

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.

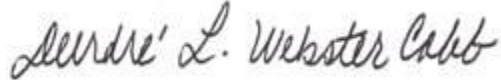
Thus, a review of the record fails to establish an error in the layoff process and the appellant has not met her burden of proof in this matter.

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 27TH DAY OF APRIL 2022



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