

In the Matter of John Lewis and John Shultz, Monmouth County
CSC Docket Nos. 2009-4047 and 2009-4048
(Civil Service Commission, decided July 8, 2009)

John Lewis and John Shultz, former County Correction Officers with Monmouth County (Monmouth), represented by Robert A. Fagella, Esq., petition the Civil Service Commission (Commission) for relief regarding their layoffs effective May 1, 2009.

By way of background, Lewis and Shultz were permanently appointed to the title of County Correction Officer on April 24, 2006. Subsequently, on February 6, 2009, Monmouth submitted a layoff plan to the Division of Local Human Resource Management (LHRM)¹ proposing to lay off as of May 1, 2009, 35 County Correction Officers, 1 County Correction Sergeant, and 2 County Correction Lieutenants for reasons of economy and efficiency. On March 9, 2009, LHRM approved Monmouth's proposed layoff plan and advised that a General Notice of Layoff must be posted in all facilities and served personally on all positions in the affected departments and that Individual Notices of Layoff must be personally served on employees whose positions were targeted for layoff. Thereafter, Monmouth issued an Individual Notice of Layoff and a General Notice of Layoff to Schultz via certified mail on March 11, 2009 and advised him that he would be laid off as of the close of business on May 1, 2009. Further, Monmouth issued a General Notice of Layoff to Lewis via certified mail on March 11, 2009 advising him that his position may be affected by the layoff. Monmouth also posted a General Notice of Layoff or Demotion on March 11, 2009 in the Monmouth County Correctional Institution and the Youth Detention Center specifying that 35 County Correction Officers, 1 County Correction Sergeant, and 2 County Correction Lieutenant positions were being abolished as of May 1, 2009.

On April 9, 2009, LHRM issued layoff rights determination letters to the impacted employees. With respect to Schultz, it was determined that he had seniority displacement rights to a County Correction Officer position held permanently by Jeffrey Simon. However, as a result of the layoff of William Giersbach from his position of County Correction Sergeant, Giersbach was given a demotional displacement right to the position to which Schultz had been granted seniority displacement rights. As such, Shultz's layoff was recorded effective May 1, 2009. With respect to Lewis, as a result of the layoff of Mark E. Brawly from his position of County Correction Sergeant, Smith was given demotional displacement rights to the position held by Lewis. Accordingly, Lewis' layoff was recorded effective May 1, 2009.

¹ LHRM is now the Division of State and Local Operations.

In their petition for relief, filed on May 20, 2009, 19 days after the effective date of the layoff, the petitioners present that the layoff plan approved by LHRM only authorized the layoff of 35 County Correction Officers. However, notwithstanding the authorization to only lay off 35 County Correction Officers, the petitioners assert that Monmouth laid off 38 County Correction Officers. Since they were the next most senior County Correction Officers who were among the 38 officers laid off, the petitioners reason that they would not have been laid off if Monmouth limited the layoffs to the 35 who were approved for County Correction Officer. In this regard, the petitioners state that *N.J.A.C. 4A:8-1.4(a)4* requires layoffs to be limited to a specifically enumerated number of persons listed by title and name. In this case, the petitioners contend that Monmouth added 3 County Correction Officers whose layoffs were not approved by LHRM. As such, the petitioners request the Commission reinstate them with back pay until a revised layoff plan is submitted and approved by LHRM.

In response, Monmouth, represented by Parthenopy A. Bardis, Special County Counsel, states that the petitioners have not set forth any legal or factual basis to warrant interim relief. Specifically, it contends that *N.J.A.C. 4A:8-1.4(a)4* does not place a cap on the number of layoffs. Rather, Monmouth states that it only requires an appointing authority to submit the number of positions to be vacated, reclassified, or abolished and the titles of the employees *initially affected*. Monmouth underscores that the Commission retains the authority to determine the employees' lateral and demotional rights and in so doing may determine that the employees not named in the layoff plan will be affected by other employees exercising their displacement rights. In this regard, it notes that the General Notice of Layoff to all employees warns of this possibility. Monmouth emphasizes that the General Notice of Layoff clearly indicated to all employees that they may be affected by the exercise of the seniority, lateral, demotional, and/or special reemployment rights of other employees. In this case, since LHRM determined that two County Correction Sergeants had demotional displacement rights to the County Correction Officer positions held by the petitioners. Accordingly, since the Commission authorized the layoffs of County Correction Officers beyond the numbers submitted, Monmouth maintains that the petitioners' request for relief should be denied.

Although provided the opportunity, the petitioners did not provide any additional information for the Commission to review in this matter.

CONCLUSION

In support of their request for relief, the petitioners argue that since only 35 County Correction Officer positions were approved for layoff by LHRM, their layoffs were improper. The Commission disagrees. *N.J.A.C. 4A:8-1.4(a)4* provides that at least 30 days prior to the issuance of layoff notices, the following shall be submitted for LHRM's review prior to the issuance of layoff notices:

The number of positions 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.

As correctly noted by Monmouth, it identified the names of the employees to be initially affected by the layoff and provided them to LHRM in compliance with *N.J.A.C. 4A:8-1.4(a)4*. However, since one County Correction Sergeant and two County Correction Lieutenant positions were also targeted, the incumbents in those positions had demotional displacement rights to lower level titles in the County Correction Officer title series. These rights are determined by LHRM and may impact individuals not *initially* identified in a proposed layoff plan if the incumbents in the targeted positions have displacement rights to a particular title. As emphasized by Monmouth, the General Notice of Layoff that was issued to the appellants clearly indicated to all employees that they may be affected by the exercise of the seniority, lateral, demotional, and/or special reemployment rights of other employees.

In these cases, John Kolodziej, Jr., and Paul Labella, the incumbents in the targeted County Correction Lieutenant positions, exercised demotional rights to County Correction Sergeant positions held by Mark Brawley and William Giersbach. This resulted in Brawley and Giersbach exercising their demotional rights from County Correction Sergeant to the County Correction Officer positions held by Lewis and Schultz. Byron Jones, the incumbent in the targeted County Correction Sergeant title, had exercised his demotional rights to County Correction Officer. The sole issue in a title rights appeal is whether the LHRM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1, et seq.*, in determining layoff rights. In this case, there is no evidence that LHRM improperly determined the petitioners' seniority or demotional displacement rights, and the petitioners do not argue that they were not timely notified of the possibility that they could be impacted by the layoff. As such, there is no basis on which to provide them relief or to reinstate them with back pay to their positions as County Correction Officers.

ORDER

Therefore, it is ordered that the petitioners' request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.