

In the Matter of Michael Sheridan, Union County

CSC Docket No. 2014-1485

(Civil Service Commission, decided February 26, 2014)

Union County requests that Michael Sheridan, a Mason's Helper, be transferred from the Department of Engineering and Public Works Facilities to the Sheriff's Office and appointed to the title of Parking Attendant.

By way of background, the title of Building Maintenance Worker has a lateral title right to Parking Attendant. Thus, as a result of the June 1, 2012 and August 31, 2012 layoffs at Runnells Specialized Hospital of Union County, 11 former Building Maintenance Workers¹ currently appear on the special reemployment list (SRL) for Parking Attendant, a noncompetitive title.

In the instant matter, the appointing authority requests that the rules regarding SRLs be relaxed in order to transfer Sheridan to the Sheriff's Office and appoint him as a Parking Attendant despite the existence of the SRL for Parking Attendant. It explains that Sheridan sustained a workplace injury and has physical restrictions. Thus, in order to accommodate Sheridan, the appointing authority seeks approval for his lateral title change/noncompetitive appointment from Mason's Helper to Parking Attendant. It states that Sheridan has over 21 years of service. Personnel records indicate that Sheridan was first appointed as a Laborer, effective July 25, 1992, and then permanently appointed as a Mason's Helper on January 13, 2004. He has more seniority than the 11 individuals on the SRL for Parking Attendant. The appointing authority argues that in light of Sheridan's seniority, he should not be displaced by former employees with "significantly less seniority." It is noted that the Division of Classification and Personnel Management advises, and personnel records confirm, that the appointing authority has demonstrated its willingness to reappoint Building Maintenance Workers from active SRLs. Additionally, a Mason's Helper does not have lateral or demotional title rights to any title. It is further noted that personnel records reveal that Sheridan has been transferred to the Sheriff's Office in his permanent title of Mason's Helper effective August 10, 2013. However, there also is a SRL for Mason's Helper, Union County, consisting of one eligible.

CONCLUSION

N.J.A.C. 4A:8-2.3(b)2 provides that employees on SRLs have priority in appointments over noncompetitive appointments and transfers. Specifically, the

¹ One former Building Maintenance Worker was laid off from the Department of Engineering and Public Works Facilities, Union County.

regulation states that SRLs shall take priority over noncompetitive appointments, transfers except appointments pursuant to *N.J.A.C. 4A:8-1.6(f)1*, and all lateral title changes except those resulting from position reclassification within a layoff unit. Moreover, a review of the regulatory history of *N.J.A.C. 4A:8-2.3* reveals that this rule was enacted to reiterate the priority of SRLs over other employment lists as reflected in *N.J.S.A. 11A:4-12*. *N.J.A.C. 4A:8-2.3(b)2* is an extension of that statutory mandate. Further, although transfers are contemplated in pre-layoff actions, once an employee is laid off, he or she must be afforded the highest priority in appointments as provided by law and rule. Nonetheless, since *N.J.S.A. 11A:4-12* only addresses the priority of the SRL over other eligible lists and not noncompetitive appointments and transfers, and *N.J.A.C. 4A:8-2.3(b)2* is a rule and not a statute, an appointing authority may petition for a rule relaxation pursuant to *N.J.A.C. 4A:1-1.2(c)*, which states that the Civil Service Commission (Commission) may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Initially, the appointing authority does not dispute that a Building Maintenance Worker has a lateral title right to Parking Attendant. Rather, it maintains that Sheridan's seniority should be taken into consideration in his transfer and appointment to Parking Attendant. While seniority would be a factor in the exercise of lateral title rights in a layoff,² this case does not represent a layoff situation. Thus, Sheridan's seniority alone is not a compelling reason for his transfer and noncompetitive appointment to Parking Attendant. The appointing authority must present good cause in order to relax the provisions of *N.J.A.C. 4A:8-2.3(b)2*. For instance, this rule has been relaxed based on the appointing authority's needs, budgetary constraints, and special qualifications/skills of the employee to be transferred. *See e.g., In the Matter of Jacqueline Gonzalez* (CSC, decided January 25, 2012) (Commission permitted transfer of Employee Benefits Clerk to another department despite existence of SRL due to additional cost of appointing another employee and the fact that the specific position could be filled with the current skilled employee. Further, the transfer was found not to be a circumvention of the special reemployment rights of laid off employees). However, in the present case, the appointing authority's prior utilization of Building Maintenance Worker SRLs does not overcome the rights of the remaining Building Maintenance Workers to exercise their special reemployment rights from the Parking Attendant SRL. It is emphasized that the highest priority must be given to the individual who is the holder of a special reemployment right. Furthermore, while the Commission is mindful of Sheridan's unfortunate personal circumstances, those circumstances are not sufficient to usurp the rights of those individuals who were negatively impacted in the layoff. However, the appointing authority is not precluded from transferring and appointing Sheridan to an appropriate title for which there is not an active

² See *N.J.A.C. 4A:8-2.2(d)6*. Additionally, as previously noted, a Mason's Helper does not have lateral or demotional title rights to any title.

SRL. In this regard, the appointing authority has not presented that all alternative titles have been explored. In addition, unless the SRL for Mason's Helper, Union County, has been exhausted, Sheridan cannot be transferred to the Sheriff's Office, for the same aforementioned reasons, regardless of whether the transfer is in his permanent title. Consequently, since good cause has not been presented in this case, the appointing authority's request is denied.

ORDER

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.