

B-61



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher Homa,
et al., Hunterdon Developmental
Center

CSC Docket Nos. 2016-1097
2016-1096
2016-1631

Layoff Appeals

ISSUED: DEC 21 2015 (RE)

Christopher Homa, Theresa Kulp and William Rodweller, Hunterdon Developmental Center, appeal the determinations of the Division of Agency Services (DAS) regarding placement on Special Reemployment Lists (SRLs) for Head Cottage Training Supervisor of the following a layoff due to the closure of the Woodbridge Developmental Center, effective January 9, 2015. These appeals have been consolidated due to common issues.

By way of background, the Department of Human Services submitted a layoff plan to the Commission to layoff employees in various titles at the Woodbridge Developmental Center, effective January 9, 2015, for reasons of economy and efficiency and many positions were impacted across facilities in the Department of Human Services. The three appellants were Head Cottage Training Supervisors (class code 15) who were bumped from their positions at Hunterdon Developmental Center to vacant positions as Cottage Training Supervisors (class code 13). Thereafter, their names were added to the SRL for Head Cottage Training Supervisor.

On appeal, Mr. Homa and Ms. Kulp explain that an Assistant Supervisor Professional Residential Services (class code 23), Theresa Diehl, opted for a vacant position as Cottage Training Supervisor at Hunterdon Developmental Center rather than selecting a higher title at a different location. They assert that she has less seniority than they do, and therefore should not be higher on the SRL for Head Cottage Training Supervisor than themselves. They indicate that she was hired off

an SRL on August 10, 2015, and argued that her layoff rights and seniority were applied incorrectly.

Mr. Rodweller asserts that there was no SRL for Head Cottage Training Supervisor in March 2015 when Ms. Diehl was offered a reassignment for Cottage 15. He states that she turned it down and the position was filled by another individual. Another vacancy in Cottage 16 was filled by another individual in August 2015. Two more vacancies appeared in Cottages 17 and 20, and Ms. Diehl turned down an offer on Cottage 20. He explains that she was offered a position in Cottage 17 which she accepted. Mr. Rodweller states that he asked Human Resources why she was not placed at the bottom of the list as she turned down a position, and was told that it was unofficially offered so there was no rejection. He explains how other positions were filled by other individuals in various cottages and expressed his displeasure with how appointments are being filled from the SRL. He states that he is seventh or eighth on the list and is not directly affected, but he could not stand seeing this played out the way it is.

Official records indicate that that Theresa Diehl selected a demotion from Assistant Supervisor Professional Residential Services to a vacancy in her prior-held title Cottage Training Supervisor at Hunterdon Developmental Center. She was subsequently promoted to Head Cottage Training Supervisor from the SRL on August 22, 2015.

CONCLUSION

In an appeal of this nature, it must be determined whether the Division of Agency Services (DAS) properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. However, these appeals do not challenge the determination of title rights. Rather, this matter concerns whether the appointment of another employee, Ms. Diehl, from the SRL violated the appellants' layoff rights. In this regard, eligibles on an SRL are ranked in descending order of the class code or class level of the title from which the eligible was displaced. Then, within each class code or class level; eligibles are ranked in accordance with the employees' seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list. *See N.J.A.C. 4A:4-3.2(c) and N.J.A.C. 4A:8-2.3(c)1.* As such, employees are listed on an SRL from the highest class code to the lowest, and by seniority within each class code. As Assistant Supervisor Professional Residential Services is in a higher class code than Head Cottage Training Supervisor, the seniority of the former Assistant Supervisor Professional Residential Services is not a factor, and does not need to be compared with the appellants' seniority. Her ranking on the list will be above all former Head Cottage Training Supervisors, regardless of their seniority. Consequently, the appellants should not be placed higher than Ms. Diehl on the SRL. In this respect, the layoff determinations have been correctly applied.

Next, vacancies are filled from the SRLs. However, during a layoff, *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). If the appointing authority has a vacancy that it is willing to fill, it requests a certification and must make an appointment from the interested eligible candidates. See *N.J.S.A. 11A:4-5*. The New Jersey Administrative Code does not mandate that Departments spend funds to make promotional appointments, and as long as there are no improper reporting relationships or misclassifications, how often the office is reorganized is not reviewable in the context of a layoff appeal. Lastly, promotional opportunities are not entitlements, but are based on factors such as the needs of the appointing authority to fill a vacancy subject to fiscal and other considerations, which include merit and fitness. See *In the Matter of Gerard Tarino* (CSC, decided September 24, 2008). The certification process is strictly regulated by Title 11A of the New Jersey Statutes and Title 4A of the New Jersey Administrative Code. Although Mr. Rodweller claims that the rules were somehow "broken and manipulated" by the appointing authority, he has failed to support this claim.

When an appointing authority has a vacancy that it wishes to fill, it requests a certification. When employees are placed on an SRL, it is for an unlimited duration, and appointments from the list are made in the order certified. See *N.J.A.C. 4A:8-2.3(c)*. Additionally, when there is more than one current eligible list for a title, an SRL has priority. See *N.J.A.C. 4A:4-3.7(a)*. Once a list is certified, the appointing authority contacts the eligibles for interest. Under certain circumstances as explained below, individuals on the list do not have to accept an appointment. If they indicate that they are still interested, but reject a particular position for reasons authorized by the rules, their name is retained on the list at the same ranking. They do not go to the bottom of the list if they did not accept an offered position.

Official records indicate there have been two certifications for the Head Cottage Training Supervisor title in 2015, since the layoff. For the certification on March 16, 2015 (PS150334), Ms. Diehl, who heads the list, indicated she was not interested in the shift, but she wished to be retained on the list. This is permitted under *N.J.A.C. 4A:8-2.3(e)1*. For the certification on June 4, 2015 (PS150783), Ms. Diehl was appropriately ranked first. She accepted the position and was regularly appointed on August 22, 2015. As there were two vacancies, another individual was appointed as well on that date. There was no delay in certification procedures or an indication from the record that there is any misapplication of the rules to the

certification procedures. Mr. Rodweller asserts that Ms. Diehl was approached by human resource personnel for her interest in a third position, and she declined interest. Nevertheless, there are no rules indicating that human resource personnel cannot approach an employee prior to a certification to discover their interest in a position. Also, without certification of a list, any response to such an approach does not affect the employee's position on an SRL.

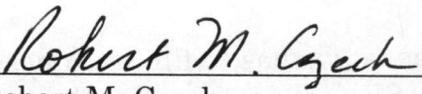
Thus, a review of the record fails to establish an error in the layoff process and the appellants have not met their burden of proof in this matter.

ORDER

Therefore, it is ordered that these appeals 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 16th DAY OF DECEMBER, 2015


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