



B-26

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Francesca Miller,
Department of Human Services

CSC Docket No. 2016-440

Layoff Appeal

ISSUED: **NOV 10 2015** (RE)

Francesca Miller, a Clinical Nutritionist with the Department of Human Services, New Lisbon Developmental Center, appeals her lateral displacement in lieu of layoff to the same title at Trenton Psychiatric Hospital.

By way of background, the Department of Human Services submitted a layoff plan to the Division of Classification and Personnel Management (CPM)¹ to lay off employees in various titles, including employees of Division of Developmental Disabilities, due to the closure of the North Jersey Developmental Center, effective June 27, 2014. Numerous positions in various titles at several institutions were affected. A review of official records indicates that Ms. Miller was displaced from her Clinical Nutritionist title at New Lisbon Developmental Center by someone more senior in the title, and she took a lateral position in the same title at Trenton Psychiatric Hospital. She was not affected in the layoff of January 9, 2015.

In an appeal postmarked July 3, 2015, Ms. Miller states that Burlington County is her home location and she is on a Special Reemployment List (SRL) for that County. She explains that, in the layoff of January 9, 2015, a Clinical Nutritionist displaced another Clinical Nutritionist at Trenton Psychiatric Hospital, and that the displaced person bumped to a position in Burlington County. She claims the displaced person "took my position at New Lisbon Developmental Center," on January 9, 2015. She contends that she should have been hired from

¹ Now the Division of Agency Services.

the SRL to fill any vacancy at New Lisbon Developmental Center, and she asks why she was bumped, and believes that a monumental error has occurred.

Commission staff responded by letter that, a Clinical Nutritionist displaced another Clinical Nutritionist, Jennifer Lutz, at Trenton Psychiatric Hospital in the January 9, 2015 layoff by typical means. That is, Ms. Lutz was displaced by someone from the closing agency, Woodbridge Developmental Center, who selected her location. There is no error in this action, and she selected the vacancy in New Lisbon Developmental Center that was available at the time.

The appellant was also informed that vacancies are submitted as part of the layoff plan and cannot be added as the Reduction in Force is being administered. If vacancies were not identified prior to the layoff, they could not be added during the layoff since this gives the appearance of impropriety. Thus, a position may be vacated during a layoff and be unoccupied, but it is not an available vacancy. The position does not become an available vacancy until various personnel actions are performed, and those actions are not done during the layoff. In this case, there was an identified vacancy in New Lisbon Developmental Center included in the layoff plan. As such, it was a position to be filled by a displaced employee.

N.J.A.C. 4A:8-2.2 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). As such, after the layoff of June 27, 2014, the Department of Human Services was not required to fill this vacancy with an individual from the SRL prior to the administration of the second layoff. It chose to maintain a vacancy and identify it in the layoff plan. There is no impropriety in this action.

Ms. Miller was told that the fact that there may now be a promotional opportunity at New Lisbon Developmental Center for Clinical Nutritionists is not evidence of a misapplication of her layoff rights. She is eligible only for those promotional opportunities in her current unit scope. Also, she was advised that she must contact the Department of the Treasury, Division of Pensions and Benefits, or her Human Resources Office for information related to her pension. The Commission is not the forum for that issue.

In response, in a letter dated August 4, 2015, the appellant maintained that this response was worded in legal terminology and she needed time to seek professional representation. As of the end of September, no additional correspondence was received from her.

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. 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, proper procedures were followed in deciding the appellant's placement in lieu of layoff. The appointing authority is not required to hire from an SRL to fill a vacancy. And in this case, the appointing authority did not do so in anticipation of the closing of the Woodbridge Developmental Center, *i.e.*, a second layoff. The appellant is not entitled to be appointed from an SRL to an available vacancy. No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

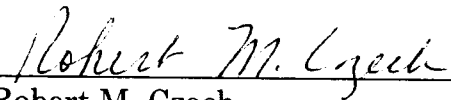
Thus, a review of the record fails to establish an error in the layoff process and the appellant has not met her burden of proof in this matter.

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 5th DAY OF NOVEMBER, 2015



Robert M. Czech
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