



On appeal, the appellant states that on July 31, 2015, she received an "Employment Status" letter that materially changed her employment status without notice or hearing. Specifically, the letter indicated that her position was being converted to part-time status with the right to work the equivalent of one day a week with nearly no benefits. The appellant claims that no explanation of her rights was provided but was instead told "this action is entirely due to Civil Service." Further, the appellant claims that the appointing authority had to search for nurses to fill the gap created by her improper "layoff." Additionally, she claims that she has sufficient seniority and there was no basis to "bump," layoff or alter her employment status as she has had continuous service since March 1997. In this regard, although she did sign a document in July 2006 indicating that she resigned, the appellant argues that this is not a basis for creating a break in service as her resignation was forced, not voluntary. The appellant recounts the situation around a work-related injury and extended leave of absence from 2005 to 2006 and asserts that since she could not return to work, the appointing authority told her she could be fired "for cause" or she could resign. Thus, she maintains that her hand was forced and that she was squeezed which resulted in the creation of a false paper trail. In a supplemental submission, the appellant maintains that her resignation in July 2006 was based on a non-consensual settlement agreement and that she should have never been forced to choose between aggravating her condition or being humiliated by being terminated. Therefore, the appellant states that her seniority should be based on her original date of hire, which was in March 1997.

In response, the appointing authority, represented by Kathryn Van Deusen Hatfield, Esq., presents that in December 2014, Runnells Specialized Hospital was sold and the appellant was laid off. Thereafter, she was rehired by Cornerstone, Inc., the psychiatric unit retained by Union County, in February 2015 from a special reemployment list. However, Union County claims that in August 2015, her position was reduced to part-time because it was directed to do so by "Civil Service." The appointing authority maintains that the appellant was advised of her employment status as evidenced by the July 31, 2015 letter and that it only rehired individuals whose names appeared on the special reemployment list. Additionally, it states that it was explained to the appellant that another employee had greater seniority rights to the position, which is why her hours were adjusted. The appointing authority also disputes the assertion that it had to search for nurses to fill the gap caused by her "improper" layoff. Further, it states that the appellant was on a leave of absence for almost one year between 2005 and 2006. Since the appellant could not perform the essential duties of her job and it could no longer hold her position open, she entered into a voluntary settlement agreement wherein she was able to resign in good standing as opposed to being terminated. In support of its position, the appointing authority provides a copy of the settlement agreement signed by the appellant, who, at the time, was represented by counsel. Therefore, the appointing authority maintains that the appellant does not have continuous permanent service since March 1997.

Official agency records indicate that the appellant was hired as a Graduate Nurse on March 30, 1997 and resigned in good standing on January 10, 2004. Subsequently, she was appointed on March 28, 2004 and resigned in good standing effective July 8, 2006. The appellant was reappointed on November 12, 2006 and was laid off effective December 15, 2014. Thereafter, the appellant's name was certified from the special reemployment list and in disposing of the certification, the appointing authority indicated that it appointed the appellant on a part-time basis effective August 2, 2015.

### 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. Therefore, the only issues to be discussed in this matter are layoff rights issues.

Pursuant to *N.J.A.C. 4A:8-2.6(a)2*, a determination of rights appeal is based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly.

Initially, the appellant's layoff rights with respect to the December 15, 2014 layoff were correctly determined based on the date she was appointed as a Graduate Nurse, November 12, 2006. Although the appellant argues that she did not voluntarily enter into the settlement agreement dated July 14, 2006 where she agreed to resign in good standing effective July 7, 2006, the Commission disagrees. The Commission is mindful of the policy of the judicial system which strongly favors settlement, and which is equally applicable in the administrative realm. *See Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubb*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. In this regard, the Commission will not ignore or set aside a settlement agreement unless it is in contravention of Civil Service law and rules or is otherwise defective.

In this case, the settlement agreement was never provided to the Commission to acknowledge. Even if the Commission had reviewed the matter, no such deficiencies are apparent in this matter. Indeed, the terms clearly indicate that the appellant shall resign in good standing in exchange for dismissal of pending disciplinary charges against her. There is nothing improper with subjecting an employee to disciplinary charges if it appears that the employee may be unfit to perform the duties of her job. *See N.J.A.C. 4A:2-2.3(a)3*. Further, it is well

established that an employee's resignation in the face of pending disciplinary charges does not establish that the resignation was made under duress and was not voluntary. Additionally, it cannot be ignored that the agreement is signed by both her and her attorney in that matter, Richard P. Krueger, Esq. Clearly, the appellant had competent representation of her choosing and she knowingly and voluntarily entered into the agreement. Therefore, there is no basis on which to provide the appellant with seniority to the date she was initially hired in March 1997 because she had a break of service. As such, her seniority was properly calculated from November 12, 2006 when she was reappointed to the non-competitive title of Graduate Nurse.

With respect to the appellant's alleged "improper" layoff on July 31, 2015 from her full-time position, a layoff action did not occur in July 2015 in Union County. Rather, since she was laid off in December 2014, the appellant's name was certified from a special reemployment list for reemployment consideration as a Graduate Nurse. The appellant's status from February 2015, when she asserts she went back to work with the appointing authority, to August 1, 2015 is unclear as the certification that was issued to fill Graduate Nurse positions did not reflect that any permanent appointments were made prior to August 2, 2015. However, it is not improper for an appointing authority to utilize *per diem* employees even if a special reemployment list exists, so long as such positions are first offered to employees on the special reemployment list. See *In the Matter of Elijah Arce, et al.* (CSC, decided May 7, 2014) (Use of per diem Custodians, Community Aides, and Teacher's Aides did not evidence that layoff of permanent employees in those titles was done in bad faith as the per diem positions were first offered to those impacted by the layoff and an equivalent number of per diems were never subsequently hired following the layoff).

*N.J.A.C.* 4A:4-1.10(a) provides that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval by this agency. It is settled that an appointment is not valid or final until it is approved by this agency. See *Thomas v. McGrath*, 145 *N.J. Super.* 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev'd based on dissent*, 75 *N.J.* 372 (1978); *Adams v. Goldner*, 79 *N.J.* 78 (1979); *In the Matter of Donald Gates* (MSB, decided June 6, 2007). Therefore, as this agency approved the certification from the special reemployment list that appointed the appellant to a part-time position effective August 2, 2015, any service she may have had prior to that date cannot be considered to be equivalent of a permanent appointment. As the appellant was not permanently appointed until August 2, 2015, the appointing authority could offer her either a full or part-time position. In this case, the appointing authority opted to offer the appellant a permanent part-time position because one was available.<sup>3</sup> As such, the appellant was never subjected to a second layoff and there is no evidence that the appointing authority improperly disposed of the certification from the special reemployment list.

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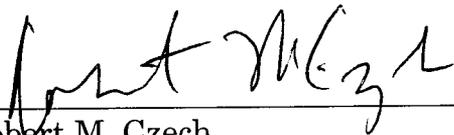
<sup>3</sup> It is noted that the appellant's CAMPS record indicates that her status was changed from part-time to full-time on September 15, 2015.

**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 23<sup>RD</sup> DAY OF NOVEMBER, 2016

  
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Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Director  
Division of Appeals  
and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312

Attachment

c: Radhamani Soman  
Thomas W. Hartmann, Esq.  
Kathryn Van Deusen Hatfield, Esq.  
Kelly Glenn  
Records Center



Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair/Chief Executive Officer

November 19, 2014

Ms. Radhamani Soman  
27 Columbia Avenue  
Berkeley Heights, NJ 07922

**RE: Layoff from your permanent position of Graduate Nurse, Union County, Runnells Specialized Hospital, effective close of business of November 30, 2014**

Dear Ms. Soman:

In accordance with the provisions of N.J.S.A. 11A:8-1 et seq., your layoff from the title of Graduate Nurse has been recorded. The New Jersey Civil Service Commission has determined there are no displacement rights that can be afforded to you. As a result, your employment will be terminated effective close of business November 30, 2014 and your name will be placed on the Special Reemployment List for your current permanent title and for other titles that may be deemed appropriate.

Special Reemployment Lists will be certified, subsequent to the effective date of layoff, against employees serving on a provisional basis. If there are no such employees, your name will remain on the Special Reemployment List(s) for certification against future vacancies or provisional employees. Please note it is the responsibility of each employee whose name is placed on a Special Reemployment List to advise the Civil Service Commission of any present or future change of name or address. Failure to do so may result in not receiving a future employment opportunity or possible removal from the list.

You may appeal whether the Appointing Authority (Alfred J. Faella, County Manager) acted in good faith in instituting this layoff plan. The burden of proof in such appeals is on the part of the appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this notice. Please be advised, pursuant to P.L. 2010 C.26, effective July 1, 2010 there shall be a \$20 fee for good faith layoff appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from this appeals fee. Good faith appeals should be addressed to the New Jersey Civil

Ms. Radhamani Soman  
November 19, 2014

Page 2

Service Commission, Division of Appeals and Regulatory Affairs, Unit H, P.O. Box 312, Trenton, New Jersey 08625-0312.

You may also appeal the determination of your layoff rights or seniority. The burden of proof in such appeals is on the part of the appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this letter. These appeals should be addressed to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, Written Records Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312. No fee is required for layoff rights or seniority appeals.

Sincerely,



Mark B. Van Bruggen  
Supervising HR Consultant

MVB

C: Norman Albert, Director of Administrative Services  
File

