

B-21



STATE OF NEW JERSEY

In the Matter of Lillian Nyczepir-Zito, Bergen County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-2860

Layoff Rights Appeal

ISSUED: MAR 24 2017 (JET)

Lillian Nyczepir-Zito, a former Supervisor of Accounts with Bergen County, represented by Randi Doner April, Esq., appeals the determination of her layoff rights by the Division of Agency Services (Agency Services).

By way of background, the appointing authority submitted a layoff plan to this agency with an effective layoff date of December 31, 2015. Upon approval of the plan, 45-day notices were sent to the affected employees on November 1, 2015. On December 16, 2015, Agency Services issued a letter to the appellant advising her of her layoff rights. The appellant, whose permanent title was Supervisor of Accounts, was advised that she possessed demotional title rights to a Principal Account Clerk position which was occupied by a provisional employee. The appellant accepted the demotional title right effective December 31, 2015.

On appeal to the Civil Service Commission (Commission), the appellant argues that she performed the duties of a Business Manager while serving as a Supervisor of Accounts. Further, the appellant asserts that there are employees serving in various titles, including Accountant and Fiscal Analyst, who are performing the duties of a Supervisor of Accounts. The appellant explains that these employees were not subjected to the layoff, despite the fact that some of them possess less seniority than she does. She states that, while layoff rights are determined by job duties and seniority, the appointing authority has refused to appoint her as an Accountant or a Fiscal Analyst. Moreover, the appellant requests classification review for individuals serving in the Division of Senior Services, Division of Office for Children and in the Division of Planning and Contract. In this

regard, the appellant maintains that a classification review will show that there are individuals who are performing Supervisor of Accounts work despite that fact that their positions are classified as Accountant or Fiscal Analyst.

A review of the appellant's personnel record indicates that she was provisionally appointed pending open competitive examination procedures to the title of Business Manager effective February 8, 2000. However, she was found ineligible for the open competitive examination for Business Administrator (C6994B), Bergen County and the former Merit System Board denied her ineligibility appeal of that matter. *See In the Matter of Lillian Zito* (MSB, decided September 3, 2003). Subsequently, she was provisionally appointed as a Supervisor of Accounts effective May 14, 2001. Thereafter, she applied for, was deemed eligible, and passed the open competitive examination for Supervisor of Accounts (C8001E), Bergen County and was permanently appointed from the resultant eligible list effective September 22, 2004.

CONCLUSION

N.J.A.C. 4A:8-2.2(c) provides that in local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

In the instant matter, the appellant is challenging her layoff on the basis that she should be entitled to displace employees in the titles of Accountant and Fiscal Analyst, who she claims are performing Supervisor of Accounts duties. However, pursuant to *N.J.A.C.* 4A:8-2.1, displacement rights may only be exercised to titles with substantially similar duties and responsibilities. The current system for determining title rights was the result of a policy to automate the determinations consistent with the established regulatory criteria. This policy, which arose out of State layoffs in 1995, was upheld by the Commissioner of Personnel on appeal and reconsideration and affirmed by the Appellate Division, Superior Court. *See In the Matter of State Layoff Rights* (Commissioner of Personnel, decided July 7, 1995), *reconsid. denied* (Commissioner of Personnel, decided May 24, 1996), *aff'd*, Docket No. A-5847-95T3 (App. Div., December 9, 1997) (State Layoff Rights). *See also, In the Matter of Emily Graham-Weber* (Commissioner of Personnel, decided June 30, 2000), *aff'd*, Docket No. A-6681-99T5 (App. Div., December 4, 2001).

In *Graham-Weber, supra*, the Appellate Division observed that, because of the above-described system for determining demotional title rights, "an employee with far less seniority may displace another individual when the displacing individual is in a title with duties and responsibilities that are higher but substantially similar to the displaced employee's title." Thus, as the court rightly noted, "a particular individual's qualifications, the functions currently performed by any one individual, and even an individual's special abilities to perform other jobs

are not a factor in the Department of Personnel's [now Civil Service Commission] comparative analysis to determine title rights. Rather, the agency focuses only upon a comparison of the responsibilities and duties of the affected title and other designated positions."

Based on a review of the record, the appellant has failed to establish that she is entitled a right to the titles of Business Administrator, Accountant, or Fiscal Analyst. In this regard, the appellant never achieved permanent status as a Business Administrator because she was found ineligible for the open competitive examination and the Board denied her appeal. Rather, the appellant applied for, was deemed eligible, passed an examination and was permentaly appointed as a Supervisor of Accounts. In accordance with the aforementioned system of determining title rights, the Supervisor of Accounts title only possesses lateral and/or demotional title rights to the titles of Supervising Account Clerk, Assistant Supervisor of Accounts, Principal Account Clerk, Senior Account Clerk, and Account Clerk. It does not have rights to the titles of Business Manager, Accountant, or Fiscal Analyst. The appellant is only entitled to displace another employee if the employee is serving in a title to which she had rights. *See In the Matter of Kenneth Poole* (CSC, decided April 29, 2009). Thus, since the Business Manager, Accountant and Fiscal Analyst titles do not have lateral or demotional rights to the Supervisor of Accounts title, the appellant is not entitled to displacement rights. However, the appellant was properly offered and she accepted displacement rights as a Principal Account Clerk. Moreover, the appellant only had layoff rights within the layoff unit, and the fact that other employees may have absorbed the duties of a Supervisor of Accounts after the layoff does not establish her contentions.

In regard to her assertion that she performs the duties of a Business Manager and her rights should be based on that title, the appellant essentially argues that her position is misclassified. However, classification disputes are not reviewable in the context of a layoff rights appeal. As noted earlier, the determination of layoff title rights is based on application of layoff title rights criteria and the record fails to establish evidence of layoff rights error. The layoff rights review process is necessary limited to the criteria established in *N.J.A.C. 4A:8-2.1* not only to ensure objectivity and uniform treatment of employees in all cases, but also to implement layoff rights determinations within the statutory 45-day time frame provided for such review. Moreover, verification of the appellant's claimed out-of-title work circumstances would require individual position classification duties analysis in accordance with *N.J.A.C. 4A:3-3.9*. In the event of layoffs affecting numerous related positions, it is not possible to finalize such reviews within allowable time limits. Thus, since the appellant did not raise the issue of her classification, as well as the classifications of other unnamed individuals, until after her layoff, her claim of misclassification is not cognizable in under classification review procedures. *See In the Matter of Kathleen Diringer* (Commissioner of Personnel, decided April 22, 1994).

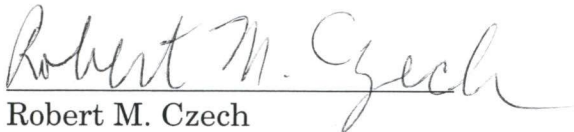
Accordingly, the appellant has not met her burden of proof of this matter, and there is no basis to disturb Agency Service's determination of her layoff rights.

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 22nd DAY OF MARCH, 2017



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