

Removal of applicant's name from open competitive list was improper; inability to communicate effectively in English. In the Matter of Bangar, 94 N.J.A.R.2d (CSV) 500.

Disqualification; lack of job requirements. City of Trenton v. Porzilli, 94 N.J.A.R.2d (CSV) 172.

Inability to speak English warranted removal of name from eligible list. Patel v. Division of Youth and Family Services, 93 N.J.A.R.2d (CSV) 147.

Removal from eligibility list for position at college was justified by inability to communicate in English. Shah v. William Paterson College, 93 N.J.A.R.2d (CSV) 97.

#### 4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;
2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or
3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:
  - i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;
  - ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and
  - iii. See N.J.A.C. 4A:4-2.15(h) for tie scores.

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. A statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tied score;
5. In situations where an appropriate list is used, the title and functions of the appointee's employment; and
6. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is

necessary to institute layoff procedures, the Department may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8-1.1 et seq. for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

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)3iii.

Amended by R.1994 d.507, effective October 3, 1994.

See: 26 N.J.R. 2697(b), 26 N.J.R. 3941(a).

#### Law Review and Journal Commentaries

Civil Service. Judith Nallin, 133 N.J.L.J. No. 14, 65 (1993).

#### Case Notes

The Civil Service Act and its accompanying regulations did not require that preliminary notices of disciplinary action be signed by both police director and IAD Commander because the Act and its regulations did not require two signatures for the filing of a complaint. Grill v. City of Newark, 709 A.2d 333, 311 N.J.Super. 149 (N.J.Super.L. 1997).

Stating reasons for administrative actions limits arbitrary determinations, enhances judicial review of agency decisions, and discloses correctable deficiencies to aid in guiding future conduct. Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles, 262 N.J.Super. 598, 621 A.2d 549 (A.D. 1993).

Law Division had jurisdiction over declaratory judgment action seeking statement of reasons why employees were not selected for promotion under the Civil Service Act. Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Appointing administrative authority was not required by Civil Service Act or regulations to apprise unsuccessful qualified candidate of reasons for promoting lower-scoring eligible employee. Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles, 262 N.J.Super. 598, 621 A.2d 549 (A.D. 1993).

Minimal requirements for making a valid appointment: when appointment is final. Thomas v. McGrath, 145 N.J.Super. 288, 367 A.2d 898 (App.Div.1976), reversed per curiam 75 N.J. 372, 382 A.2d 1121 (1978).

Police captain fails to establish he was impermissibly bypassed for selection of police chief. Shaffery v. Middletown Township, 97 N.J.A.R.2d (CSV) 299.

Fire captains properly bypassed; exercise of discretion provided under the "rule of three" and not political discrimination. Bulger v. Town of Harrison, 93 N.J.A.R.2d (CSV) 509.

#### 4A:4-4.9 Date of appointment

(a) An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.

2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or

3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall be no later than the disposition due date.

Amended by R.1996 d.98, effective February 20, 1996.  
See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

In (a)3 substituted "be no later than" for "coincide with".

#### 4A:4-4.10 Certification of additional eligibles

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that the Department certify additional names.

### SUBCHAPTER 5. WORKING TEST PERIOD

#### 4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire and regular reemployment lists;
2. Appointments to a comparable or lower related title in lieu of layoff; or
3. Appointments to titles previously held on a permanent basis within current permanent continuous service.
4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

#### Case Notes

Employee who worked out of title during working test period and did not perform the duties of the position was not entitled to permanent status (citing former N.J.A.C. 4:1-13.1 and 13.2). *Cipriano v. Dep't of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

Actual completion of a working test period is a basic condition of permanent employment (citing former N.J.A.C. 4:1-6.4). *Cipriano v. Dep't of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

Working out of title during working test period. *Cipriano v. Department of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

CETA hired police officers. Att'y Gen. F. O. 1977-No. 25 (see footnote).

Dismissal of employee at end of working test period for unsatisfactory performance was warranted, despite employee's claims that decision to dismiss her was made in bad faith. *Schopf v. New Jersey Department of Labor*, 96 N.J.A.R.2d (CSV) 853.

Release of family service specialist at end of working test period was not improper when based in part on comments of co-employees. *Nwosu v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 436.

Working test period justified school security guard's removal for incompetency. *Hogan v. Vineland Board of Education*, 95 N.J.A.R.2d (CSV) 400.

Food service worker on approved medical leave was entitled to additional working test period. *Singletary v. Bergen Pines County Hospital*, 95 N.J.A.R.2d (CSV) 370.

Laborer granted new working test period because job requirement of commercial driver's license not documented in progress report or final report. *Niosi v. Department of Public Works*, 95 N.J.A.R.2d (CSV) 238.

Release of drug abuse counselor at end of working test period; lack of veracity, good communication skills, punctuality and reliability. *Memmot v. Department of Health, Twp. of Freehold*, 95 N.J.A.R.2d (CSV) 118.

Correction officer properly released at end of working test period. *Muhammad v. Department of Corrections*, 94 N.J.A.R.2d (CSV) 609.

Probationary employee failed to show that he was released in bad faith. *Lindsley v. Department of Buildings and Grounds, Monmouth County*, 94 N.J.A.R.2d (CSV) 604.

Deficiency in both quality and quantity of work; release at end of working test period. *Brown v. Department of Labor*, 94 N.J.A.R.2d (CSV) 362.

Demotion justified; performance did not substantially improve during three-month test period. *Smith v. Jersey City Housing Authority*, 94 N.J.A.R.2d (CSV) 381.

Termination of hospital attendant at end of working test period was justified. *Vaidier v. Mercer County Geriatric Center*, 94 N.J.A.R.2d (CSV) 94.

Release of probationary police officer; working test period. *Burchardt v. Union Township Police Department*, 93 N.J.A.R.2d (CSV) 618.

Release of assistant engineer at end of his working test period justified. *De Botton v. Borough of Fair Lawn*, 93 N.J.A.R.2d (CSV) 579.

Release at end of work test period was not justified. *Hall v. Newark Housing Authority*, 93 N.J.A.R.2d (CSV) 432.

Removal at end of working test period for unsatisfactory services was not in bad faith. *Amin v. Department of Transportation*, 93 N.J.A.R.2d (CSV) 406.

Release at end of working test period was not in bad faith. *Capone v. State-Operated School District of Jersey City*, 93 N.J.A.R.2d (CSV) 395.

No showing of bad faith; termination at end of employee's working test. *Capone v. State-Operated School Dist. of City of Jersey City, Hudson County*, 93 N.J.A.R.2d (CSV) 395.

Removal at end of working test period was not action taken in bad faith. *Aller v. Department of Labor*, 93 N.J.A.R.2d (CSV) 390.

Decision to remove at the conclusion of working test period was not formulated in bad faith. *Aller v. Department of Labor*, 93 N.J.A.R.2d (CSV) 390.

Termination of officer was in bad faith. *Bowers v. Irvington Township Police Department*, 93 N.J.A.R.2d (CSV) 55.

Good faith; termination at the end of a working test period. *Davis v. Department of Transportation*, 92 N.J.A.R.2d (CSV) 769.

Suspension and release at end of working test period. *Evelina v. William Paterson College of New Jersey*, 92 N.J.A.R.2d (CSV) 738.

Release from position at the end of working test period was justified. *Meyrick v. Hunterdon County Sheriff's Office*, 92 N.J.A.R.2d (CSV) 692.

No error in release at the end of working test period. *Edington v. Treasury Department*, 92 N.J.A.R.2d (CSV) 673.

Release after working test period; not bad faith. *Phillips v. New Jersey Department of Human Services*, 92 N.J.A.R.2d (CSV) 602.

Department of Transportation improperly used a working test period as a basis for terminating inspector's employment. *Andres v. N.J. Department of Transportation*, 92 N.J.A.R.2d (CSV) 481.

Employee released in good faith at end of working test period. *Johnson v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 363.

Bad faith termination of recruit because of unsatisfactory working test period. *Smith v. Northern State Prison*, 92 N.J.A.R.2d (CSV) 342.

Release at end of extended working test period; not justified. *Vegotsky v. Office of Administrative Law*, 92 N.J.A.R.2d (CSV) 162.

Release at end of working test period; failure to demonstrate bad faith. *Downs v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 94.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-13.7). *Davis v. Newark Public Library*, 9 N.J.A.R. 84 (1987).

#### 4A:4-5.2 Duration

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

(b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:

1. In local service, a period of three months of active service, which may not be extended.

2. In State service, a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request should be submitted to the Department of Personnel at least five working days before the end of the four month period. The appointing authority shall notify the employee of the extension in writing on or before the last day of the four month period.

i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Commissioner for an additional 44 work days. For purposes of this subsection, any part of a day shall constitute a work day.

ii. An employee serving in an intermittent title who is furloughed prior to completing the working test period, shall resume the working test period upon return from furlough.