

separation at the time of layoff shall not be placed on a special reemployment list. See N.J.A.C. 4A:8-1.6(f)1.

3. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with the same or lower class code, except that the employee shall retain rights to his or her permanent job title and job location at the time of layoff.

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all previously held lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles.

1. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special reemployment list. Employees who decline reemployment because the position is in a different shift from the position from which they were displaced, or because the position is full time when the position from which displaced was part-time (or vice versa) shall remain on the special reemployment list.

(f) The name of an employee shall be removed from all applicable special reemployment lists where the employee receives an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A within one year of the effective date of a layoff resulting in the employee's separation from service.

(g) In local service, the name of an employee laid off from the title of Police Assistant and placed on a special reemployment list shall be removed from the list if the employee is over the age of 35. See N.J.A.C. 4A:4-2.3(b)2i.

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (a), changed N.J.A.C. reference in the introductory paragraph; in (b), inserted an exception in 2; rewrote (c); and in (e), inserted "previously held" following "and all" in the first sentence of the introductory paragraph.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Added (f).

Amended by R.2003 d.304, effective August 4, 2003.

See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

In (a), amended the N.J.A.C. reference in the introductory paragraph; in (b)2, inserted "noncompetitive appointments," preceding "transfers"; rewrote (c).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Added (g).

Amended by R.2009 d.41, effective January 20, 2009.

See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (c)3, deleted "(State service) or lower level (local service)" following "lower class code".

Administrative correction.

See: 44 N.J.R. 2057(a).

#### Case Notes

Authority to establish lists of permanent civil service employees eligible for special reemployment; generally, special reemployment list has highest priority. *Matter of Chief Clerk*, 282 N.J.Super. 530, 660 A.2d 1217 (A.D.1995).

Validity of preference rights in re-promotion based on veterans status (citing former N.J.A.C. 4:1-16.3). *Scarillo v. Dep't of Civil Service*, 146 N.J.Super. 127, 369 A.2d 26 (App.Div.1977).

Veteran's preference in regard to reemployment. *Scarillo v. Department of Civil Service*, 146 N.J.Super. 127, 369 A.2d 26 (App.Div.1977).

Evidence of abuse of patients at developmental center by human services assistant was insufficient to warrant termination. *Gibbons v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 10.

#### 4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter, except for police and fire titles as set forth in (b) below, is the amount of continuous permanent service in the jurisdiction, regardless of title. An employee's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A shall be considered as continuous permanent service in the jurisdiction. Seniority shall be based on total calendar years, months and days in continuous permanent service regardless of work week, work year or part-time status.

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) For police and fire titles in State and local service, seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. A police officer's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, shall be considered as continuous permanent service in the jurisdiction unless the police officer waives all accumulated sick leave and seniority rights in effecting the transfer. Seniority shall be based on total calendar years, months and days in title regardless of work week, work year or part-time status.

1. A police title is any law enforcement rank or title where entry level employees are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course.

2. A fire title is any uniform fire department rank or title.

3. If two or more employees in a police or fire title have equal seniority, the tie shall be broken in the order of priority set forth in (h) below, except that the fifth tie-breaking factor shall give priority to the employee with greater continuous permanent service, regardless of title.

4. A county or municipal appointing authority may elect to provide, through adoption of an ordinance or resolution, as appropriate, that employees in police and fire titles may exercise previously held demotional rights, pursuant to N.J.A.C. 4A:8-2.2(f) against employees in any layoff unit in the jurisdiction. Such ordinance or resolution shall not be given effect during a layoff unless adopted at least 90 days prior to submission of the layoff plan (see N.J.A.C. 4A:8-1.4).

(c) Preferred status, which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred status.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred status. Records of preferred status shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred status, priority will be determined on the basis of the class code of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(d) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff;

4. In State service, employment in the Senior Executive Service, provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(e) Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence and periods of

layoff which began on or after March 1, 1987. In local service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after July 1, 1988.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff and reappointment shall be deducted from the employee's seniority.

(g) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(h) Tie-breakers based on service shall include service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, except for all firefighters, and except where a law enforcement officer, including a sheriff's officer and a county correction officer, waives all accumulated seniority rights in the intergovernmental transfer. If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system must have been approved by the Department of Personnel;

3. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes;

4. The employee with the greater seniority in the title before a break in service shall have priority;

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

11. Other factors as may be determined by the Commissioner.

Amended by R.1990 d.387, effective August 6, 1990.  
See: 22 N.J.R. 1300(b), 22 N.J.R. 2263(a).

In (c): added "family" to list of leaves with pay.  
Amended by R.1994 d.620, effective December 19, 1994.  
See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).  
Amended by R.1995 d.12, effective January 3, 1995.  
See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).  
Amended by R.1995 d.251, effective May 15, 1995.  
See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).  
Administrative correction.

See: 27 N.J.R. 3156(a).  
Petitions for Rulemaking: Layoffs, Seniority.  
See: 27 N.J.R. 4916(a).

Amended by R.1996 d.259, effective June 3, 1996.  
See: 28 N.J.R. 1334(a), 28 N.J.R. 2839(a).

In (d) added provision relating to local service.  
Amended by R.1996 d.260, effective June 3, 1996.  
See: 28 N.J.R. 1441(a), 28 N.J.R. 2841(a).

In (a) excepted police and fire titles, added (b) and recodified former (b)-(g) as (c)-(h).  
Amended by R.2000 d.12, effective January 3, 2000.  
See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (b)4, changed N.J.A.C. reference; rewrote (c); and added (i) and (j).  
Amended by R.2001 d.420, effective November 19, 2001.  
See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

In (a) and (b), added second sentences in the introductory paragraphs; in (h) rewrote the introductory paragraph.  
Amended by R.2003 d.304, effective August 4, 2003.  
See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Amended N.J.A.C. references throughout; rewrote (c)3; deleted (i) and (j).

Administrative correction.  
See: 38 N.J.R. 2686(a).

Amended by R.2007 d.358, effective November 19, 2007.  
See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In the introductory paragraph of (b), inserted the second sentence; in (b)4 and (h)3, updated the N.J.A.C. references; and rewrote the introductory paragraph of (h).

Amended by R.2009 d.41, effective January 20, 2009.  
See: 40 N.J.R. 4381(a), 41 N.J.R. 399(b).

In (c)1, updated the N.J.A.C. reference; and in (c)3, deleted "in State service, or the class level in local service," following "class code".

#### Case Notes

Statute which permitted layoff of permanent public employee superseded statute providing that an injured public employee receiving workers' compensation benefits was to continue on the payroll. *Novak v. Camden County Health Services Center Bd. of Managers*, 255 N.J.Super. 93, 604 A.2d 649 (A.D.1992).

Negotiability of seniority. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

#### 4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be subject to the following types of involuntary reassignments, except as permitted by the Commissioner for good cause:

1. Reassignment to a different shift, unless the reassignment is based on a seniority program;

2. In State service, if employed in the original municipality, reassignment to a different municipality; and

3. In State service, if not employed in the original municipality, reassignment to a different job location.

(b) Specific justification for such involuntary reassignments must be shown by the appointing authority.

(c) During the period described in (a) above, notice of the types of voluntary reassignments listed in (a) above shall be provided to affected negotiations representatives, and appointing authorities should consult with such representatives upon request. Appointing authorities shall conspicuously post notices of opportunities for voluntary reassignment for a period of 10 working days at all work locations.

Amended by R.1995 d.251, effective May 15, 1995.

See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Administrative correction.

See: 27 N.J.R. 3156(a).

#### 4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, 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 shall be subject to hearing and final administrative determination by the Merit System Board (see N.J.A.C. 4A:2-2.9 et seq.); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

## Case Notes

Standards of review to be applied by Commission in appeals de novo. *Henry v. Rahway State Prison*, 81 N.J. 571, 410 A.2d 686 (1980).

Police officer failed to establish under N.J.A.C. 4A:8-2.6(c) that the Town of Harrison acted in bad faith when it chose him as one of the employees being laid off. The authorized layoff was for economy and efficiency in order to reduce the shortfall in the Town's budget. Even if the officer proved that invidious motivation was partially responsible for him being one of the persons chosen in the layoff, and he did not, such motivation was insufficient to counter the Town's need to reduce a budget shortfall. In *Re Harrison Police Dep't*, OAL Dkt. No. CSV 05047-10, 2013 N.J. AGEN LEXIS 71, Initial Decision (April 5, 2013).

Sheriff's employees failed to demonstrate that their layoffs were for reasons other than economy or efficiency; the mere rescission of some of the layoffs did not demonstrate that the sheriff's office was financially secure. In *re Passaic County Civilian Employees 2008 Layoffs*, OAL Dkt. No. CSV 1151-09, 2011 N.J. CSC LEXIS 1098, Final Decision (September 7, 2011).

Two sheriff's employees failed to present credible or convincing evidence that they were specifically targeted for layoff for discriminatory or invidious reasons arising out of their union activities and the fact that one of their spouses had previously filed a lawsuit against the county. The county was experiencing a budgetary crisis and the use of machinery rendered at least one of the positions obsolete. In *re Passaic County Civilian Employees 2008 Layoffs*, OAL Dkt. No. CSV 1151-09, 2011 N.J. CSC LEXIS 1098, Final Decision (September 7, 2011).

Issues of position classification are not reviewable in the context of a layoff appeal; a layoff rights appeal is subject to a review of the written record and is treated as a separate appeal from the good faith layoff appeal. In *re Passaic County Civilian Employees 2008 Layoffs*, OAL Dkt. No. CSV 1151-09, 2011 N.J. CSC LEXIS 1098, Final Decision (September 7, 2011).

Former senior juvenile detention officers who were demoted in lieu of layoff failed to provide any evidence that the layoffs were retaliatory for the filing of an unfair practice charge; the record indicated that the appointing authority recognized the potential for a layoff as early as 2005 and that the demotions in lieu of layoff were in good faith and based on economy or efficiency. In *re Bremmer*, OAL Dkt. No. CSV 4790-07, 2009 N.J. AGEN LEXIS 909, Final Decision (February 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 54) adopted, which found, on conflicting evidence, that a plumbing official's layoff was for economic reasons and not in retaliation for the plumber's "whistle blowing" to the Department of Community Affairs concerning the employer's management practice of understaffing and usurping his authority. In *re Zaccaria*, OAL Dkt. No. CSV 4929-07, 2008 N.J. AGEN LEXIS 561, Final Decision (March 12, 2008).

Principal planner's appeal from the decision to lay him off was dismissed after he failed to prove that the decision was made in bad faith or based on race; the appointing authority's justification of economy for the layoff was amply supported by its prior actions of issuing hiring and spending freezes, terminating provisional employees, eliminating vacant

positions, and reducing capital expenditures (adopting 2007 N.J. AGEN LEXIS 201). In *re Brooks*, OAL Dkt. No. CSV 9670-03, 2007 N.J. AGEN LEXIS 1181, Final Decision (May 23, 2007).

Clerk failed to demonstrate that her layoff was in retaliation for maternity leave or a health insurance buy-out; the evidence showed that the layoff was the result of the appointing authority's cost-cutting measures and the clerk failed to set forth sufficient evidence that the layoff was instituted for a reason other than economic efficiency. In *re Torsiello*, OAL Dkt. No. CSV 3976-05, 2007 N.J. AGEN LEXIS 221, Initial Decision (April 24, 2007), adopted (Merit System Board June 6, 2007).

Despite evidence of the mayor's animus toward a recycling coordinator, the decision to close the municipal recycling bureau was not a bad-faith pretext for removing the coordinator from his position; even if ill will was a factor in the City's decision, the record nevertheless fully supported the conclusion that the City was primarily motivated by a desire to remove itself from the recycling business for reasons of economy and efficiency (rejecting 2006 N.J. AGEN LEXIS 359). In *re Mack*, OAL Dkt. No. CSV 562-05, 2006 N.J. AGEN LEXIS 1118, Final Decision (December 6, 2006), aff'd per curiam, No. A-2606-06T2, 2008 N.J. Super. Unpub. LEXIS 2302 (App.Div. March 20, 2008).

Where municipal housing authority had been taken over by HUD due to financial problems and questions involving reimbursement, layoffs of certain employees during a privatization effort were found not to have been in bad faith. In *re Blackston*, OAL Dkt. No. CSV 10161-05 (CSV 10515-98 and CSV 805-99 On Remand), 2006 N.J. AGEN LEXIS 406, Initial Decision (July 18, 2006), adopted (Merit System Board Aug. 23, 2006), aff'd, Nos. A-1162-06T2, A-4513-06T2, 2008 N.J. Super. Unpub. LEXIS 300 (App.Div. Aug. 12, 2008).

Department of Personnel approval of a layoff plan is not relevant to a determination of good faith of the layoff plan; the Department merely reviews the plan to make sure that it adheres to the procedural requirements needed for a layoff. In *re Blackston*, OAL Dkt. No. CSV 10515-98 and CSV 805-99 (Consolidated), 2005 N.J. AGEN LEXIS 1043, Merit System Board Decision (November 22, 2005).

Summary decision was properly granted in former water employees' appeal from their layoffs because there was no genuine issue of material fact that the layoffs were the result of economic hardship and the need for efficiency; the question was not whether the layoffs achieved the purpose of saving money, but whether the motive in adopting the layoffs was to accomplish economies or instead to remove a public employee without following merit system law and rules (adopting 2005 N.J. AGEN LEXIS 428). In *re Antoniello*, OAL Dkt. No. CSV 5695-03, 2005 N.J. AGEN LEXIS 1202, Final Decision (October 19, 2005), aff'd per curiam, No. A-1994-05T3, 2007 N.J. Super. Unpub. LEXIS 2931 (App.Div. June 14, 2007).

Building and grounds worker may not appeal alleged bad faith layoff when city did not lay him off. *Granger, et al. v. Department of Buildings and Grounds*, 96 N.J.A.R.2d (CSV) 90.

Determination as to whether layoffs for purposes of economy were made in good faith. *Tyler, et al. v. City of Paterson*, 2 N.J.A.R. 272 (1979). *DiGerolamo v. Borough of Roselle*, 1 N.J.A.R. 1 (1979).