from his Technician, MIS position on June 26, 2015. He argues that he should be hired into a vacant position and that the appointing authority is hiring in that title. He also requests rights to a Computer Service Technician position held by Adam Purvis.

Venessa McGowan was a Police Aide. She states that she has extensive knowledge of the Police Department and there are vacancies, but the appointing authority has not indicated what positions they intended to fill. She also states that she was "replaced" by a former Police Lieutenant.

Mohammed Khan states that he was a Police Aide who was performing the duties of a Messenger. He states that he requested a desk audit, which was resubmitted in 2007, but did not receive a determination. He states that he submitted a new request on June 1, 2015, and that his duties have been detailed to a Clerk 2. He requests to be rehired, have his desk audit submitted to DAS, and be placed in the proper title. He requests the same consideration as a Parking Enforcement Officer who was moved to a Record Support Technician 1 title.

George Brown was a Director of Recreation/Community Center in the Department of Public Works who was laid off on July 31, 2015. He contends that he should be assigned to the Health and Human Services Department, and should have his position corrected. He explains that since December 1, 2014, when the Health and Human Services Department Director retired, the Recreation Division and Special Event was split between the Department of Public Works and the Department of Licensing and Inspections. He states that the City has yet to formally align the Divisions through an ordinance change, and he requests that the Civil Service Commission require the city to properly align the Divisions in order for employees to receive proper demotional and lateral title rights.

Efrain Morales, Jerome Williams, John Bucci and Ganeen Brooks are Recreation Aides and claim bumping rights to the positions held by Shamone Alvarez, Arnelle Lyles, Erika Cors, and Jason Lantz, respectively, as they are Recreation Aides with less seniority.

Tamee Jones, Gloria Hamlett, and Sharay Hampton argue that DAS has incorrect records and they are School Traffic Guards, not Traffic Control Officers. It is noted that they were recorded in the County and Municipal Personnel System (CAMPS) as Traffic Control Officers until their layoff on June 26, 2015. They argue that they have been performing duties as School Traffic Guards since 2007.

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 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. As to prior held rights, a displaced individual only has rights to a prior-held title in a lower class code if they have more seniority than the incumbent in that position.

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.

First, regarding the general issues, the appellants claim that contractors have been hired to fill vacancies. In that regard, contractors do not have Civil Service positions, and the appointing authority is not their employer. When referring to contractors, there is no position to bump, and they do not fill vacancies. This argument can be addressed in the appellants' good faith layoff appeal, but this is not an indication of an error in title rights.

In this case, Quwana Price-Couch was a Mail Clerk and wants rights to a Clerk 1 position. A review of the title rights for Mail Clerk indicates that it has lateral rights to Messenger, but no other titles. 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, and the mandatory requirements shall not exceed those of 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 record establishes that DAS correctly utilized a uniform and objective automated system to determine layoff rights and did not disregard 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 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).

The record further establishes that for purposes of layoff rights and determinations, DAS operationalized *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 Dictionary of Occupational Titles 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, a comparison of the job specifications for Mail Clerk and Clerk 1 indicates that they do not have substantially similar duties and responsibilities. As such, Mail Clerk does not have rights to Clerk 1. 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. Mail Clerk is in the occupational group Occupations in Information and Message Distribution (24). The Clerk title series is in the Clerical occupational group (20). As such, the titles are not functionally similar. Ms. Price-Couch's title does not have rights to the Clerk 1 position.

Terry Phillips argues that he should be hired into a vacant position and that the appointing authority is hiring in that title. As to vacancies, vacancies are submitted as part of the layoff plan and cannot be added as the Reduction in Force is being administered. If vacancies were not identified prior to the layoff, they could not be added during the layoff since this gives the appearance of impropriety. Thus, a position may be vacated during a layoff and be unoccupied, but it is not an available vacancy. *N.J.A.C. 4A:8-2.2* provides the order in which title rights shall be provided against other employees; while lateral and demotional title rights may be provided from "a vacant position that the appointing authority has previously indicated it is *willing to fill*," (emphasis added) the employer is not required to fill any vacancies. See *In the Matter of Gertrude Remsen, Department of Human Services*, A-1126-96T3 (App. Div. January 17, 1997). The appointing authority is also not obligated to inform the employees or the union of vacancies that they intend to fill. If there are any vacancies after the layoff interviews have been completed, those positions will be filled by individuals who are on the Special Reemployment Lists if the appointing authority decides to fill those vacancies.

Mr. Phillips was informed that Mr. Purvis, while in the Administration Department, is in the title Computer Service Technician, and this is not a title to which the Technician, MIS title has lateral rights. In this case, the title of Technician, MIS is classified in the occupational group Information Processing Systems (12), while the Computer Service Technician title is classified in the occupational group Occupations in Repair of Electrical Equipment (72). While the titles are in the same class code, a comparison of the responsibilities and duties of the titles indicates that they do not have substantially similar duties and responsibilities. As the Technician, MIS title does not have lateral rights to Computer Service Technician, Mr. Phillips cannot bump Mr. Purvis.

Venessa McGowan was a Police Aide and states that she was "replaced" by a former Police Lieutenant. In fact, her position was targeted. Thus, she was not bumped by a former Police Lieutenant. Also, the title Special Law Enforcement Officer is in the unclassified service. If the union suspects that Special Law Enforcement Officers are performing the duties of career service positions, it can request a classification review for those positions. See *N.J.A.C. 4A:3-3.9 et seq.*

Mohammed Khan states that he was a Police Aide who was performing the duties of a Messenger. He states that he requested a desk audit, which was resubmitted in 2007, but never acted upon. He states that he submitted a new

request on June 1, 2015, and that his duties have been detailed to a Clerk 2. He requests to be rehired, have his desk audit submitted to DAS, and be placed in the proper title. He requests the same consideration as a Parking Enforcement Officer who was moved to a Record Support Technician 1 title.

In reply, if Mr. Khan is performing duties inconsistent with the job specification for Police Aide, he is working out-of-title. Out-of-title work is not a basis for title rights as defined in Title 4A of the Administrative Code, and a title rights appeal is not the forum for a classification appeal. If he has been performing duties as a Messenger since 2007, he needed to pursue his classification appeal at that time. He states that he appealed the classification of his position again on June 1, 2015, after the layoff notices were sent. Nevertheless, he was laid off on August 28, 2015. Had Mr. Khan received a classification determination reallocating his title from DAS prior to his layoff date, his title would have been changed. As this did not occur, and the appellant is no longer performing duties, there is no basis for a desk audit. Classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. All layoff rights are determined by the title encumbered on the layoff date.

George Brown was a Director of Recreation/Community Center in the Department of Public Works who was laid off on July 31, 2015. He argues that he should be assigned to the Health and Human Services Department, but he provides no arguments as to why he would belong in that Department. He also explains that the Health and Human Services Department was split between the Department of Public Works and the Department of Licensing and Inspections. As such, his argument that he belongs in the Health and Human Services Department is unsupported. The appellant does not provide any reasoning as to why he believes that the Health and Human Services Department was improperly split, or improperly aligned. Any argument that he was placed in the Department of Public Works in order to limit his title rights is a good faith issue and can be addressed in his good faith appeal.

Efrain Morales, Jerome Williams, John Bucci and Ganeen Brooks claim bumping rights to the positions held by less senior Recreation Aides. However, those individuals will be laid off at the same time, as their positions are part of the reduction in force.

DAS has corrected the employee records for Tamee Jones, Gloria Hamlett, and Sharay Hampton to indicate that they were Traffic Control Officers who were laid off, and who have been rehired as School Traffic Guards in the unclassified service. These appellants argue that they have been performing duties as School Traffic Guards since 2007. Nevertheless, as indicated above, out-of-title work is not a factor in title right determinations. If they felt that they were misclassified, they

always had the option of requesting a classification review pursuant to *N.J.A.C.* 4A:3-3.9(d). That opportunity passed with their separation in the layoff. As they have been rehired as School Traffic Guards, based on their own arguments, they should now be properly classified.

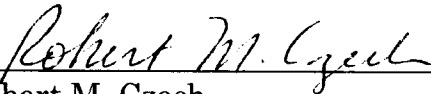
Thus, a review of the record fails to establish any errors in the layoff process and the appellants have not met their burden of proof in this matter.

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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