



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of the New Jersey School of Conservation, Montclair State University, Layoff

Request for Stay

CSC Docket No. 2020-2722

ISSUED: JULY 20, 2020 (DASV)

The Communications Workers of America (CWA), represented by Hetty Rosenstein, Area Director, petitions for a stay of the layoff of Montclair State University (MSU) employees in the New Jersey School of Conservation (School of Conservation) scheduled for August 3, 2020.

By way of background, on June 12, 2020, MSU submitted a layoff plan to the Division of Agency Services (Agency Services) proposing the layoffs of 15 employees¹ in the School of Conservation due to economic necessity and budgetary constraints. MSU indicated that the School of Conservation facility was closed due to the COVID-19 public health emergency. In addition, MSU stated that it had lost funding and could no longer subsidize the school in this "stressed environment" and would relinquish control of the property back to the Department of Environmental Protection (DEP) effective July 1, 2020. MSU also indicated that in an attempt to reduce the possibility of layoffs, it considered voluntary alternatives to layoffs in accordance with N.J.A.C. 4A:8-1.2, but none were feasible, and conducted pre-layoff actions in accordance with N.J.A.C. 4A:8-1.3, such as suspending non-critical hiring for all positions throughout the university and eliminating temporary employees at

¹ Targeted positions include Cook - 12 months; Senior Food Service Handler; Head Cook 1; Program Assistant Administrative Services; Professional Services Specialist 3, Administrative Service; Professional Services Specialist 4, Administrative Service; Supervisor of Maintenance, School of Conservation; Maintenance Worker, and Building Maintenance Worker; and Staff Nurse – 10 months.

the school. It noted that other pre-layoff actions were not feasible for the School of Conservation employees. Moreover, MSU advised that it consulted with representatives of the affected collective negotiations on various dates in May 2020, including CWA on May 18, 2020. In support of its layoff plan, MSU submitted a summary of the consultations, which notes CWA's proposal of furloughing employees, obtaining funding for MSU, or looking for alternative partners, such as another university, which may be interested in the school. MSU also requested that the 30-day review period for the layoff plan be waived to lessen the impact on its operating budget. By letter dated June 17, 2020, Agency Services granted the waiver of the 30-day requirement and approved the layoff plan as the contents were "in compliance with the provisions of *N.J.A.C.* 4A:8-1.4."

It is noted that, in MSU's layoff plan, it explained that pursuant to a 1981 law, the Legislature transferred the management and control of the land and buildings of the School of Conservation from the Division of Parks and Forestry, DEP, to MSU. *See* L. 1981, c.148 (*N.J.S.A.* 18A:64I-1, *et seq.*) The 1981 law also provided that the Board of Trustees of MSU would expend the sum of money as may be included in any annual appropriations act for the expenses necessary for the educational program and for the maintenance of the buildings and grounds necessary for that program. *See N.J.S.A.* 18A:64I-2. However, MSU stated that a line item earmarked for the School of Conservation was included by the Legislature in the annual appropriations act until Fiscal Year 2011, when it was deleted without explanation. The annual appropriation had been approximately \$1 million in 2010. However, MSU continued to support the school's operating costs in an effort to sustain "this important educational and historical State asset." Given the latest 2020 cut in State appropriation, "especially in the current stressed environment," MSU submitted that it could no longer subsidize the school without any assistance from the State. MSU advised that it was informed that that it would not receive State funding for the period from July through September 2020,² and the State appropriation for Fiscal Year 2021 remained uncertain. Furthermore, MSU submitted that the school's facility has been closed during the COVID-19 pandemic and it has made arrangements to relinquish the management of the buildings and land to the DEP effective July 1, 2020.

In its petition for stay, CWA objects to the approval of the layoff plan. It argues that the 1981 law directed that MSU operate the School of Conservation "in perpetuity." Moreover, it alleges that MSU has failed "to demonstrate any serious effort to comply, or substantially comply, with its consultation obligations" as set forth in *N.J.A.C.* 4A:8-1.1., *et seq.* Furthermore, it claims that MSU has not responded to its request for information, and thus, its budgetary reasons for the layoff may be "patently untrue." CWA also argues that MSU has not engaged in consideration of alternatives to layoff or pre-layoff actions in a "meaningful" way. It

² MSU later advises that it secured \$3.9 million in State funding for the period from July through September 2020.

notes that MSU rejected an offer to furlough the employees so that immediate savings can be realized while the employees could still maintain their health benefits. Loss of such benefits inflict irreparable harm to the employees. Additionally, CWA argues that the abandonment of the facilities will result in deterioration of the buildings, and vandalism and theft are “likely to ensue.” It also indicates that the School of Conservation has a wastewater plant and if that plant is compromised, it “will result in catastrophic damage to a pristine State waterway, the Flatbrook.” Thus, CWA maintains no substantial injury would result in granting a stay as the public interest favors keeping the School of Conservation open, or at a minimum, until MSU complies with the regulatory requirements and that the Legislature’s mandate can be accomplished.

As for the factors in considering a petition for stay, CWA reiterates that MSU did not consider alternatives to the layoff and failed to engage in a “meaningful” consultation with affected unions. It maintains that, pursuant to *N.J.A.C. 4A:8-1.2*, an employer “must consider alternatives to layoffs,” such as furloughs, reduction of work hours, job sharing, and title changes. MSU “did none of these,” although CWA offered the option of furloughing the employees to which MSU did not respond. CWA states that MSU announced in a press release on May 14, 2020 that it would close the school, relinquish control of the property, and that the employees would be laid off. There was no evidence that MSU considered any of the alternatives prior to the announcement. Moreover, the Board of Trustees of MSU did not take action to close the school at that time. After the Board of Trustees “rubber-stamped” the layoff, MSU still did not consult with the relevant unions, despite CWA requesting meetings about reassigning employees and assisting employees in finding other employment. MSU was thus not in compliance with *N.J.A.C. 4A:8-1.3*. Therefore, CWA concludes that “by announcing [the layoff] as a *fait accompli* in advance of genuine consultations, [it] shows that the Union is likely to prevail.” CWA notes that MSU and CWA have negotiated a side letter, which MSU has not complied with and CWA is grieving, that imposes certain obligations if MSU seeks to close a school or unit. Furthermore, CWA asserts that MSU’s announcement contained “gross misstatements” regarding the State’s appropriation. It indicates that the budget clearly establishes that through at least Fiscal Year 2016, the State has set aside over \$1 million dollars for the School of Conservation. In support, CWA submits appropriations data. Further, CWA claims that MSU receives a large grant from the State for operating expenses and MSU has “continuously contributed some amount” to the School of Conservation. In addition, CWA emphasizes that if the layoffs are not stayed, than it is “self-evident” that MSU cannot perform its statutory obligations for the School of Conservation to “be used in perpetuity as a school of environmental field study under the direction of the Board of Trustees” of MSU. Therefore, because MSU is in violation of regulatory provisions “coupled with other improper acts such as failing to respond to information requests, breaching the applicable [collective negotiations agreement], and its violation of the [School of Conservation’s] enabling statute,” there is a clear likelihood of success on the merits of the employees’ claim to

reverse the layoff. In support of the foregoing, CWA presents the certifications of Hetty Rosenstein, Area Director, and Earl Hotalen, Supervisor of Maintenance, School of Conservation.

Moreover, CWA reiterates that if the layoff occurs, “immediate consequences would ensue” concerning the School of Conservation’s buildings. Hotalen certifies that without constant monitoring, the “buildings will fall into an irrecoverable state of permanent disrepair” in addition to the “catastrophic contamination” of Flatbrook, which is used for fishing and other recreation. Further, in-person monitoring is necessary for the systems to operate notwithstanding that generators are monitored electronically. The lake is also at risk in the absence of personnel and material to control unwanted toxic growth. In addition, Hotalen indicates that the school stores fuel, and having no employees runs the risk of spills and environmental damage. Additionally, CWA maintains that MSU’s plan to “erect an unmonitored gate” will not prevent trespassers from vandalism or theft. Rather, having the presence of people at the [school] acts as a deterrent to such acts.” Therefore, it contends that the closure of the facility would result in irreparable harm.

Furthermore, CWA argues that if the stay is granted, there will not be substantial injury to MSU, DEP, the State, or other parties. MSU “may actually stand to gain” if it adopts CWA’s recommendation regarding the furloughs. CWA notes that MSU’s annual budget for Fiscal Year 2020 had been contemplated as \$428 million in revenues and \$424 million in expenditures. Thus, keeping the School of Conservation open does not qualify as substantial injury in light of this budget. CWA argues that the public interest will not be served if the layoff occurs, as the School of Conservation is an important natural and educational resource for students and professors to learn and conduct research. Finally, it claims that MSU has no plan in place after it “abandons” the School of Conservation on July 1, 2020. Accordingly, for all the foregoing reasons, CWA requests that a stay of the layoff be granted.

In response, MSU, represented by, Angelo J. Genova, Esq. and Joseph M. Hannon, Esq., initially submits that the employees “are not in danger of immediate *irreparable* harm by the planned layoff, and CWA’s “underlying appeal lacks substantive merit.” In this regard, it first sets forth legislative history of L. 1981, c.148 (*N.J.S.A. 18A:64I-1, et seq.*), emphasizing that the purposes of the enactment was to dedicate the land in Stokes State Forest to be used “in perpetuity” as the School of Conservation and to place the school under the direction of the Board of Trustees of MSU. *See* Assembly Committee and Senate Committee Statement. The law also authorized MSU to request appropriations for the maintenance of the school. However, as set forth in its layoff plan, MSU reports that the State had included a specific line item in its annual appropriations act for the School of Conservation up until Fiscal Year 2010, in the amount of \$1.05 million dollars. MSU reiterates that, without explanation, the Legislature eliminated the line item. MSU continued to fund the school to date but its general State appropriation this current fiscal year has

been reduced by 26% to approximately \$34 million dollars. MSU has also experienced increased expenses of at least \$24 million dollars of expenses resulting from the COVID-19 pandemic. It also reiterates that the appropriation for Fiscal Year 2021 is uncertain. MSU anticipates that a deficit will continue to rise to subsidize the School of Conservation, as the facilities need improvements. As a result, MSU informed DEP and the Secretary of Education that it would close the School of Conservation.

MSU requests that CWA's petition for stay of the layoff be denied as the factors for such a petition have not been met. It argues that CWA cannot demonstrate a clear likelihood that it would succeed on the merits of an appeal of the approved layoff plan since it misinterprets *N.J.S.A. 18A:64I-1*. MSU submits that it was "*never*" the intention for MSU to operate the School of Conservation in perpetuity especially in the event of a dire financial situation. Rather, as noted above, MSU maintains that the Legislature dedicated the 240-acre lot of land to the School of Conservation in perpetuity and placed the school under the direction of the Board of Trustees of MSU. MSU notes that the Board of Trustees has the power and duty to determine educational programs of MSU. Even if it were the Legislature's expressed intent of mandating a perpetual operation of the school, MSU claims that the State has "suspended its intent" as it ceased subsidizing the School of Conservation by its act of deleting the line item in the 2011 appropriation act. By this deletion, the Legislature has suspended MSU's obligation. In that regard, MSU cites *Camden v. Byrne*, 82 *N.J.* 133 (1980), for the proposition that the intentional deletion of an existing line item in the appropriation act represents an implied suspension of the obligation to carry out the program for which the funding was eliminated. Thus, MSU asserts that given "a decade of zero funding, and in the midst of an uncertain future from a budgetary and health standpoint, it was reasonable and in good faith for [MSU] to decide to close the School of Conservation and to lay off the School's workers." Therefore, it maintains that CWA's petition lacks substantive merit.

Furthermore, MSU disputes that there is immediate or irreparable harm if the stay request is not granted. It indicates that harm is not irreparable if it can be redressed. In the present case, MSU submits that, if the employees are successful in challenging the layoff upon an appeal, they can be reinstated and awarded back pay. Lastly, MSU argues that the equities and public policy favors the denial of the stay. Given its financial situation, MSU urges that the request for stay be denied.

It is noted that the Civil Service Commission (Commission) initially reviewed this matter at its July 1, 2020 meeting and requested that the parties provide additional information. Specifically, the matter was remanded to the parties to further explore alternatives to layoff and engage in consultation. The parties were to provide a report to the Commission in that regard. In addition, it was requested that MSU respond to CWA's claim that it did not provide certain requested information relating to budgetary issues and to file that information with the Commission. The

parties were also given the opportunity to present any additional information for the Commission to consider based on this remand.

In response, MSU states that the parties engaged in further discussion on July 3, 2020 regarding alternatives to layoff, which produced an exchange of proposals and counterproposals to settle on July 7, 10, 12, and 13, 2020. However, the parties have not yet been able to reach an agreement. Moreover, MSU states that it has provided CWA with budgetary documents including a “Request for Expression of Interest for Use of the New Jersey School of Conservation Campus,” issued on June 25, 2020 and due on July 14, 2020, which “solicit[s] recommendations for economically self-sustaining educational programming” for the school’s campus that also includes a proposal regarding the maintenance of the buildings and grounds; a “Critical Renovation List,” the School of Conservation Operating Budget for 2019-2020; Revenues and Expenses from 2011 to 2020; Operating Appropriations from 2006 to 2021; “State Budget Submission-Budget Initiative Forms” from 2008 to 2020; “COVID Impact Summary;” a May 30, 2020 Memorandum from the President of MSU to the Board of Trustees recommending closure of the School of Conservation; and the Resolution of the Board of Trustees to close the School of Conservation. These documents have also been presented to the Commission.

Moreover, MSU argues that CWA incorrectly interprets the rule on layoff alternatives as mandatory, when the controlling regulatory provision makes it clear that an appointing authority’s ability to offer alternatives is optional. In this case, MSU states that the layoff plan listed the various layoff alternatives and “none of these employment alternatives are feasible.” It also engaged in discussions with DEP to explore funding for the School of Conservation. Furthermore, MSU maintains that it met its regulatory obligation as the layoff plan specifically details its discussions with various unions in May 2020. Furloughs were discussed, but MSU decided against it. It notes that an approved layoff plan cannot be overturned even when it is unclear what discussions occurred between an appointing authority and union.

Furthermore, MSU reiterates that the closure of the School of Conservation was undertaken “as part of its necessary response to a 26% cut in its F[iscal] Y[ear] 2020 operating appropriation by the State in March 2020, which totaled approximately \$12 million.” It also indicates that it actually will receive State funding from July 2020 through September 2020, but it is only \$3.9 million, which is \$7.8 million less than the first quarter amount approved in the Fiscal Year 2020 budget. The State appropriations for the balance of Fiscal Year 2021 still remains uncertain. Additionally, MSU emphasizes that the coronavirus crisis has resulted in \$24 million in expenses “for a cumulative impact of approximately \$34 million.” Lastly, MSU submits that CWA’s arguments regarding irreparable harm to the facility if it were closed is speculative and should not be considered. It contends that CWA’s arguments do not focus on the harm to the employees “at all and must be rejected on those grounds.” Nonetheless, MSU states that any harm that would

result to the employees is economic and does not meet the standard for irreparable harm. In support of its position, MSU submits the various documents listed above and the certification of David Vernon, MSU's Vice President for Human Resources.

Despite the opportunity, CWA has not presented any additional information for the Commission to consider.

CONCLUSION

Initially, it is noted that the Commission has the right and duty to interpret and apply statutes, including those outside the Civil Service Act, to resolve the dispute before it. *See Matter of Allen*, 262 *N.J. Super.* 438, 444 (App. Div. 1993); *In the Matter of Edison Cerezo, Police Officer, West New York*, Docket No. A-4533-02T3 (App. Div. October 15, 2004); *John Kowaluk v. Township of Middletown*, Docket No. A-4866-02T1 (App. Div., August 6, 2004); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000). *Compare, In the Matter of Sybil Finney, Judiciary, Vicinage 8, Middlesex County* (MSB, decided March 24, 2004) (It was determined that no jurisdiction existed to review a Judiciary employee's claim that the denial of a reasonable accommodation request violated the ADA, where the appeal was based exclusively upon an alleged ADA violation). Thus, in the instant matter, the Commission shall review the request for stay in the context of *N.J.A.C.* 4A:2-1.2(c), *N.J.S.A.* 18A:64I-1, *et seq.*, and the applicable law and rules pertaining to the layoff of permanent career service employees.³ In that regard, *N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for a stay:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Moreover, *N.J.S.A.* 18A:64I-1 through *N.J.S.A.* 18A:64I-4 provide that:

The 240 acre tract of land known as the [School of Conservation], located in Stokes State Forest, Sussex county, New Jersey, together with all the buildings thereon, and under the management and control of the Division of Parks, Forestry and Recreation in the [DEP], shall be used in perpetuity as a school for environmental field study under the direction of the Board of Trustees of [MSU].

³ CWA refers to a negotiated side letter, which it asserts that MSU has violated and it is grieving. The Commission shall not review that issue as it does not have jurisdiction to enforce or interpret items which are contained in a collective bargaining agreement negotiated between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is the Public Employment Relations Committee. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4(c).

The Board of Trustees of [MSU] shall expend such sum or sums of money as may be included in any annual appropriations act for the expenses necessary for the educational program of the [School of Conservation], including the maintenance of the buildings and grounds necessary for that program.

The Board of Trustees of [MSU] shall include in its annual request for appropriations a request for such sums as may be necessary to maintain the [School of Conservation]. Such funding shall be separate from and in addition to the regular formula support provided to and shall not limit the funding provided to higher education as a sector.

The Division of Parks, Forestry and Recreation in the [DEP] shall retain responsibility for the care, management and preservation of the Stokes State Forest reserve as provided for other State forest reserves by P.L.1966, c. 54, section 2 (C. 13:1B-15.101).

Additionally, *N.J.A.C.* 4A:8-1.2(a), in conjunction with *N.J.A.C.* 4A:8-1.2(c), states that in State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives, including granting leaves of absence without pay to permanent employees; granting voluntary furloughs to employees; allowing voluntary reduction of work hours by employees; providing employees with optional temporary demotional title changes; and other appropriate actions to avoid a layoff. *N.J.A.C.* 4A:8-1.2(e) indicates that appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff. Further, *N.J.A.C.* 4A:8-1.3(a) indicates that appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to initiating a temporary hiring and/or promotion freeze; separating non-permanent employees; returning provisional employees to their permanent titles; reassigning employees; and assisting potentially affected employees in securing transfers or other employment. Additionally, *N.J.A.C.* 4A:8-1.3(c) provides that appointing authorities shall consult with affected negotiations representatives prior to initiating measures under this section. Furthermore, *N.J.A.C.* 4A:8-1.4(a) states that at least 30 days prior to issuance of layoff notices, or such other period as permitted by the Chairperson or designee, the following information shall be submitted by an appointing authority to the Chairperson or designee:

1. The reason for the layoff;
2. The projected effective date of layoff;
3. Sample copies of the layoff notice and the projected date for issuance;
4. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status,

layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;

5. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;
6. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;
7. A summary of consultations with affected negotiations representatives; and
8. A list of affected negotiations representatives, including addresses and the units they represent.

In the present case, CWA seeks relief in the form of a stay of the School of Conservation layoff plan as it contends that the layoff violates statutory provisions that the school must operate in perpetuity, MSU did not have any “meaningful” consultations with CWA and are thus not in compliance with regulatory obligations, immediate irreparable harm of irrecoverable disrepair would result to the School of Conservation’s facilities and area property, no harm would come to other parties if the stay were grant, and that the public interest favors continuing the operation of the school as a natural and educational resource. However, *N.J.S.A. 18A:64I-1* does not specifically state that the actual school must forever be open, nor does it preclude a layoff of employees. The Commission’s reading of the statute is consistent with the statements contained in the legislative history of the law as presented by MSU. Rather, what must be done in perpetuity is that the 240-acre tract of land known as the School of Conservation together with its buildings must be utilized as a school of environmental field study under the direction of the Board of Trustees of MSU. In other words, the tract of land and its buildings cannot be used for any other purpose. How that is specifically accomplished is not for the Commission to dictate. The Commission notes that apparent arrangements have been made that MSU is relinquishing control over the land and the buildings to DEP and under the direction of the Board of Trustees has decided to close the school. Moreover, in its effort to maintain the campus, MSU has issued a “Request for Expression of Interest for Use of the New Jersey School of Conservation Campus” to continue the campus as an “economically self-sustaining educational” program. Proposals are also to include recommendations on the maintenance of the buildings and grounds.

Furthermore, as set forth in *N.J.S.A. 18A:64I-2* and *N.J.S.A. 18A:64I-3*, it is clear that the Board of Trustees of MSU must use any sums of money that is included in any annual appropriations act for the expenses to maintain the school, buildings, and grounds and that it is obligated to request such sums in its annual request for appropriation. This funding is separate and in addition to the sums provided to MSU in its regular formula support. However, the School of Conservation apparently was defunded according to MSU and MSU has subsidized its expenditures until now.

Specifically, MSU submits that up until Fiscal Year 2011, the line item earmarked for the School of Conservation was included by the Legislature in the annual appropriations act; however, it was then deleted without explanation. MSU has articulated that, given the latest 2020 cut in State appropriations, it can no longer subsidize the school without any operating or capital assistance from the State. CWA has not convincingly shown that the line item deletion did not occur. Although CWA disputes the defunding of the school in the appropriations act and presents information that purportedly includes appropriations through at least Fiscal Year 2016, it is now 2020. Moreover, the initial information submitted in response to the petition for stay, as well as the supplemental information given to CWA as directed by the Commission, appears to have satisfied CWA's claim that it did not receive requested budgetary information. Nonetheless, a dispute of monetary ability, and a refusal to answer requests for information, raises whether a layoff has been made in good faith, and as such, is considered a material fact in dispute that requires a hearing.

In that regard, it is emphasized that *N.J.S.A.* 11A:8-4 and *N.J.A.C.* 4A:8-2.6(a)1 provide that good faith appeals may be filed based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. At the outset, when a jurisdiction has abolished a position, there is a presumption of good faith and the burden is on the employee to show bad faith and that the action taken was not for purposes of economy. *Greco v. Smith*, 40 *N.J. Super.* 182 (App. Div. 1956); *Schnipper v. North Bergen Township*, 13 *N.J. Super.* 11 (App. Div. 1951). As the Appellate Division further observed, "That there are considerations other than economy in the abolition of an office or position is of no consequence, *if, in fact, the office or position is unnecessary, and can be abolished without impairing departmental efficiency.*" *Schnipper, supra* at 15. (emphasis added). The question is not whether the plan or action actually achieved its purpose of saving money, but whether the motive in adopting a plan or action was to accomplish economies or instead to remove a public employee without following *N.J.A.C.* 4A:8-1 *et seq.* Thus, a good faith layoff exists if there is a logical or reasonable connection between the layoff decision and the personnel action challenged by an employee. Additionally, it is within an appointing authority's discretion to decide how to achieve its economies. *See Greco, supra.* Therefore, such a dispute of fact must be resolved after a hearing. *See N.J.A.C.* 4A:8-2.6(a)1. The Commission will not attempt to determine the merits of CWA's contentions on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. The Commission comments, however, that regardless of whether MSU has received funding from the State from July through September 2020, MSU's position has not changed, *i.e.* the layoff of the employees of the School of Conservation is still necessary due to budgetary restraints that it contends that it has experienced and may also suffer in the coming Fiscal Year. Whether this position was taken in good or bad

faith is a matter for the parties to argue at the hearing. Therefore, based on the foregoing, there is no clear likelihood of success on the merits of CWA's claims.

As for CWA's contention that MSU did not engage in "meaningful" consultations with CWA, it is initially noted that the level of consultation contemplated by Civil Service law and rules governing layoffs does not require negotiations with affected collective bargaining units as that term is used in labor relations law. However, it does require more than mere notification of impending layoffs. Civil Service law and rules contemplate that a meaningful discussion will occur between an appointing authority and affected negotiations representatives with a view toward avoiding a reduction in force altogether or lessening the impact of a proposed layoff on permanent employees and the provision of public services. In the present case, the record demonstrates that the consultation occurred on May 18, 2020, where CWA offered a furlough as an alternative to layoff. Although CWA claims that there was no consultation prior to the press release, consultations did in fact occur prior to the submission of the layoff plan on June 12, 2020 which satisfies MSU's obligation pursuant to *N.J.A.C. 4A:8-1.4(a)7*. The fact that MSU disagreed and found the option not feasible does not void a layoff plan. As noted above, it is within an appointing authority's discretion to decide how to achieve its economies. *See Greco, supra*. Furthermore, MSU not only consulted with CWA prior to the submission of the layoff plan, it met with the other unions, and per the directive of the Commission, it further engaged in consultation with CWA. However, despite settlement proposals, the parties appear to have reached an impasse and a settlement agreement has not been produced. Therefore, the Commission is satisfied that MSU acted in accordance with *N.J.A.C. 4A:8-1.2(e)* and *N.J.A.C. 4A:8-1.3(c)*, and sufficient information as set forth in *N.J.A.C. 4A:8-1.4(a)* has been presented to approve the layoff plan. It is noted that *N.J.S.A. 11A:8-1.2* and *N.J.A.C. 4A:8-1.3* contain *suggestions* for an appointing authority to lessen the possibility, extent or impact of an impending layoff. While these suggestions include granting voluntary furloughs to employees, Civil Service law and regulations do not *require* that these steps be taken prior to implementing a layoff. *See e.g., In the Matter of City of Hoboken Layoff* (Chairperson of the Civil Service Commission, decided May 5, 2020).

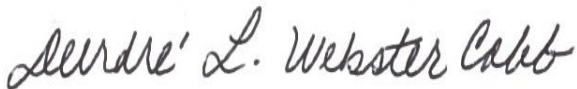
An evaluation of a petition for a stay must also include consideration as to whether there is a danger of immediate or irreparable harm, absence of substantial injury to other parties, and the public interest. While the Commission is cognizant of the impact of a layoff on affected employees, MSU correctly points out that the employees would be entitled to back pay and a return to positions should they be successful in an appeal of their layoffs. Further, MSU and, indirectly, the public taxpayers would be required to shoulder the financial costs of maintaining additional personnel on the payroll when an appointing authority determines that a layoff can achieve economy and efficiency. Moreover, while CWA fervently argues that detrimental effects would result to the buildings, facilities, and surrounding property if the stay were not granted, its claims are speculative at best. MSU has indicated

that it is relinquishing control of the property back to the DEP effective July 1, 2020. Moreover, as set forth in *N.J.S.A.* 18A:64I-4, DEP already has the responsibility for the care, management and preservation of the Stokes State Forest reserve. There is no indication that DEP has rejected MSU's planned relinquishment, and the School of Conservation has been closed since the pandemic arose. Therefore, the record does not demonstrate a danger of immediate or irreparable harm which would necessitate staying the layoff. Lastly, the Commission fully acknowledges that the School of Conservation is a State asset, where educational programs have been administered for years and valuable research has been conducted for the benefit of the citizens of this State. However, it would not be in the public interest for the affected employees to remain in their positions where no sufficient basis has been found at this time to stay the layoff and regulatory requirements have been satisfied to approve the plan. The Commission notes that should the parties reach a settlement, MSU may rescind the layoff or extend the effective date of the layoff in accordance with *N.J.A.C.* 4A:8-1.6(d). ⁴In that regard, *N.J.A.C.* 4A:8-1.6(d) states that "[a] layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Chairperson or designee for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff." If a settlement occurs after the effective date of the layoff, the employees may be reinstated by way of special reemployment opportunities pursuant to *N.J.A.C.* 4A:8-2.3. Accordingly, CWA's request for a stay is hereby denied.

ORDER

Therefore, it is ordered that this petition for a stay be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17th DAY OF JULY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

⁴ MSU has advised that it has extended the effective date of the layoff from August 3, 2020 to August 28, 2020.

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