

1 Before Hearing Officer Gary N. McLean-  
2 Under Delegation from the Civil Service Commission

3  
4 BEFORE THE CIVIL SERVICE COMMISSION  
FOR THE CITY OF SEATTLE

5 CELESTE DUNCAN,

6 Appellant,

7 vs.

8 SEATTLE PUBLIC UTILITIES,  
9 CITY OF SEATTLE

Respondent / Employer.

CSC No. 11-04-006

**DECISION, FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW**

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11 This matter came before the Civil Service Commission upon the filing of an Appeal  
12 by the appellant, Ms. Duncan, regarding actions taken by her employer, Seattle Public  
13 Utilities (hereinafter "SPU"), when it abrogated Appellant's previous full-time position  
14 effective January 4, 2011, assigned her to work in another part-time position, and did not  
15 afford her "bumping" rights associated with a condition of layoff.

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17 **Procedural History**

18 On December 2, 2010, Ms. Duncan filed an appeal with the Civil Service  
19 Commission, generally alleging that SPU violated applicable law when it did not allow her  
20 to exercise bumping rights to retain a full-time position held by a less-senior colleague  
21 instead of the part-time position into which she was eventually assigned. (CSC Appeal No.  
22 10-04-018). SPU responded to the first appeal, by moving for dismissal, asserting that  
23 Appellant failed to exhaust available administrative remedies. On delegation from the Civil  
24 Service Commission, the City's Hearing Examiner considered SPU's Motion to Dismiss,  
25 and issued her Order regarding such motion at the end of January, 2011. The Hearing

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1 Examiner dismissed the first appeal, without prejudice to Appellant's right to re-file  
2 following completion of the internal grievance process. (See Order on Motion to Dismiss,  
3 entered on January 28, 2011). Subsequently, Appellant initiated her department's grievance  
4 process, and her grievance was denied. Shortly thereafter, she re-filed the instant appeal,  
5 identified as CSC Appeal No. 11-04-006. (Filed on March 15, 2011, attaching copy of the  
6 Hearing Examiner's Order and materials exchanged as part of the grievance process).

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9 This appeal was delegated to the undersigned Hearing Officer, who conducted a  
10 Pre-Hearing Conference on March 14, 2011 and issued a Statement of Issue and Scheduling  
11 Order on the same date. At the Pre-hearing Conference, the parties agreed that this matter  
12 would best be resolved through an exchange of written materials, instead of extended sworn  
13 testimony in a regular hearing process. Accordingly, each party submitted opening and  
14 responsive briefs supporting their respective positions in this appeal. This Decision is  
15 based on the information and evidence provided by the parties in the Appeal file, their  
16 briefing materials, and a review of applicable law on the subject.  
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19 **Issue Presented**

20 Whether Respondent, Seattle Public Utilities, complied with Personnel Rule  
21 6.2.3(A), and/or applicable guidelines and procedures found within the  
22 Seattle Municipal Code and Personnel Rules, when it abrogated Appellant's  
23 previous position, assigned her to work in another half-time position, and did  
24 not afford her "bumping" rights associated with a condition of layoff?  
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**Stipulated Facts**

At the Pre-Hearing Conference, the parties stipulated to the following facts:

- A. Appellant's previous position was abrogated;
- B. Personnel Rule 6.2.3(B), regarding "management-initiated reduction[s] in scheduled work hours does not apply to Appellant's situation; and
- C. Appellant is currently employed in a half-time position, and another less-senior employee holds a full-time position within the same classification or title as Appellant's, within the employing unit.

**Findings of Fact**

In addition to the parties stipulations, the Hearing Officer makes the following additional findings of fact for purposes of resolving the instant Appeal.

Appellant previously held a full-time Senior Training and Education Coordinator position with SPU, which position (No. 00018694)<sup>1</sup> was abrogated as part of the City's budget-cutting process, effective January 4, 2011. SPU identified a vacant part-time Senior Training and Education Coordinator position (No. 00012117) and placed Appellant into such opening, effective January 5, 2011.<sup>2</sup> Since October of 2010, Ms. Duncan has been working in an out-of-class assignment on a full-time basis as a Senior Planning and Development Specialist, and such full-time assignment is scheduled to last through August of 2011.<sup>3</sup>

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<sup>1</sup> See page 2 of March 14 2011 Memorandum issued by Acting Personnel Director Darwyn Anderson, Response to Ms. Duncan's Step 3 Grievance, submitted by Appellant as part of her Appeal.

<sup>2</sup> Id.

<sup>3</sup> Id.

1 Appellant was not afforded "bumping" rights, which might have allowed her to  
2 "bump" a less-senior employee who still works in a full-time position within her same  
3 classification or title and employing unit. (See SPU responsive materials attached to the  
4 instant Appeal).

5  
6 In this Appeal, SPU relies upon a determination of the City's Personnel Department  
7 that the circumstances under which Appellant's previous position was abrogated from the  
8 City's budget did not result in a "condition of layoff," meaning that she is not entitled to  
9 exercise "bumping" rights. The Personnel Director's "Analysis" is provided below in its  
10 entirety:  
11

12 ***Analysis***

13 *The SMC and the Personnel Rules are the legal authority for which*  
14 *Personnel and City departments may adopt policies and procedures for*  
15 *layoff, and they prevail over any distributed materials on the subject - the*  
16 *Employee Layoff Guide and the FAQs memo submitted by the grievant both*  
17 *contain statements to this effect. Regretfully, the City's layoff process is very*  
*complicated and written communication that discusses the issue in broad*  
*terms does create opportunity for misinterpretation.*

18 *The abrogation of Position No. 00018694 and reduction of Ms. Duncan's*  
19 *work hours do not meet the criteria of a layoff condition under the SMC and*  
20 *Personnel Rules. SMC 4.04.030 defines layoff as the "discontinuation of*  
21 *employment and suspension of pay of any regular or probationary*  
22 *employee..." Personnel Rule 6.2.3(A) is clear that no condition of layoff*  
23 *exists if there is another available position in the same classification.*  
24 *Abrogation of a position does not equate to layoff if there is a funded*  
25 *position to which an employee may transfer. Additionally, Personnel Rule*  
26 *6.2.3(B) provides that a reduction of work hours (equal to or greater than*  
*half-time employment) does not constitute a layoff. The SMC and the Rules*  
*simply do not provide employees with layoff rights if their full-time positions*  
*are abrogated and they are transferred to part-time positions as part of the*  
*budget process.*

*I find that SPU's reduction of Ms. Duncan's employment status from full-*

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1 *time to halftime without providing her the opportunity to bump a less senior*  
2 *employee to be consistent with the SMC and the Rules. Because Ms. Duncan*  
3 *continues to hold long term regular employment in a half-time capacity at*  
*SPU, she has not met the conditions of layoff as defined in the SMC and*  
*provided by the Personnel Rules in order to be eligible for bumping rights.*

4 See March 14, 2011 Memorandum from Darwyn Anderson, Acting Personnel Director, to  
5 Ray Hoffman, SPU Director and Celeste Duncan, Step 3 Grievance Response, attached to  
6 the underlying Appeal filed on March 15, 2011.

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9 **Conclusions of Law**

10 Bumping rights flow from SMC 4.04.220. In 1996, the Seattle City Council  
11 amended SMC 4.04.220, and repealed language that read as follows: "*Separate orders of*  
12 *layoff shall be prepared for employees holding full-time and part-time positions in the event*  
13 *both types of positions occur in the class affected by a layoff.*" (See Section 1, of Ord. No.  
14 118121, passed on May 6, 1996). The short title of the Ordinance reads: "*AN*  
15 *ORDINANCE relating to the personnel system, amending Seattle Municipal Code Section*  
16 *4.04.220 to clarify employee 'bumping' and reinstatement rights where layoff is based upon*  
17 *budget titles; to repeal provisions for layoff from grant funded positions and separate*  
18 *orders of layoff for part-time and full-time employee[s].*"(emphasis added). The last recital  
19 in the preamble of Ord. No. 118121 explained that "*the distinction between part-time and*  
20 *full-time employees is unnecessary and not consistent between represented and*  
21 *nonrepresented employees, and therefore difficult to administer when both represented and*  
22 *nonrepresented employees in the same job class occur within the same*  
23 *department.*"(emphasis added).  
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2 It is the City Council's clear intent that layoff orders will not distinguish between  
3 full-time and part-time positions when both types of positions occur in the class affected by  
4 a layoff. It is also clear that the City Council intended Ord. No. 118121 to clarify bumping  
5 rights where a layoff is based on budget titles. Those clarifications included repeal of text  
6 that detailed circumstances under which a part-time employee could bump a less-senior  
7 full-time employee, among other things. (See Ord. No. 118121, at Sec 1, repealing text  
8 previously included in SMC 4.04.220(C)(2)). Nevertheless, as a matter of law, a full-time  
9 position is still different from a part-time position – financially, and as defined within the  
10 Seattle Municipal Code. (See SMC 4.04.030(21), definition of "Part-time position").  
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13 The parties are in agreement that Appellant has been moved into a "Part-time  
14 position." Under the Seattle Municipal Code, "Part-time position" means "a position that  
15 has been designated as 'part-time' in, and created by, the annual budget or by another  
16 ordinance and that requires an average of twenty (20) hours or more but less than forty (40)  
17 hours of work per week during a year". (SMC 4.04.030(21)). Appellant's current position  
18 was thus, created by the annual budget or another ordinance. So was her previous full-time  
19 position. They are not the same. One position – her previous position no. 00018694) –  
20 funded her previous job on a full-time basis. Her current assigned position, no. 00012117,  
21 is written to fund two half-time positions, and Ms. Duncan only holds one of the two half-  
22 time positions. She is working full-time only on an out-of-class basis. The record is silent  
23 on the subject, but the assumption is (because Ms. Duncan did not allege the contrary) that  
24 her take-home pay remains unchanged from what she earned in her previous position to the  
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1 one she currently earns in her out-of-class full-time assignment.

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3 There is no dispute that Appellant does, in fact, “possess the skills required to  
4 perform the duties of the position held by the employee who would be displaced” if she  
5 were permitted to exercise “bumping” rights, which is a prerequisite to using such process.  
6 (SMC 4.04.220(C)).

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9 As a matter of law, if Ms. Duncan were to be laid off, as that term is defined in  
10 applicable provisions of the Seattle Municipal Code and Personnel Rules, she would be  
11 entitled to “bumping” rights.

12  
13 The Seattle Municipal Code defines the term “Layoff” to mean “the discontinuation  
14 of employment and suspension of pay of any regular or probationary employee because of  
15 lack of work, lack of funds, or through reorganization.” SMC 4.04.030(19). Within an  
16 employing unit, the order of layoff in a given class shall be as follows: 1. Probationary  
17 employees; 2. Trial service employees; and 3. Regular employees. SMC 4.04.220(A).  
18 Among regular employees, order of layoff shall be in order of seniority, until a performance  
19 evaluation system is in effect, in which case employees with the lowest evaluations are laid  
20 off first. Id. In this Appeal, neither party asserts that any performance evaluation system  
21 would apply, instead, each party focused their positions on bumping rights based upon  
22 seniority. Accordingly, this Decision is limited to such focus – i.e. *if* bumping rights are to  
23 be applied in Appellant’s situation, they should be based upon *seniority*, and not a  
24 performance evaluation system.  
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2 The last paragraph in SMC 4.04.220(A)(3), reads as follows:

3 “In the event one (1) or more positions having different budget and class  
4 titles or having budget titles only and no class titles are scheduled to be  
5 abrogated for any reason and such abrogation will result in a layoff, the  
6 Director shall establish an order of layoff for regular employees that reflects  
7 their relative seniority in positions with the same budget title as such  
8 positions affected by the layoff.” (emphasis added).

9 Employees affected by a potential layoff have options to avoid layoff, called  
10 “Bumping” rights, which are explained in SMC 4.04.220(C). That section reads in relevant  
11 part as follows:

12 “C. Employee Options for Transfers to Avoid Layoff (Bumping). Insofar as  
13 the option is available, as determined by the Director, any regular employee  
14 subject to being laid off may displace within the same employing unit the  
15 employee who has the least seniority in the displacing employee’s class, or if  
16 the order of layoff reflects seniority within a budget title pursuant to SMC  
17 Section 4.04.220(A) above, in the displacing employee’s budget title.”

18 The Personnel Department Director has discretion to adopt Rules under delegation  
19 from the City Council, provided such rules are consistent with such grant of authority and  
20 specific language addressing personnel matters that may be found in the Seattle Municipal  
21 Code and Ordinances of the City. Such rules include P.R. 6.2.3, regarding “Conditions of  
22 Layoff”, which reads as follows:

23 6.2.3 Conditions of Layoff

24 A. A condition of layoff exists when an employing unit must abrogate  
25 or unfund a position of employment in the classified service, and there are  
26 no vacant funded positions in the classification or title within the employing  
unit.

B. A management-initiated reduction in scheduled work hours shall not  
constitute a layoff unless the reduction is to less than 20 hours per  
workweek.

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1  
2 SPU relies on the language in P.R. 6.2.3(A) to conclude that Ms. Duncan is not  
3 entitled to bumping rights because no condition of layoff exists solely because a position is  
4 abrogated; to constitute a layoff, SPU argues, there must also be “no vacant funded  
5 positions” – be they part-time or full-time – in the same classification or budget title in the  
6 employing unit, i.e. SPU. Standing alone, such a position appears tenuous, because part-  
7 time and full-time jobs are not the same. However, in light of the clear legislative intent  
8 expressed by the Seattle City Council when it adopted Ordinance No. 118121 in 1996,  
9 SPU’s position in this appeal must be sustained. That Ordinance was enacted, in part, “to  
10 clarify bumping rights” and specifically found that “the distinction between part-time and  
11 full-time is unnecessary...” As it appears to be the City Council’s intent that no distinction  
12 should be made between part-time and full-time positions when making decisions regarding  
13 “bumping” rights, the underlying Appeal must be denied.  
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17 Further, there does not appear to have been a “layoff” as that term is defined in the  
18 relevant provisions of the Seattle Municipal Code and Personnel Rules. Ms. Duncan is still  
19 working full-time, and it appears that she will be doing so until some point in August of this  
20 year, when she will, presumably, be reduced to working part-time. Until or unless the  
21 Personnel Rules or the city code are revised or updated to modify previous legislative  
22 history, it appears that Seattle departments are free to move employees from full-time  
23 positions to part-time positions, without treating such personnel actions as a layoff, for  
24 purposes of bumping rights. In other words, unless the code or rules are modified between  
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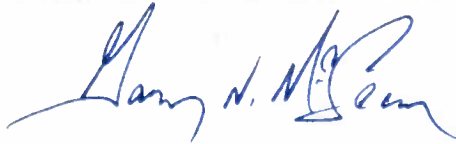
1 the date of this decision and Ms. Duncan's reduction to part-time employment, by  
2 application of law, she will once again be denied the relief she seeks herein.

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5 **Conclusion**

6 Based on controlling legal authority, primarily in the form of legislative intent  
7 expressed by the Seattle City Council in 1996, the underlying appeal is denied.

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11 ISSUED this 6<sup>th</sup> Day of May, 2011

12 FOR THE CITY OF SEATTLE  
13 CIVIL SERVICE COMMISSION

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17 Gary N. McLean, Hearing Officer

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20 *The decision of the Hearing Officer in this case is subject to review by the Civil Service Commission. Parties*  
21 *may also request that the Commission review the decision, by filing a Petition for Review of the Hearing*  
22 *Officer's Decision and asking the Commission to consider specific issues and fact. To be timely, the Petition*  
23 *for Review must be filed with the Civil Service Commission no later than ten (10) days following the date of*  
24 *issuance of this decision, as provided in Civil Service Commission Rules.*

CITY OF SEATTLE  
CIVIL SERVICE COMMISSION

Affidavit of Service  
By Mailing

STATE OF WASHINGTON }  
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 9th day of May, 2011, I sent via electronic mail, a copy of **Decision,**

**Findings of Fact, and Conclusions of Law** to:

**Celeste Duncan, Appellant**

And copies of same via electronic mail addressed to:

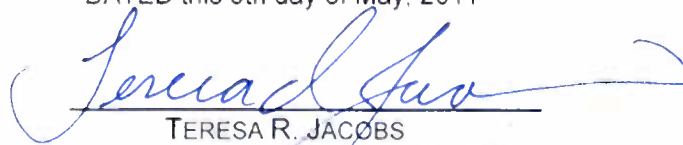
**Charlene MacMillan-Davis, Labor Relations Coordinator, SPU**  
**Darwyn B. Anderson, Acting Personnel Director**  
**Gary N. McLean, CSC Hearing Officer**

In the appeal of:

CELESTE DUNCAN V. SEATTLE PUBLIC UTILITIES

CSC APPEAL NO. 11-04-006

DATED this 9th day of May, 2011

  
TERESA R. JACOBS  
ADMINISTRATIVE STAFF ASSISTANT