

B-13



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Andrea Goldsboro,
Et al., Department of Human
Services

CSC Docket Nos. 2014-2940
2014-2938
2014-2939
2014-3106
2014-3105

Layoff Appeal

ISSUED: SEP - 4 2014

(RE)

Andrea Goldsboro, Karen Lyden, Joyce Wells, Nadeania Lugo and Denise White, represented by Robert Yaeger, CWA Local 1040, appeal their layoff rights from their positions at Vineland Developmental Center.

By way of background, the Department of Human Services submitted a layoff plan to the Division of Classification and Personnel Management (CPM) to lay off employees in various titles, including employees of Vineland Developmental Center, due to the closure of the North Jersey Developmental Center, effective June 27, 2014. Various positions in various titles at various institutions were affected. As a result, a review of official records indicates that the positions of Mss. Goldsboro, Lyden, and Wells as Head Cottage Training Supervisors (class code 15), and the positions of Mss. Lugo and White as Cottage Training Supervisors (class code 13), were affected in the layoff. The Head Cottage Training Supervisors each bumped a Cottage Training Supervisor, while Ms. Lugo bumped a provisional Cottage Training Supervisor and Ms. White bumped a Senior Cottage Training Technician.

On appeal, the appellants argued that there were three employees in "acting" positions as Head Cottage Training Supervisor, and that those positions should have been offered to Mss. Goldsboro, Lyden, and Wells. Since Mss. Goldsboro and Lyden bumped Mss. Lugo and Wells, those appellants were impacted as well.

The appellants' circumstances were reviewed, and they were informed by Commission staff that layoff rights are based on an employee's permanent title at the time of layoff, and an employee is entitled to displace another individual if the

individual is serving in a title to which the employee has rights. In this case, the permanent title for Giulia Cartar, Jaynet Peterson and Elizabeth Smith was Cottage Training Supervisor, and Mss. Goldsboro, Lyden, and Wells accepted positions as Cottage Training Supervisors. Additionally, they were informed an “acting” capacity is out-of-title work, as “acting” positions are not recognized. See *N.J.A.C. 4A:4-1.1 et seq.* In other words, any action regarding their claim that Giulia Cartar, Jaynet Peterson and Elizabeth Smith are misclassified would not result in an action which would be effective prior to the layoff date of June 27, 2014 and provide them with additional layoff rights.

The appellants responded that they believe that the “acting” positions of Giulia Cartar, Jaynet Peterson and Elizabeth Smith are, in fact, vacancies, into which they should be allowed to laterally move. They provide internal documents which refer to those positions as “acting,” although these documents are undated or dated prior to the June 27, 2014 layoff.

CONCLUSION

In an appeal of this nature, it must be determined whether CPM 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). In this case, Giulia Cartar, Jaynet Peterson and Elizabeth Smith are Cottage Training Supervisors. If they are working out-of-title, they are not filling vacancies, which would have unique position numbers, but are performing duties inconsistent with the job specification for Cottage Training Supervisor. They hold their own positions which are numbered and are paid accordingly. In this regard, there is no such designation as an acting appointment under Civil Service rules. *N.J.S.A. 11A:4-13* and *N.J.A.C. 4A:4-1.1 et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. See *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006) and *In the Matter of Russell Davis* (MSB, decided August 10, 2005).

Again, out-of-title work is not a basis for title rights as defined in Title 4A of the Administrative Code. The job specification is the basis; neither the individual's qualifications, the duties of a particular position, nor the organizational structure, is used in determining layoff rights. If these individuals are still working out-of-title after the June 27, 2014 layoff, the designation of such positions is clearly

improper and in violation of *N.J.A.C.* 4A:3-3.4. Accordingly, the Department of Human Services should *immediately* discontinue the use of "acting" positions. The proper designation for such advancements would be either temporary appointments pursuant to *N.J.A.C.* 4A:4-1.7 or provisional appointments pending promotional procedures pursuant to *N.J.A.C.* 4A:4-1.5. If the Department of Human Services fails to comply with this directive, it may be subject to fines or other penalties pursuant to *N.J.A.C.* 4A:10-2.1.

Lastly, although the positions of Giulia Cartar, Jaynet Peterson and Elizabeth Smith are not vacancies, even if they were, *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). No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

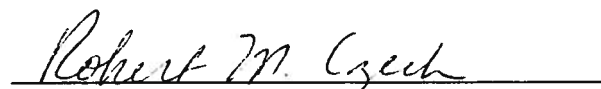
Thus, a review of the record fails to establish an error in layoff process and the appellants have not met their burden of proof in this matter.

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 3rd DAY OF SEPTEMBER, 2014

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

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