

Retention of provisional employees in excess of time permitted. *Handabaka v. Division of Consumer Affairs*, 167 N.J.Super. 12, 400 A.2d 490 (App.Div.1979).

Decision to fill positions provisionally is not a mandatorily negotiable item. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Provisional employment for eight to ten years prior to examination being held. *Omrod v. N.J. Department of Civil Service*, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 384 A.2d 513.

Police officers dismissed after failure to take exam; validity. *De Larmi v. Borough of Fort Lee*, 132 N.J.Super. 501, 334 A.2d 349 (App.Div.1975) certification denied 68 N.J. 135, 343 A.2d 423.

Jurisdiction: PERC does not have authority to hear and decide unfair labor practice charges and to issue various types of affirmative remediate orders respecting them (citing former N.J.A.C. 4:6.8). *Burlington Co. Evergreen Park Mental Hospital v. Cooper*, 56 N.J. 579, 267 A.2d 533 (1970).

4A:4-1.6 Interim appointments

(a) For purposes of this rule, the term "phasedown" shall mean a phased reduction in size of a government operation, in anticipation of a closing of the operation.

(b) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence;
2. Is on indefinite suspension;
3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Merit System Board on appeal; or
4. Has accepted an interim appointment.

(c) An interim appointment may be made where the position/title will be abolished at a future date pursuant to a closing or phasedown of a government operation. Such an interim appointment may be made only following official notification to the Commissioner of Personnel by the applicable department head, in State service, or by the appointing authority, in local service, of the closing or phasedown.

(d) An interim appointment may also be made to a vacant position/title in a government operation not scheduled for a closing or phasedown where:

1. An employee of a government operation scheduled for a closing or phasedown has accepted a reassignment to that government operation;
2. Due to operational requirements, the employee is needed by the governmental operation scheduled for the closing or phasedown while it continues to operate;
3. The government operation not scheduled for a closing or phasedown needs to fill the vacant position/title to which the employee would have been reassigned; and
4. The notification requirements in (c) above are met.

(e) When an appointing authority does not make an appointment in the situations listed in (b) above, the appointing authority shall reserve a position/title for the absent employee as a vacant position/title.

(f) Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence, on indefinite suspension or awaiting final administrative action of the Merit System Board on the appeal of a disciplinary demotion or removal, or during the period leading up to the date on which the closing or phasedown of the government operation is scheduled to conclude.

1. At the end of the interim appointment, the appointee shall return to his or her permanent title.

(g) An interim appointee shall possess the minimum qualifications for the title.

(h) If a complete eligible list exists for the title, the interim appointment shall be made from that list. An interim appointee's name shall remain on the eligible list for consideration for permanent employment.

1. If the closing or phasedown of a government operation is rescinded after an interim appointment has been made from an eligible list, the interim appointee who was appointed from the eligible list shall receive a permanent appointment subject to the satisfactory completion of a working test period, regardless of whether the eligible list has already expired.

(i) An interim appointee shall continue to accrue seniority in his or her permanent title.

(j) The layoff rights of an interim appointee shall be determined from his or her permanent title. See N.J.A.C. 4A:8-2.

(k) The appointing authority shall advise interim appointees of their rights under an interim appointment. See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised text.

Amended by R.1996 d.174, effective April 1, 1996.

See: 27 N.J.R. 4760(a), 28 N.J.R. 1832(a).

4A:4-1.7 Temporary appointments

(a) The Commissioner may approve temporary appointments to positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Commissioner to a position established as a result of a short-term grant.

(b) A temporary appointee shall meet the minimum qualifications for the title.

(c) See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.

(d) Consecutive temporary appointments in excess of the periods set forth in (a) above are prohibited.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Revised (c) and added (d).

Case Notes

A person who does not possess the minimum qualifications may not receive a provisional appointment (citing former N.J.A.C. 4:1-14.2). Gloucester Cty. Wel. Bd. v. New Jersey Civil Service Comm'n, 93 N.J. 384, 461 A.2d 575 (App.Div.1983).

Effect of federal funding of local civil servants on question of temporary permanent appointments. In re Hudson Cty. Probation Dep't., 178 N.J.Super. 362, 429 A.2d 368 (App.Div.1981).

Entitlement of temporary employees to positions following board establishment of eligible list. Local 866 v. Board of Education, 149 N.J.Super. 147, 373 A.2d 435 (Chanc.Div.1977).

4A:4-1.8 Emergency appointments

The Commissioner may authorize an emergency appointment for a period not to exceed 30 days when the appointing authority certifies that the failure to make such appointment will result in harm to persons or property.

4A:4-1.9 Return of employees to their permanent titles

(a) An employee with permanent status in a career service title, who is returned during or at the end of the working test period in another title, or from an appointment under N.J.A.C. 4A:4-1.3, 1.4, 1.5, 1.6, 1.7 or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. In State service, an organizational unit shall mean an appointing authority. In local service, an organizational unit shall mean a department or separate agency within the same governmental jurisdiction. A school district shall be considered a separate jurisdiction.

(b) The appointing authority shall use the following procedures, to effect the return of the permanent employee:

1. Reassign the employee to a vacant position/title;
2. Separate a provisional employee with no permanent status and reassign the returning employee to the position/title; or
3. Return an employee serving provisionally in the permanent title of the returning employee to his or her permanent title and reassign the returning employee to the position/title.

(c) The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee.

1. The employee may accept appointment to other titles at the same or lower level, in the same or a different series for which the employee qualifies in the same or another organizational unit.

2. The status and compensation rights of the returning employee shall be determined in accordance with normal merit system rules and policies.

(d) When the appointing authority offers the employee options under (b) and (c) above, the employee may choose to accept either option.

(e) If the appointing authority offers only an option under (b) above, the employee must accept the option offered.

(f) Layoff procedures must be utilized when the appointing authority cannot effect the return of a permanent employee under (b) or (c) above. See N.J.A.C. 4A:4-4.8(d) on certification procedures.

Case Notes

Employee no longer eligible for promoted position reverts to former position (citing former N.J.A.C. 4:3-8.3). In the Matter of Williams, 198 N.J.Super. 75, 486 A.2d 858 (App.Div.1984).

Return to position of corrections sergeant at end of working test period was appropriate. Heaney v. Mahon Correctional Facility, 93 N.J.A.R.2d (CSV) 529.

Employee returned to her former position at end of working test period. Durmer v. Ocean County Board of Social Services, 93 N.J.A.R.2d (CSV) 242.

Return to former position at end of working test period was justified. Arroyo v. Department of Corrections, 93 N.J.A.R.2d (CSV) 3.

4A:4-1.10 Approval of appointments by Department of Personnel

(a) All initial and subsequent appointments, promotions, and related personnel actions are subject to the review and approval of the Department of Personnel.

1. The Commissioner may direct personnel action freezes in connection with layoffs or other emergent circumstances.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by the Department of Personnel whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a).
Amended by R.1994 d.619, effective December 19, 1994.
See: 26 N.J.R. 3510(a), 26 N.J.R. 5002(a).

4A:4-1.11 (Reserved)

New Rule, R.1990 d.48, effective January 16, 1990.
See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).

Repealed by R.1996 d.97, effective February 20, 1996.
See: 27 N.J.R. 4048(a), 28 N.J.R. 1201(a).
Section was "Vacancy Review Board: State service".

**SUBCHAPTER 2. COMPETITIVE
EXAMINATIONS**

4A:4-2.1 Announcements and applications

(a) Notice of open competitive examinations shall be announced in a monthly job listing or by other appropriate means as approved by the Commissioner to secure sufficient qualified candidates. Copies of notices for all open competitive examinations shall be available in each regional office of the Department of Personnel.

(b) In order to notify all employees of promotional opportunities, notices of promotional examinations and applications shall be provided to eligible employees by the Department of Personnel or as directed by the Department of Personnel through the appointing authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such posting.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;



Case Notes

Remand was required where record did not disclose basis for agency's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Process servers have no statutory right to tenure (citing former N.J.A.C. 4:1-8.14). *New Jersey District Court Assoc., Inc., v. New Jersey Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (App.Div. 1985) affirmed 208 N.J.Super. 527, 506 A.2d 742 (1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Absent contractual, statutory or implied right to continued employment, employment termination invokes no substantive due process protection of a property interest (citing former rule N.J.A.C. 4:1-8.14). *N.J. District Court Associates, Inc., v. N.J. Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (Law Div. 1985) affirmed 209 N.J.Super. 527, 506 A.2d 742 (App.Div. 1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Interest in liberty protected by due process clause; right to post-termination evidentiary hearing (citing former N.J.A.C. 4:1-8.14). *Campbell v. Atlantic Cty. Bd. of Freeholders*, 145 N.J.Super. 316, 367 A.2d 912 (Law Div. 1976) affirmed per curiam 158 N.J.Super. 14, 385 A.2d 311 (App.Div. 1978).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). *Valluzzi v. Bergen County*, 10 N.J.A.R. 89 (1988), adopted—*Merit System Bd., App.Div. A-3269-87, 3/3/88*.

Discretion of Bd. of Trustees to refund contributions to pension fund after employee was dismissed for delinquent performance of his duties. Refund granted (citing former N.J.A.C. 4:1-8.14). *Maddox v. Bd. of Trustees*, 2 N.J.A.R. 372 (1980).

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring and administration (see N.J.A.C. 4A:4-6.4);
2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and
3. Examination related matters other than (a)1 and (a)2 above (see N.J.A.C. 4A:4-6.6) including:
 - i. Disqualifications under N.J.A.C. 4A:4-6.1;
 - ii. List extension or revival; and
 - iii. Denial of veterans preference.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Commissioner, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examina-

tion results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)1: Made stylistic revisions.

Case Notes

Merit System Board bears burden of establishing job-validity of its psychological tests. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Appointing authority has discretion under "rule of three" statute to appoint any of top three candidates while statute mandating preference for residents in the event of tie scores were pertinent in placing three people on list (citing former N.J.A.C. 4:1-9.6; 4:2-9.1; 4:3-9.1). *Gallagher v. Irvington*, 190 N.J.Super. 394, 463 A.2d 969 (App.Div. 1983).

Claim of failure to promote due to anti-union animus. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div. 1978). Modified and affirmed 82 N.J. 1, 410 A.2d 1146 (1980).

Jurisdiction, Civil Service Commission and PERC. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div. 1978) modified 82 N.J. 1, 410 A.2d 1146.

4A:4-6.4 Review of examination items, scoring and administration

(a) Candidates for multiple choice examinations shall be permitted to review the scoring key for a period of five business days beginning on the second business day after the examination has been held.

1. Within the review period set forth in (a) above, candidates may file an appeal against the scoring key and/or examination items.
2. The appeal shall be in writing, specify the question(s) being challenged and must be received by the Department of Personnel by the end of the review period.
3. All questions under appeal shall be reviewed by the Department of Personnel and, when necessary, appropriate action taken to modify the examination scoring.
4. No appeal relating to the scoring key or a multiple choice examination shall be permitted after the review period.

(b) Candidates for tests other than multiple choice may review their examination papers and the scoring key and may file an appeal in writing of examination items and scoring 20 days after the Department of Personnel provides notification of examination results. Candidates for multiple choice examinations may review their examination papers and the scoring key during this 20 day period, but may file appeals during this period only with respect to the scoring of

their test papers. See (a) above for multiple choice scoring key and/or examination item appeals.

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing for a period of five business days beginning on the second business day after the examination has been held.

(d) Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Department of Personnel permits.

(e) In order to maintain the security of the examination process, the Commissioner may, on a particular examination, modify or eliminate the review of examination questions and answers.

(f) The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the Merit System Board.

(g) A party may appeal the first level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the first level, plus a copy of the decision below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

(h) The Board may bypass any other level of appeal for its direct review.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

Added "administration" to section title.
Added new (c) and relettered old (c)-(h) as (d)-(i) with no change in text.

Amended by R.1993 d.162, effective April 5, 1993.

See: 24 N.J.R. 4467(a), 25 N.J.R. 1511(b).

Revised (f); deleted existing (g); redesignated existing (h)-(i) to (g)-(h) and revised text.

Case Notes

Finding that police officer candidate was mentally unfit to perform police duties was based on substantial evidence. Matter of Vey, 272 N.J.Super. 199, 639 A.2d 724 (A.D.1993), certification granted 133 N.J. 445, 627 A.2d 1149, affirmed 135 N.J. 306, 639 A.2d 718.

Police officer candidate was mentally unfit to effectively perform police duties. Matter of Vey, 272 N.J.Super. 199, 639 A.2d 724 (A.D.1993), certification granted 133 N.J. 445, 627 A.2d 1149, affirmed 135 N.J. 306, 639 A.2d 718.

Challenge to value of Minnesota Multiphasic Personality Inventory (MMPI) test in determining mental fitness of applicant for police work. Matter of Vey, 135 N.J. 306, 639 A.2d 718 (1994).

It was not arbitrary, capricious or unreasonable to find applicant unfit for police work. Matter of Vey, 135 N.J. 306, 639 A.2d 718 (1994).

Police department not required to test all of its current police officers and compare those psychological test results. Matter of Vey, 135 N.J. 306, 639 A.2d 718 (1994).

Correction officer failed medical exam for the police academy and termination was warranted. Theodore v. Passaic County Sheriff's Department, 92 N.J.A.R.2d (CSV) 398.

Removal from eligible list; vision below minimum standard. Thomas v. State Department of Corrections, 92 N.J.A.R.2d (CSV) 218.

Position of correction officer; visual acuity standard; medically fit for the position. Garland v. Department of Corrections, 92 N.J.A.R.2d (CSV) 140.

Restoration to eligibility list; appointing authority rescinded charge of psychological unfitness. N.J.S.A. 4A:4-65. Ruth v. Department of Personnel and Borough of Keyport, 92 N.J.A.R.2d (CSV) 78.

Police captain restored to eligibility list for chief of police. Ruth v. Department of Personnel and Borough of Keyport, 92 N.J.A.R.2d (CSV) 78.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (f) below for report requirements.

3. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. All eligibles for the title, to whom an offer of employment is made, are subjected to such examinations;

2. Information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

i. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the ability of an applicant to perform essential job functions;

ii. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

iii. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

iv. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request; and

3. The results of such examinations are used only in accordance with the Americans with Disabilities Act.

(c) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. He or she has been disqualified for appointment;

2. He or she may file an appeal with the Merit System Board within 20 days of such notification;

3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and

4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(d) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Merit System Board, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request.

1. The appointing authority shall also furnish the appellant with all of the information supplied to the Merit System Board.

2. In those limited circumstances when the examining physician, psychologist or psychiatrist certifies that such disclosure would be injurious to the appellant's health, and provides a basis specific to the diagnosis of that appellant, the information shall not be provided to the appellant but shall be provided by the appointing authority to the appellant's attorney or doctor.

3. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

(e) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See (f) below for report requirements.

(f) The Merit System Board may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1. The professional's signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;

2. The length of the examination or interview;

3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;

4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and

5. All tests that have been administered (for example, EKG, EEK, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

(g) The Merit System Board shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations or other materials.

1. When submitted to the Review Panel or Examiners Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to a Panel.

2. If no appearance is requested, the appeal will be reviewed by the Panel upon the written record.

3. The Panel shall prepare a written report and recommendation for the Merit System Board.

i. The appellant and appointing authority shall be provided with copies of the report and recommendation.

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

Repeal and New Rule, R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

Amended by R.1990 d.346, effective July 16, 1990.

See: 22 N.J.R. 1300(a), 22 N.J.R. 2143(a).

Changes made to accurately reflect N.J.S.A. 45:14B-1 et seq. concerning the licensing of psychologists.

Amended by R.1993 d.46, effective January 19, 1993.

See: 24 N.J.R. 3596(a), 25 N.J.R. 292(a).

Redesignated existing (b)-(g) as (c)-(h); added new (b).

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a)2 and (e).

Law Review and Journal Commentaries

Public Employment—Police. Steven P. Bann, 136 N.J.L.J. No. 14, 70 (1994).

Case Notes

Remand was required where record did not disclose basis for agency's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. Matter of Vey, 124 N.J. 534, 591 A.2d 1333 (1991).

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. An appeal must be filed within 20 days of notice of the action, decision or situation being appealed.

2. The appeal shall be filed with Department of Personnel as indicated on the notice advising of disqualification.

3. The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the Merit System Board.

(b) A party may appeal the first level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the first level, plus a copy of the decision below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

(c) The Board may bypass any other level of appeal for its direct review.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a): added "and administration" and replaced "unfitness" with "disqualification" describing types of appeals.

Amended by R.1993 d.162, effective April 5, 1993.

See: 24 N.J.R. 4467(a), 25 N.J.R. 1511(b).

Revised (a); deleted existing (b); redesignated existing (c)-(d) to (b)-(c) with revisions in text.

Case Notes

Statements made in report of background check of police officer applicant were absolutely privileged. Pollinger v. Loigman, 256 N.J. Super. 257, 606 A.2d 1113 (A.D.1992).

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

4A:4-7.1 Transfers

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate jurisdiction.

(b) If the transferred employee is concurrently appointed to a title other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 et seq., 4A:4-7.6 and 4A:4-7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) A permanent transfer shall require the consent of both organizational units, the affected employee, and the approval of the Department of Personnel.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Commissioner.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Revised (a), (c) and (d).

4A:4-7.7 Appeals

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the Commissioner's approval, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;
2. The demotion was agreed to by both the employee and the appointing authority; and
3. The demotion was for a set period of time up to a maximum of one year.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Revised (b) and added (b)1; revised (c)1.
Amended by R.1994 d.74, effective February 7, 1994.
See: 25 N.J.R. 4823(b), 26 N.J.R. 795(a).

Case Notes

Position and salary reduced; bad faith. *Morello v. Township of Belleville*, 94 N.J.A.R.2d (CSV) 606.

Demotion of personnel for reasons of economy was warranted. *Mihlebach v. New Jersey Department of Human Services*, 92 N.J.A.R.2d (CSV) 443.

Rescission of voluntary demotion after the demotion had been effectuated. *Loatman v. Cumberland County*, 92 N.J.A.R.2d (CSV) 262.

4A:4-7.9 Resignation/new appointment

(a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.

1. Accumulated service for purposes of determining sick and vacation leave, and in State service, administrative leave, entitlements shall be retained.
2. See N.J.A.C. 4A:3-4.4(b) for salary placement in State service.

(b) The employee may request placement on the regular reemployment list for the previous title.

(c) The new appointing authority shall inform the employee of his or her effective resignation of permanent status prior to the employee's new appointment.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Added new (c).

4A:4-7.10 Regular reemployment

(a) A permanent employee who has resigned in good standing, retired or voluntarily demoted, may request consideration for reemployment by indicating availability to his or her appointing authority.

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the Department of Personnel shall place the employee's name on a reemployment list.

(c) Police and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement or voluntary demotion, unless the list is extended pursuant to N.J.A.C. 4A:3.3(a)1.

1. Requests for reemployment must be submitted within the duration of the applicable list.

(d) Seniority commences as of the date of regular reemployment.

Amended by R.1992 d.338, effective September 8, 1992.

See: 24 N.J.R. 2107(a), 24 N.J.R. 3091(b).

Deleted (b); redesignated existing (c) as (b) without changes.

Petition for Rulemaking.

See: 26 N.J.R. 2148(a).

Amended by R.1995 d. 418, effective August 7, 1995.

See: 27 N.J.R. 1839(a), 27 N.J.R. 2885(b).

Redesignated former (a) as (a) and (b), in (b) substituted the Department of Personnel for the employee as the party responsible for adding the employee's name to a reemployment list, added (c), and redesignated former (b) as (d).

Law Review and Journal Commentaries

Civil Service—Disability Retirement—Police Seniority. Judith Nal-
lin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

Aggregation of seniority complies with legislative mandate that disabled employees return to former position upon cessation of disability. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

Police officer who accepted lower position but sought former position after he overcame disability did not waive rights and was not barred by estoppel or laches. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed or combined with those of the State or of a separate political subdivision operating under Title 11A, New Jersey Statutes, the Department of Personnel upon request of both appointing authorities shall approve the transfer of some or all affected employees to the receiving unit.

(b) Any employee so transferred who holds permanent or probationary status in a title in the career service shall continue to hold such status in the receiving unit.

(c) Seniority calculations and leave entitlements for transferred permanent or probationary employees shall be calculated as if the entire period of service was in the receiving unit.

(d) If positions are abolished because they are made no longer necessary by the consolidation of functions, affected employees shall be accorded all layoff and special reemployment rights in N.J.A.C. 4A:8.

New Rule, R.1992 d.419, effective October 19, 1992.

See: 24 N.J.R. 2494(a), 24 N.J.R. 3718(a).

4A:4-7.12 Reinstatement following disability retirement

(a) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.

(b) The employee's reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

(c) Seniority for an employee who is reinstated following a period of disability retirement shall be the aggregate of permanent service in the employee's permanent title prior to retirement and following reinstatement. Seniority shall not be granted for the period of retirement.

New Rule, R.1992 d.338, effective September 8, 1992.

See: 24 N.J.R. 2107(a), 24 N.J.R. 3091(b).