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

Layoff Appeal

(RE)

The appellant replied that she was bumped by a Principal Clerk Typist who she states now performs her prior duties, and she argues that she has more

seniority than this individual. She states that a "Secretary" in the Engineering Department retired on July 1, 2014, and thus there is a vacancy that she is qualified for and which the appointing authority is willing to fill. The appellant names two individuals who she states do not have permanent status and who are still working, and states that there is a third person as well.

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). The rights of employees are decided from the highest class code and seniority to the lowest. That is, employees in higher class codes and higher seniority have their rights decided prior to employees in lower class codes and seniority. The Principal Clerk Typist who bumped into the Hunterdon Developmental Center is in a higher class code than the appellant, who is a Clerk Typist. In addition, the appellant was not bumped by this Principal Clerk Typist, but was bumped by a Clerk Typist. As such, the seniority of the Principal Clerk Typist is not a factor, and does not need to be compared with the appellant's seniority. It is noted that the appellant believes her seniority to be 7 years, 2 months and 25 days, but her Reduction in Force Final Notice, which was provided to her, has her seniority as 7 years, 0 months and 5 days.

Next, the appellant argues that a vacancy existed on July 1, 2013, after the layoff date. The appellant has not provided the name of the individual who retired, or the title of the position. Thus, it cannot be determined if the appellant had title rights to this position as of the layoff date, June 27, 2014. If an employee was properly displaced, and another employee subsequently resigns or retires afterwards, then the position is vacant and will be filled by the Special Reemployment List (SRL), with the most senior employee eligible to fill the vacancy. Once a bumping action has been completed and the process moves forward, the action cannot simply be reversed or considered as though it did not take place. In addition, a position does not become an available vacancy until various personnel actions are performed, and those actions are not done during a layoff. In any event, even if this vacancy existed, *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). The appellant maintains that the appointing authority is willing to fill the vacancy, but she provides no proof other than her own assertions. She states that she is qualified to perform the duties of this untitled position but, as stated above, if the appointing authority is willing to fill the vacancy, it will do so from the SRL.

The appellant maintains that individuals who do not have permanent status are still working. She provided two names, and records indicate that those individuals are not State employees. As the appellant was informed, contractors do not have Civil Service positions, and the appointing authority is not their employer. The appellant states that there is another person, but that individual is not named by the appellant and it cannot be determined if he or she is an employee of the Department of Human Services. At least one Clerk Typist remains at Hunterdon, and that individual has more seniority than the appellant does. 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 3rd DAY OF SEPTEMBER, 2014



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