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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Raymond Ramos,
Newark Housing Authority

CSC Docket No. 2011-638

Layoff Rights Appeal

ISSUED: DEC 18 2015 (DASV)

Raymond Ramos, a former Carpenter with the Newark Housing Authority (NHA), represented by Arnold Shep Cohen, Esq., requests enforcement of the attached determination of his layoff rights by the Division of State and Local Operations (SLO).¹

As background, the NHA withdrew from the Civil Service system on May 27, 1997. Employees with permanent status in career service titles retained all career service rights so long as they remained in the title. See *N.J.A.C. 4A:3-1.1(c)*. By letter dated June 3, 2010, the NHA submitted a layoff plan to SLO to eliminate five Civil Service Carpenter positions, effective July 26, 2010, for reasons of economy and efficiency. As of that date, this agency's personnel records indicated that there were 10 career service Carpenter positions. The NHA indicated that although it explored various alternatives to layoff, layoffs could not be avoided. Moreover, the NHA informed SLO that the employees would be separated on June 30, 2010, but it would continue to compensate the laid off employees through July 26, 2010. The layoff plan was approved on June 8, 2010 and Individual Notices of Layoff were sent by certified mail and personally served on the affected employees on June 9, 2010. Since the NHA targeted five positions, the five least senior Carpenters were to be laid off.

By letter dated June 29, 2010, SLO informed the appellant that he had a displacement right to the Carpenter position encumbered by Stanley Cimpric. The

¹ SLO is now known as the Division of Agency Services.

appellant was appointed as a Carpenter on November 9, 1992 and was the sixth least senior Carpenter at that time. Cimpric had less seniority than the appellant, having been appointed on May 24, 1993. SLO advised Cimpric that he would be laid off from his position, as no displacement rights could be afforded to him. It is noted that a Carpenter has a lateral title right to a Cabinet Maker and a demotional title right to a Carpenter Helper. However, no career service employee was serving in those titles. Nonetheless, prior to the layoff, the appointing authority changed Cimpric's title to Welder. Consequently, the appellant became the fifth least senior Carpenter. The appointing authority abolished his position and laid him off.

Thereafter, the appellant filed the instant matter and also challenged the good faith of his layoff. With regard to the latter, he was granted a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on August 13, 2010, along with the appeals of the four other laid off Carpenters. The appellant, who had been the Vice President of the Skilled Trades Association (STA), alleged, among other things, that the NHA intentionally targeted permanent Carpenters and the STA members. He also claimed that Cimpric's title change from Carpenter to Welder was made in order to lay him off. With regard to his layoff rights, the appellant maintained that although he exercised his displacement rights to the position held by Cimpric, the NHA had not permitted him to return to work. He claimed that Cimpric's title change was "a subterfuge for the refusal by the [NHA] to permit [him] to exercise his lateral transfer rights." Moreover, the appellant contended that Cimpric did not even know that his title changed. The appellant also asserted that he did not receive the required 45 days' notice prior to his layoff. As for his remedy, the appellant requested reinstatement, back pay, benefits, and counsel fees. Additionally, he urged the Civil Service Commission (Commission) to fine the NHA for violating SLO's determination. However, due to the arguments advanced by the appellant, it was determined that the appellant's request for enforcement of his layoff rights would be held in abeyance pending his good faith layoff appeal. A determination could not be rendered until the issue of whether Cimpric's title change was made in good faith was addressed at the OAL.

At the OAL, the good faith layoff appeals were consolidated with an unfair practice complaint that had been filed by the STA with the Public Employment Relations Commission (PERC). In that matter, the STA alleged that the layoffs were based on anti-union animus and in retaliation for the STA's vigorous representation of its members. The STA also asserted that the layoffs were an attempt to eliminate the STA. It is noted that PERC had the predominant interest in the consolidated appeal. On February 25, 2014, the Administrative Law Judge (ALJ) issued his initial decision, finding, among other things, that the layoffs were instituted in good faith. However, by order dated April 10, 2014, PERC remanded the matter to the OAL for the ALJ to evaluate various issues including "[w]hether the NHA proved by a preponderance of the evidence that the protected activity [of the STA members] was a motivating factor in the layoff and title change [of

Cimpric]" and "[w]hether the NHA submitted evidence of a legitimate business justification for the layoff and title change." In the remanded initial decision rendered on September 3, 2015, the ALJ found that anti-union animus was not a substantial or motivating factor in the layoff of the STA members in 2010 or in the title change of Cimpric. Specifically, based on witness testimony, the ALJ determined that Cimpric's title changed to reflect his actual work. The NHA did not want to lose its only Welder and removed Cimpric from the layoff list. The ALJ reviewed Cimpric's work log from June 2009 to June 2010, which demonstrated that he worked almost exclusively as a Welder. Thus, the ALJ found unpersuasive the STA's argument that the NHA changed Cimpric's title in order to target the appellant for layoff. Upon review, PERC adopted the ALJ's findings of fact and conclusion that the NHA did not violate the New Jersey Employer-Employee Relations Act and dismissed the unfair practice complaint. Additionally, upon its review, the Commission found that the layoffs were effectuated in good faith and also adopted the ALJ's decision. *See In the Matter of Gerard Costella, et al.* (CSC, decided November 18, 2015).

In the instant matter, the NHA submits an In House Skilled Trades Seniority List, which shows that Cimpric had a "Title Correction" to Welder and that his previous title was "Welder/Carpenter." It states that this list was presented to SLO with its layoff plan. It also presents two Personnel Action forms, which demonstrate that Cimpric received a lateral title change to Welder effective June 2, 2010. One of the forms indicates that there was a "Title correction in the Human Resources system." The form was approved and signed by the Department Head and Chief on June 2, 2010, the Chief Financial Officer on June 3, 2010, and the Chief Human Resources Officer on June 4, 2010.² The NHA contends that it did not deviate from SLO's determination. Rather, it maintains that the appellant was laid off because there was no longer a position for him since Cimpric's title changed.

The appellant asserts that Cimpric is still performing the duties of a Carpenter and Cimpric cannot be afforded a retroactive title change. In that regard, the appellant relies on *N.J.A.C. 4A:4-7.6(d)*,³ arguing that there was no employee consent or approval by the head of the organizational unit or this agency.

In reply, the NHA indicates that of the nine Carpenters with Civil Service status, five were laid off and four remained employed. Additionally, it states that the Carpenters without Civil Service status were also laid off, as well as other employees in various ranks and unions. It maintains that the STA was aware of its

² It is noted that this agency did not receive the Personnel Action forms.

³ *N.J.A.C. 4A:4-7.6(d)* states that a lateral title change shall require the consent of the employee, the head of the organizational unit, and the approval of the Chairperson of the Commission or designee, except when the title change results from changes in the Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Chairperson or designee.

financial difficulties given its reduced federal funding. Furthermore, it reiterates that it took action to correct Cimpric's title to Welder to reflect his actual work and accordingly reduced his salary. In support, the NHA submits the work orders of the appellant and Cimpric from June 2009 to June 2010.

The appellant responds that although Cimpric's title changed, pursuant to *N.J.A.C.* 4A:4-7.6(b)1, he should have "retain[ed] accumulated seniority or service for purposes of determining promotional, layoff, or demotional rights and sick and vacation entitlements." Thus, the appellant argues that Cimpric's seniority did not change and he had less seniority than the appellant. The appellant also notes that the work orders submitted by the NHA as to his assignments are incomplete.

CONCLUSION

Initially, with regard to the appellant's claim that he did not receive 45 days' notice prior to his layoff, *N.J.A.C.* 4A:8-1.6(a) provides that:

No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to [this agency] and affected negotiations representatives. *See also, N.J.S.A.* 11A:8-1(a).

The appellant has not provided specific details with regard to his claim. However, a review of the matter reveals that he was personally served with an Individual Notice of Layoff on June 9, 2010 and the layoff was effective July 26, 2010. This provides the appellant with more than 45 days' notice. It is noted that although the employees were separated on June 30, 2010, they were compensated through July 26, 2010. Thus, the foregoing notice satisfies the requirement of *N.J.A.C.* 4A:8-1.6(a).

Furthermore, the Commission has found that the layoffs were effectuated in good faith. *See Costella, supra.* In that matter, the ALJ determined that anti-union animus was not a substantial or motivating factor in the layoff of the STA members in 2010 or in the title change of Cimpric. The title change reflected Cimpric's actual work, and the NHA did not want to lose its only Welder. Moreover, contrary to the appellant's assertion, the ALJ reviewed Cimpric's work log from June 2009 to June 2010, which demonstrated that he worked almost exclusively as a Welder. Thus,

the appellant's allegations regarding the good faith of the layoff and Cimpric's title change and duties are without merit.

Moreover, it is an appellant's burden to provide evidence of a misapplication of the regulatory criteria in determining layoff rights. *See N.J.A.C. 4A:8-2.1 et seq.* It is well established that when a housing authority withdraws from the Civil Service, employees with permanent status in career service titles prior to the withdrawal shall retain all career service rights so long as they remain in the title. Employees who had permanent status prior to the withdrawal, even with a subsequent change in title, retain rights to a hearing for disciplinary matters and may challenge the good faith of a layoff. *See N.J.A.C. 4A:3-1.1(c).* In the instant matter, there is no question that the appellant retained all career service rights as he did not have a change of title, including a right to appeal and request enforcement of his layoff rights. However, the NHA appointed Cimpric to the title of Welder prior to the layoff. Although this agency was not aware of the title change as it did not receive the Personnel Action forms, Cimpric's appointment was approved by several levels of management and was effective June 2, 2010, prior to the layoff. SLO did not possess accurate information at the time of the layoff rights determinations. SLO's determination of the appellant's layoff rights must therefore be disregarded. Consequently, regardless of his seniority, Cimpric was no longer a Carpenter. Thus, there were only nine career service Carpenter positions at the time and five positions were still targeted. Accordingly, because the appellant was the fifth least senior Carpenter of the nine Carpenters and there were no lateral or demotional title rights opportunities for Carpenters as set forth above, the appellant's layoff was appropriate. It is emphasized that an employee is entitled to displace another individual if the individual is serving in a title to which the employee has rights. *See e.g., In the Matter of Kenneth Poole* (CSC, decided April 29, 2009) (Although the appellant may have had more seniority than other employees, he was only entitled to displace another employee if the employee is serving in a title to which the appellant had rights). Therefore, based on the foregoing facts, a misapplication of the regulatory criteria in determining layoff rights has not been demonstrated and the appellant has not met his burden of proof.

Lastly, it is noted that since the NHA withdrew from the Civil Service system, this agency no longer approves appointments of the NHA, such as the appointment of Cimpric to a Welder position. Similarly, in response to the appellant's arguments regarding the duties of Cimpric, this agency no longer has jurisdiction to review Cimpric's classification because he has had a change of title.⁴ However, the NHA must still notify this agency with respect to appointments of employees with prior career service titles so that these employees' rights, if any, are properly administered in the future. Nonetheless, since it is clear that Cimpric's

⁴ However, as noted above, the ALJ found that Cimpric's work log evidenced that he was working primarily as a Welder.

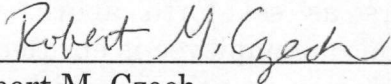
title changed on June 2, 2010 to Welder, the Division of Agency Services is directed to amend his record in the County and Municipal Personnel System (CAMPS) to reflect the title change. CAMPS currently indicates that Cimpric was laid off effective June 30, 2010. Additionally, the records of the appellant and the other laid off Carpenters, namely Joseph DeSantis, Gerard Costella, Walter Young, and Manuel Rodriguez, currently reflect their layoff on June 30, 2010. However, although these employees were separated on that date, the layoff was not effective until July 26, 2010. Accordingly, the Division of Agency Services is also directed to change the effective date of layoff of any employee affected in this layoff to July 26, 2010.

ORDER

Therefore, it is ordered that the appellant's request for enforcement be denied. It is further ordered that the Division of Agency Services make the necessary amendments to CAMPS in accordance with this decision.

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 DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Raymond Ramos
Arnold Shep Cohen, Esq.
Sibyl Bryant
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF STATE AND LOCAL OPERATIONS
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

June 29, 2010

Raymond Ramos

RE: Layoff from your permanent position of Carpenter Newark Housing Authority, effective, close of business of July 26, 2010.

Dear Mr. Ramos:

As a result of your layoff from your permanent title of Carpenter, you have been granted a seniority displacement right to the title of Carpenter held by Stanley Cimpric.

If you accept the lateral right, you must notify the appointing authority by close of business July 23, 2010 (at least two (2) days before the effective date of this layoff action).

If you refuse the lateral right, you must advise the appointing authority and send a signed statement of refusal to the New Jersey Civil Service Commission by close of business July 23, 2010 (at least two (2) days before the effective date of this layoff action). Whether you accept or refuse this lateral right, your name will be retained on the Special Reemployment List(s) for future consideration.

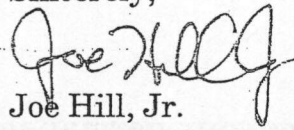
You may appeal the determination of your layoff rights or seniority. The burden of proof in such appeals is on the part of the appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this notice. Layoff rights appeals should be addressed to the Division of Merit Systems Practices and Labor Relations, Civil Service Commission, Written Record Appeals, P.O. Box 312, Trenton, New Jersey 08625.

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You may appeal whether the appointing authority acted in good faith in instituting this layoff plan. The burden of proof in such appeals is on the part of appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this notice. Good faith appeals should be addressed to the Division of Merit System Practices and Labor Relations, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625.

Sincerely,



Joe Hill, Jr.

Assistant Director

C: Newark Housing Authority

NOTE: It is the responsibility of each employee whose name is placed on a special reemployment list to advise the Civil Service Commission of any present or future change of name or address. Failure to do so may result in your not receiving a future employment opportunity or possible removal from the list.