



copy of the January 15, 2020 proposed layoff plan submitted to Agency Services. The petitioner claims that Hoboken never considered alternatives to layoffs per *N.J.A.C.* 4A:8-1.2 or took any pre-layoff actions per *N.J.S.A.* 11A:8-2.

In response, Hoboken, represented by Alyssa L. Witsch, Assistant Corporation Counsel, argues that as the layoff became effective May 7, 2020 and the instant request is dated May 8, 2020, the request is untimely.

In reply, the petitioner maintains that its request is timely. In this regard, the petitioner claims that it did not have the grounds to file a “good faith based appeal” until after the plan was accepted and the layoffs became effective. More specifically, according to the petitioner, it was not until May 4, 2020 that it was advised that employees who accepted bumping rights would suffer a reduction of salary while at the same time be forced to remain in the same positions doing the same job at a fraction of their previous salaries. Further, it was not until May 6, 2020 that Hoboken advised that the layoffs saved it a fraction of the money it asserted it would save in the layoff plan. Accordingly, in the petitioner’s view, it did not have adequate grounds to file an appeal as the employer concealed relevant information until after the plan became effective.

In reply, Hoboken reiterates that the petitioner’s request was not timely presented and should be dismissed. Hoboken states that in light of the petitioner’s reply, it now appears as though its objections center around allegations that employees who accepted bumping rights would suffer a reduction in salary while being forced to stay in the same positions. Hoboken notes that these allegations were not addressed in the petitioner’s original submission, which solely focused on Hoboken’s alleged failure to consider alternatives to layoffs.

## CONCLUSION

*N.J.A.C.* 4A:8-1.4(e) states that upon approval of the layoff plan, affected negotiations representatives shall be provided with a copy of the plan as it affects their represented employees. *See also, N.J.S.A.* 11A:8-2 and *N.J.S.A.* 11A:8-3. *N.J.S.A.* 11A:8-1 provides, in pertinent part, that a permanent employee shall receive 45 days’ written notice of impending layoff or demotion. *N.J.A.C.* 4A:2-1.1(b) provides, in pertinent part, that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

The petitioner acknowledges receiving a copy of Hoboken’s proposed layoff plan on January 31, 2020. The record also reflects that Agency Services approved the layoff plan by letter dated February 20, 2020 and provided the petitioner with a copy of the letter. The 45-day notices were issued by March 23, 2020 at the latest. Nevertheless, the instant request for a stay is dated more than 20 days after all of

those events. Moreover, it is dated one day after the layoff became effective. For those reasons, the request has not been timely presented.

Nor is there any basis in this case to extend or to relax the time for appeal. *See N.J.A.C. 4A:1-1.2(c)* (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting the petitioner's right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). *See e.g., Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of former Merit System Board's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this case, the petitioner has not presented any reason that would excuse the delay in filing the instant request for a stay. Instead, the petitioner claims that it was not until May 4, 2020 that it was advised that employees who accepted bumping rights would suffer a reduction of salary while being forced to remain in the same positions doing the same job at a fraction of their previous salaries. It further claims that it was not until May 6, 2020 that Hoboken advised that the layoffs saved it a fraction of the money it asserted it would save in the layoff plan. The Commission does not find these arguments persuasive. As Hoboken correctly notes, these arguments were absent from the petitioner's initial submission, which focused on Hoboken's alleged failure to consider alternatives to layoffs or take pre-layoff actions. However, the petitioner was aware, as early as January 31, 2020 when it received Hoboken's proposed layoff plan, that Hoboken was representing that it did consider alternatives to layoff and consult with representatives of the affected collective negotiations units concerning pre-layoff actions. As such, the petitioner could have timely requested a stay since there is no Civil Service law or rule that prohibits the filing of a request for a stay prior to the effective date of the layoff, especially if the subject of the request is alleged deficiencies in *pre-layoff* procedures.

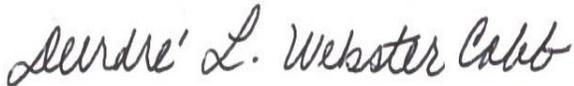
Even though the Commission has found the instant request for a *stay* to be untimely, it should be noted that *N.J.S.A. 11A:8-4* and *N.J.A.C. 4A:8-2.6(a)1* provide that good faith appeals may be filed based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals are subject to hearing and final administrative determination by the Commission. *N.J.A.C. 4A:8-2.6(a)1*. Therefore, if any impacted employees have also filed good faith appeals, they may present any arguments raised in the instant stay request in their good faith appeals. Additionally, since the petitioner claims that the duties of employees who accepted bumping rights never changed, these employees may wish to file position review requests. *See N.J.A.C. 4A:3-3.9* (providing, in pertinent part, that a position review

request is a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position).

**ORDER**

Therefore, it is ordered that this petition for a stay be dismissed as untimely.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>TH</sup> DAY OF JULY, 2020



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