



**STATE OF NEW JERSEY**

In the Matter of Barbara Fay, Orange  
Public Library

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

CSC Docket No. 2022-714

Administrative Appeal

**ISSUED: AUGUST 3, 2022 (SLK)**

Barbara Fay, a Librarian 1, represented by Patricia A. Villanueva, Esq., appeals her separation from employment, effective August 13, 2021, with the Orange Public Library (Library).

By way of background, Fay had been serving permanently with the Library since April 2005.<sup>1</sup> On appeal, Fay presents that the Library indicated to this agency that Fay “was not terminated due to any disciplinary action” but rather “because of budgetary constraints due to a reduction in funding as a matter of economy and efficiency.” However, she presents that the Library did not follow any of the proper procedures for a layoff under *N.J.A.C.* 4A:8. Therefore, Fay requests to be immediately returned to work and awarded full back pay and benefits.

Fay indicates that prior to her termination, the Library informed her union that it was seeking to implement a voluntary furlough program to help finance repairs. On or around June 8, 2021, she states that the union requested documentation, such as budgets, audited financial statements and estimates or bids from contractors, under the Open Public Records Act (OPRA) to ascertain the need for the furloughs. However, the Library never responded to the OPRA request nor did it implement any furlough program. Fay presents that on August 13, 2021, a

<sup>1</sup> The Library indicates that Fay was employed less than 25 hours a week. This comes from an email that the Library sent to this agency.

member of the Library's Board of Trustees's hand-delivered a termination notice, incorrectly indicating that she is an at-will employee. Fay asserts that she never received the mandatory 45-days' notice and the Library failed to follow the proscribed procedures for Civil Service employees. She states that on August 27, 2021, the Library communicated to the union, for the first time, of its intent to implement the layoff. In response, the union requested a copy of the layoff plan and seniority list, but it never received it. Fay indicates that on September 27, 2021, the union submitted another OPRA request seeking the Library's layoff plan, among other documentation, but it was never received. Thereafter, the union filed a complaint in Superior Court. Subsequently, the Library informed the union that it never submitted a layoff plan to this agency. She indicates that on March 9, 2022, the Superior Court ordered the Library to produce to the union the majority of the requested documentation. Still, neither a furlough plan nor a layoff plan has been provided. Therefore, Fay argues that her "layoff" was undertaken in bad faith.

Although given the opportunity, the Library did not respond in this matter.<sup>2</sup>

## CONCLUSION

In this matter, Fay, a Librarian 1, was laid off on August 13, 2021 in violation of statutory and regulatory provisions regarding layoffs. While the Library seems to believe that because Fay was a part-time employee that it did not need to follow Civil Service layoff procedures, this is not the case.

In this regard, permanent employees may be laid off for economy, efficiency or other related reasons. See *N.J.S.A.* 11A:8-1a and *N.J.A.C.* 4A:8-1.1(a). Additionally, *N.J.A.C.* 4A:8-1.1(b) provides that this agency shall determine seniority and shall designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to all affected parties. Furthermore, pursuant to *N.J.A.C.* 4A:8-1.4(a), an appointing authority must provide this agency with a layoff plan at least 30 days prior to the issuance of layoff notices. The layoff plan must include, among other things, the reason for the layoff, the projected effective date of the layoff, details regarding positions, titles and employees to be affected, alternatives to layoff and pre-layoff actions taken, and a summary of consultations with affected negotiations representatives. Through this plan, this agency ensures that the appointing authority provides all of the required information and has done everything it is legally obligated to do. If the information is lacking, this agency may take such remedial

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<sup>2</sup> Initially, this agency informed the Library to respond by June 2, 2022. Thereafter, the Library requested an extension to submit a response by June 17, 2022, which was granted. On June 30, 2022, this agency followed-up with the Library. On July 13, 2022, this agency again followed-up with the Library indicating that if it did not receive any response from it by July 15, 2022, the matter would move forward to the Civil Service Commission (Commission) based on the existing record. The Library did not respond.

action as requiring the submission of supplemental information or the implementation of alternatives to layoff or pre-layoff actions. See *N.J.A.C.* 4A:8-1.4(d).

Moreover, *N.J.A.C.* 4A:8-1.6(a) provides that:

No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to a representative of the Civil Service Commission and affected negotiations representatives. See also, *N.J.S.A.* 11A:8-1(a).

For every day the layoff notice is late, the affected employees receive a day of mitigated back pay. This is because the purpose of the 45-day notice is to allow sufficient time for this agency to determine appropriate layoff entitlements and to notify both the employer and the affected employees, to afford affected employees the opportunity to seek new employment and to provide them with what, in effect, is 45 days' severance pay. See *Amodio v. Civil Service Commission*, 81 *N.J. Super.* 22 (App. Div. 1963); *In the Matter of Joseph Bonner, City of Bayonne* (Commissioner of Personnel, decided December 15, 1989).

In the instant matter, the Library failed to follow the established layoff procedures. It did not submit a layoff plan to this agency for approval prior to Fay's layoff, which delineated the reason for the layoff, the projected date of the layoff, the number of position affected, the names of employees to be affected, and the explanation of all alternative and pre-layoff actions that have been taken and considered. Moreover, Fay did not receive the required notice of layoff. In this regard, the Library has not shown that it provided Fay with written notice of her layoff at least 45 days prior to the effective date of Fay's layoff on August 13, 2021. There is also no showing that affected negotiations representatives were given notice. Indeed, this agency did not receive a copy of any notice at that time.

Therefore, it is ordered that the Library submit a layoff plan to the Division of Agency Services (Agency Services) within 20 days of receipt of this decision, detailing the reasons for the August 13, 2021, layoff of Fay, as well as submitting the required information outlined in *N.J.A.C.* 4A:8-1.4(a). Additionally, since Fay did not receive written notice of her layoff, it is ordered that the Library compensate Fay with 45 days' pay. Should Agency Services disapprove the layoff plan or find that Fays' layoff

was improper based on her title rights, the Library is ordered to immediately reinstate Fay to her position or the position to which she is entitled with mitigated back pay commensurate with the title, applicable benefits, and seniority from the time she was separated on August 13, 2021, to the date of her reinstatement. However, if Agency Services approves the layoff plan and determines that Fay did not have any displacement rights, Fay shall be considered laid off from her position, effective August 13, 2021, and her County and Municipal Personnel System (CAMPS) record shall be amended accordingly.<sup>3</sup>

Although the Commission is permitting the appointing authority to correct the procedural errors present in this matter, the Commission advises the Library that it may be subject to fines if it fails to comply with this order. In this regard, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service laws or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. 1989).* In this case, the Commission is disturbed that the Library laid off Fay from her position, yet it failed to comply with any of the procedural requirements for layoff. Accordingly, the Commission orders the Library to comply with Civil Service law and rules.

### **ORDER**

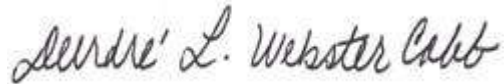
Therefore, it is ordered that the appeal be grant in part and the Orange Public Library submit a layoff plan to Agency Services for approval and determination of layoff entitlements to Agency Services regarding the August 13, 2021, layoff of Barbara Fay from her position of Librarian 1 within 20 days of receipt of this decision. It is further ordered that the Library pay Fay 45 days' pay for its failure to provide her with adequate notice of the layoff. Additionally, if Fay's layoff is not approved by Agency Services, the Library is directed to immediately reinstate Fay to her former position or the position to which she is entitled with mitigated back pay commensurate with the title, applicable benefits, and seniority from the time she was separated on August 13, 2021, to the date of her reinstatement. Alternatively, if Fay's layoff is approved by Agency Services, her CAMPS record shall be amended accordingly,

In the event that the Library has not made a good faith effort to comply with this decision within 20 days of issuance of this decision, the Commissions orders that a fine be assessed against the Library in the amount of \$100 per day, beginning on the 21<sup>st</sup> day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000.

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<sup>3</sup> If Agency Services approves Fay's layoff, she may then file an appeal of the good faith of her layoff at that time.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>RD</sup> DAY OF AUGUST 2022



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