



STATE OF NEW JERSEY

In the Matter of Daniel Vnencak,
Town of Boonton

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

CSC Docket No. 2020-2039

Layoff Rights Appeal

ISSUED: AUGUST 26, 2020 (SLK)

Daniel Vnencak, a former Parking Enforcement Officer¹ with the Town of Boonton, Police Department, appeals his layoff, effective January 24, 2020.

By way of background, on November 20, 2019, Boonton informed this agency that, in order to save money, it entered into a shared services agreement in which Morris County was to provide dispatch services. Consequently, it requested that this agency approve its plan to lay off five employees in its Police Department for reason of economy and efficiency. Subsequently, this agency approved Boonton's plan with a January 24, 2020 effective date. Further, Boonton was advised that the general and individual 45-Day Notices needed to be issued no later than December 10, 2019. Additionally, it was advised that both individuals who have been initially selected or targeted for abolishment or reduction as well all employees whose positions may be affected by the layoff must be personally served the appropriate 45-Day Notice of the layoff. Thereafter, on December 10, 2019, Boonton sent "Individual 45-Day Notice" to the five employees who were initially targeted for the layoff. It also posted a "General 45-Day Notice" on that same date informing the Police Department of the layoff and that it was possible that employees in the department may be impacted by the layoff. Vnencak was not personally served any notice of the layoff. Thereafter, in a January 17, 2020 letter, this agency informed Vnencak that one of the targeted employees of the layoff had displacement right to his position. The letter indicated that should this employee exercise his displacement rights, Vnencak would be laid off effective January 24, 2020, as he did not have any displacement rights. Subsequently, Vnencak was informed that the aforementioned employee was going

¹ Personnel records indicate that Vnencak is still an active employee. However, the record indicates that he was laid off on January 24, 2020. Accordingly, Boonton is advised to correct his personnel record in the County and Municipal Personnel System.

to exercise his displacement rights to his position and that he would be laid off on January 24, 2020.

On appeal, Vnencak states that he first learned that could potentially be laid off from his position when he received this agency's letter on January 23, 2020. Thereafter, he learned on January 27, 2020, that the employee was going to exercise his displacement rights and that he would be laid off. Vnencak is not challenging that this employee had displacement rights to his position. However, he is claiming that he did not receive the proper notice that is required under *N.J.A.C. 4A:8-1.6*. Vnencak states that when he discussed the issue with Boonton's Town Administrator, he informed him that it posted the "General 45-Day Notice" that indicated that some positions within the Police Department may be eliminated. He presents that the Township Administrator claimed that Boonton was not required to ensure that this agency sent out 45-Day Notices to all affected employees and that Boonton met its obligation by posting the 45-Day Notice. However, Vnencak argues that, under Civil Service rule and law, it was Boonton's responsibility, and not this agency to provide 45-Day Notices to all employees who were potentially impacted by the layoff.

Vnencak indicates that it was not until February 14, 2020, that he formally received his layoff notice from Boonton. Additionally, he presents that he had a work injury which required surgery on February 4, 2020, and he cannot seek employment due to this injury. He claims that if he had timely received his 45-Day Notice, he may have had the opportunity to reschedule his surgery. Vnencak claims that he was still a Boonton employee until February 14, 2020, and that his Worker's Compensation rate should be 100 percent of his salary and not the 70 percent rate while he was out of work for an on-the-job injury. He indicates that the letter from Boonton informed him that he would be covered for medical until February 28, 2020. However, he submitted dental invoices the he incurred during February only to be advised by the insurance provider that his coverage lapsed on January 30, 2020. Additionally, he has not been compensated for his vacation, compensation and sick time that is due to him.

In response, Boonton presents that the subject layoff plan was well-known to its employees and the residents. Initially, there was an October 21, 2019 town meeting that was moved to the high school due to the anticipation that 200 people would attend. Additionally, Boonton issued press releases and published information on its website regarding the shared services agreement. Further, the abolishment of dispatching was also reported in the newspaper. Lastly, the Chief of Police used the Nixle emergency alert system to notify people about the abolishment of the dispatchers and the shared service agreement with Morris County and further requested people attend the town meeting on October 21, 2019. While it cannot say for certain, it believes that Vnencak attended the October 21, 2019 meeting.

Boonton presents that it is a small town and has a small workforce. Therefore, it asserts that it is incongruous that Vnencak alleges that he had no awareness of the layoff until he received this agency's January 23, 2020 letter. It indicates that on December 10, 2020, it posted the 45-Day General Notice on the Police Department bulletin board and on two bulletin boards in Town Hall. Additionally, Boonton states that it followed the guidance from this agency when inquiring about which employees to serve notices upon and the posting of the general notice. Boonton argues that it had no knowledge that the employee who exercised demotional rights for Vnencak's position had such rights as the Town Administrator had no knowledge that this employee ever held Vnencak's title of Parking Enforcement Officer and it was not possible for him to determine the exact effect that the layoff action would have on each Boonton employee. Boonton claims that the requirement to post the general notice is futile if it is required to personally serve each Boonton employee as there would be no reason for the general posting. Boonton reiterates that there was no chance that Vnencak was not aware of the layoff and the posted General Layoff Notices.

CONCLUSION

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. For positions that are not targeted by a layoff but may be impacted by employees exercising their lateral or demotional rights, a general written notice must be served by the appointing authority *personally*, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail, at least 45 days prior to the action. A copy of the notice served on employees shall be provided to a representative of the Civil Service Commission and affected negotiations representatives.

N.J.A.C. 4A:8.1.6(b) provides that the notice shall contain the following:

1. The effective date of the layoff action; and
2. The reason for the layoff.

In this matter, Boonton did not personally provide Vnencak a 45-Day Notice as required under *N.J.A.C. 4A:8.1.6*. Initially, it is noted that a town meeting, press, emergency alert system notification or any other notification that Vnencak may have received regarding the layoff prior to December 10, 2020 **does not** satisfy the 45-Day

Notice requirement as the layoff plan had not yet been approved by this agency, and there was no effective date of the layoff action. Further, *N.J.A.C.* 4A:8.1.6 requires, in addition to conspicuously posting the 45-Day General Notice in the affected unit of the layoff, for positions that are not targeted by a layoff but may be impacted by employees exercising their lateral or demotional rights, a general written notice served by the appointing authority *personally* to such employees. As such, notwithstanding the posting of the General Notice, as Vnencak served in a position not targeted by layoff, but that was impacted as a result of another employee exercising his or her title rights, he was entitled to 45 days' notice by personal service or certified mail. See *In the Matter of Mano Ponna* (CSC, decided February 4, 2015), *aff'd on reconsideration* (CSC, decided May 6, 2015).

Additionally, contrary to Boonton's assertion that it was following this agency's guidance about which employees to serve notice upon, as this agency's letter clearly advised that it needed to personally serve any employee that may be affected by the layoff by December 10, 2020, Boonton was not actually following this agency's guidance. Regarding Boonton's statement that the Township Administrator was unaware of the employee's demotional rights to Vnencak's position because he held the title of Parking Enforcement Officer prior to the Township Administrator's employment with Boonton, ignorance of its employees' work histories is not a valid reason to not provide the required notice under *N.J.A.C.* 4A:8.1.6. Referring to Boonton's claim that there is no purpose in requiring it to post a general notice of the layoff if it must provide personal service to any employee potentially affected, regardless of its belief about the necessity to provide both general and personal notice to all employees potentially affected by the layoff, *N.J.A.C.* 4A:8.1.6 does not allow an appointing authority to only follow the provisions that it deems as necessary.

The purpose of the 45-day notice is to allow sufficient time for this agency to determine appropriate layoff entitlements and to notify both the employer and the affected employees, to afford affected employees the opportunity to seek new employment and to provide them with what, in effect, is 45 days' severance pay. See *Amodio v. Civil Service Commission*, 81 *N.J. Super.* 22 (App. Div. 1963); *In the Matter of Joseph Bonner, City of Bayonne* (Commissioner of Personnel, decided December 15, 1989). Both general posting and personal service to potentially affected employees are required to ensure that such employees are made aware of the potential impact of a layoff plan on an employee and to allow the employee to plan accordingly.

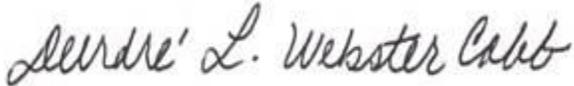
As the record indicates that Vnencak only received personal notice on January 23, 2020 via this agency, and no personally served notice from Boonton until after that date, he is entitled to an amount equal to 45 days pay. However, any claims concerning his Worker's Compensation is outside of the Civil Service Commission's jurisdiction. Similarly, any claim for benefits that were accrued after January 24, 2020, are also outside of the Civil Service Commission's jurisdiction.

ORDER

Therefore, it is ordered that this appeal be granted in part and Boonton is ordered to pay Vnencak an amount equal to 45 days' pay.

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 19TH DAY OF AUGUST 2020



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