

STATE OF NEW JERSEY

In the Matter of Jane Oeler, William Paterson University

CSC Docket No. 2022-1673

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Layoff Appeal

ISSUED: MAY 2, 2022 (RE)

Jane Oeler, a former Senior Clerk Typist with the Department of Higher Education, William Paterson University, appeals the determination of her layoff rights.

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By way of background, the William Paterson University submitted a layoff plan to the Division of Agency Services (Agency Services) to lay off employees in various titles, effective December 21, 2021. A review of official records indicates that the appellant was bumped from her position as a Senior Clerk Typist, and she was laid off.

On appeal, the appellant states that there were only two Senior Clerk Typist positions in her department, and one person was promoted, leaving a vacancy which was not filled. She stated that she deserved that vacant position or the other vacant position in the Student Enrollment Services Department.

CONCLUSION

In an appeal of this nature, it must be determined whether Agency Services 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). The rights of employees are decided from the highest class code and seniority to the lowest. That is, employees in higher class codes and higher seniority have their rights decided prior to employees in lower class codes and seniority. The appellant had eight years, eleven months and eighteen days of seniority as of the December 31, 2021 layoff date. All employees received a 45-day Layoff Notice, and appellant was bumped from her position as she had less seniority than other Senior Clerk Typist affected by the layoff. It is noted that two other Senior Clerk Typists were laid off as well.

As to vacancies, vacancies are submitted as part of the layoff plan and cannot be added as the Reduction in Force is being administered. A position does not become an available vacancy until various personnel actions are performed, and those actions are not done during a layoff. In any event, even if a vacancy existed as available, *N.J.A.C.* 4A:8-2.2 does not require the State to offer vacant positions to employees displaced in a layoff. That regulation 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 State 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). If the appointing authority is willing to fill a vacancy, it will do so from a Special Reemployment List (SRL).

In this case, there were identified vacancies included in the layoff plan, and these were positions to be filled by displaced employees. While the appellant claims that an employee vacated a position, she does not provide any identifying information regarding that individual. According to official record, none of these vacancies were for Senior Clerk Typist. As such, there was no vacancy for the appellant to bump into on the layoff date. The employee with more seniority than the appellant did not "accept an open position." Rather, that individual displaced a Clerk Typist. All three Clerk Typists were laid off, and there was no Clerk Typist for the appellant to displace. 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 the 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 27^{TH} DAY OF APRIL 2022

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Chairperson

Civil Service Commission

Inquiries Allison Chris Myers

and Director

Correspondence Division of Appeals and Regulatory Affairs

Civil Service Commission Written Record Appeals Unit

P. O. Box 312

Trenton, New Jersey 08625-0312

c: Jane Oeler Denise Robinson Lewis Division of Agency Services

Records Center