

(h) Ties in final earned ratings shall not be broken.

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

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

(a)1 clarified; added new (d).

Amended by R.1989 d.570, effective November 6, 1989.

See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added (c)1.

Amended by R.1993 d.45, effective January 19, 1993.

See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Revised (c); redesignated existing (d) as (e); added new (d).

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

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

Deleted (a)2; revised (d); added new (e) and (f); redesignated existing (e) to (g); added new (h).

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Case Notes

Validity—excluding performance evaluations (EPEIS) from the scoring of promotional examinations when evaluating supervisors and their subordinates are candidates for same position is proper (citing former N.J.A.C. 4:1-9.5). *Honachefsky v. N.J. Civil Service Comm'n*, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

Evaluation of education and experience in excess of minimum requirements not violative of due process (citing former N.J.A.C. 4:1-9.14). *Brown v. State of New Jersey*, 115 N.J.Super. 348, 279 A.2d 872 (App.Div.1971) certification denied 59 N.J. 273, 281 A.2d 535.

4A:4-2.16 Retention and inspection of examination records

(a) The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;
2. All applications;
3. The examination papers and scoring keys;
4. A description of the examination, including the date held, rating system and minimum score required, if any;
5. The list of eligibles; and
6. Any other pertinent information.

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

Amended by R.1992 d.41, effective January 21, 1992.

See: 23 N.J.R. 2906(b), 24 N.J.R. 229(b).

Revised (a)3 and 4.

4A:4-2.17 Application processing fees

(a) A \$5.00 processing fee shall be charged for each open competitive and promotional examination application.

(b) The fee shall be paid by check or money order, made payable to NJDOP, which shall be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Department of Personnel, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, Aid to Families with Dependent Children, or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance—a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.
2. Aid to Families with Dependent Children—a copy of the applicant's identification card which shows the case number.
3. Supplemental Security Income—a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").
2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Department of Personnel for fees refunded to applicants.

New Rule, R.1993 d.270, effective June 7, 1993.

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

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.1 Types of eligible lists

(a) The Commissioner may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures.
2. Promotional, which shall include permanent employees who meet qualification requirements.
3. Regular reemployment, which shall include former permanent employees who resigned in good standing, retired, or were voluntarily demoted, who timely request

reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;

4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and

5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.

2. Within each sub-list as provided in (a)1 above, the order of names shall be:

i. Eligibles entitled to disabled veterans preference in order of their scores;

ii. Eligibles entitled to veterans preference in order of their scores; and

iii. Non-veteran eligibles in order of their scores.

3. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).

4. See N.J.A.C. 4A:5-21 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. Within each class code or class level, eligibles shall be ranked in order of seniority. See N.J.A.C. 4A:8-2.4.

EXAMPLE: Emily is a State employee, and was displaced in the layoff process from her permanent title of Administrative Analyst 1, which has a class code of 29. She has a total of 10 years of seniority. George is also a State employee, and was displaced in the layoff process from his permanent title of Administrative Analyst 2, which has a class code of 26. He has a total of 15 years of seniority. The names of both Emily and George are placed on the special reemployment list for the title of Administrative Analyst 3, since it is a lower, related title. Emily's name will be listed first, because the class code of the title from which she was displaced is higher than the class code of the title from which George was displaced.

EXAMPLE: Robert, a municipal employee, was displaced in the layoff process from his permanent title of Supervising Maintenance Repairer, the highest class level title in his title series. He has 15 years of service with the municipality. Angela, who was permanent in the title of Assistant Supervising Maintenance Repairer when she was displaced in the layoff process, has 16 and one-half years of service with the municipality. The names of both Robert and Angela will be placed at the head of special reemployment lists for Senior Maintenance Repairer and Maintenance Repairer. On both of these lists, Robert's name will appear first and Angela's second, since Robert was displaced from a higher class level title.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Department of Personnel.

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.1997 d.71, effective February 18, 1997.

See: 28 N.J.R. 4979(a), 29 N.J.R. 549(b).

Substantially amended (c).

Case Notes

Credit towards service in other governmental entity. *Kloss v. Parsippany-Troy Hills*, 170 N.J.Super. 153, 406 A.2d 170 (App.Div.1979).

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

4A:4-3.3 Duration and cancellation of eligible lists

(a) Open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Commissioner determines that, under the circumstances, a shorter time period is appropriate.

1. An eligible list may, for good cause, be extended by the Commissioner prior to its expiration date, except that no list shall have a duration of more than four years.

2. The name of any employee shall not remain on a regular reemployment list for more than three years from the date of resignation, except as provided in (a)1 above.

3. Special reemployment, police reemployment and fire reemployment lists shall have unlimited durations.

(b) The Commissioner may, in cases of fraud, illegality, test invalidity, error by the Department or other good cause, cancel an eligible list prior to its expiration date by issuing a public notice and entering such notice in the minutes of the Merit System Board.

(c) See N.J.A.C. 4A:4-4.9 for appointments after the expiration date of the eligible list.

Amended by R.1996 d.98, effective February 20, 1996.

See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

Added (c).

Case Notes

Employment applicants who were tested and appointed to hiring eligibility list for position of municipal fire fighter did not have protected property interest in their ranking. Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J., C.A.3 (N.J.)1991, 940 F.2d 792.

Power of Commission to extend local eligibility list. Malone v. Fender, 158 N.J.Super. 190, 385 A.2d 929 (App.Div.1978) supplemented 160 N.J.Super. 221, 389 A.2d 504, reversed 80 N.J. 129, 402 A.2d 240 (1979).

Statutory 3 year limit upheld (local service). Imbriacco v. State Civil Service Commission, 150 N.J.Super. 105, 374 A.2d 1251 (App.Div. 1977).

Life of promotion list could not be extended beyond three-year limit (citing former N.J.A.C. 4:1-11.6). In the Matter of Newark Police Sergeant and Lieutenant List for Dep't of Civil Service, 149 N.J.Super. 121, 373 A.2d 422 (App.Div.1977).

4A:4-3.4 Revival of eligible lists

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;

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

Department of personnel did not sufficiently disclose basis for its grading decision on police sergeant's civil service examination to satisfy due process or to provide for meaningful appellate review. *Brady v. Department of Personnel*, 289 N.J.Super. 557, 674 A.2d 616 (A.D. 1996).

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.

2. The consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods or for any other documented purpose which is in the best interest of the public service. All temporary transfers must be approved by the Commissioner of the Department of Personnel.

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The Commissioner may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

i. The organizational unit to which the transfer is being made;

ii. The effective date of the transfer; and

iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Commissioner of the Department of Personnel finds that a more immediate transfer is required to provide a needed service.

Public Notice: Petition for amendment.

See: 27 N.J.R. 2805(a).

Amended by R.1996 d.426, effective September 16, 1996.

See: 28 N.J.R. 2106(b), 28 N.J.R. 4223(a).

Added provisions relating to emergency transfers.

Case Notes

Status of attorney as private plan hearing officer throughout the period in question rendered assignment of new supervisor not "transfer." *Morley v. State*, Dept. of Labor, 276 N.J.Super. 223, 647 A.2d 1312 (A.D.1994).

Scope of negotiation: transfer and reassignment provisions. In re *IFPTE Local 195 v. State*, 88 N.J. 393, 443 A.2d 187 (1982).

Improper transfer. *State v. Richford*, 161 N.J.Super. 165, 391 A.2d 531 (App.Div.1978).

Transfer requires change from one position to another of the same class—petitioner's change in position was not a transfer even though position was substantially similar (citing former N.J.A.C. 4:1-15.1 and 15.4). *State Administrative Office of the Courts v. Richford*, 161 N.J.Super. 165, 391 A.2d 531 (App.Div.1978).

Intraclass transfers. In re *Appeal of Lembo*, 151 N.J.Super. 242, 376 A.2d 971 (App.Div.1977).

Rights of employee voluntarily transferred (statutory). *Widmer v. Township of Mahwah*, 151 N.J.Super. 79, 376 A.2d 567 (App.Div.1977).

Approval from Civil Service Comm'n required prior to county board of freeholders transferring employees from classified to unclassified positions (citing former N.J.A.C. 4:1-5.4). *Bergen Cty. v. New Jersey Dep't of Civil Service*, 115 N.J.Super. 90, 278 A.2d 232 (App.Div.1971).

Transfer from classified to unclassified positions. *Bergen County v. Dept. of Civil Service of N.J.*, 115 N.J.Super. 90, 278 A.2d 232 (App.Div.1971).

4A:4-7.2 Reassignments

A reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. See N.J.A.C. 4A:4-7.7 for appeals.

Case Notes

Entire controversy doctrine should not have precluded supplementary arbitration as to salary under collective negotiation agreement of police investigators with less than seven years service. *Jersey City Police Officers Benev. Ass'n v. City of Jersey City*, 257 N.J.Super. 6, 607 A.2d 1314 (A.D.1992).

Employee who was demoted and reassigned failed to establish bad faith. *Crooms v. Newark School District*, 94 N.J.A.R.2d (CSV) 73.

Pharmaceutical consultant established that appointing authority acted contrary to administrative rules regarding reassignment. *Frantz v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 372.

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocations assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to a relocation of an office or unit, or a closing or phasedown in anticipation of closing of a State operation.

1. In order to be eligible to participate in the program, an employee's new job site must be at least 25 miles from the prior job site.

2. Relocation assistance will be requested, paid and verified by the receiving appointing authority.

(b) Such assistance may consist of all or part of the following:

1. A commutation allowance applied to the round trip mileage between an employee's domicile and new job site, reduced by the normal commutation mileage between the domicile and the previous job site.

i. The allowance shall be equal to the standard State Mileage Allowance for operating a personal motor vehicle, and shall be limited to a period of six months from the effective date of the transfer.

ii. An employee who is offered fully paid car, van pooling or mass transit options shall not be eligible for a commutation allowance.

2. A one-time moving expense allowance which is to be set by the Commissioner not to exceed \$1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the job site.

ii. The move must be made within one year of the effective date of the transfer.

3. The relocation allowance which is to be set by the Commissioner not to exceed \$1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including but not limited to broker's fees and closing costs.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the new job site.

ii. The move must be made within one year of the effective date of the transfer.

(c) Relocation assistance shall be limited at the employee's option to commutation allowance under (b)1 above or the moving expense allowance and the relocation allowance under (b)2 and 3 above.

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): deleted "permanent", which had defined employees.
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).

4A:4-7.4 Retention of rights

(a) An employee who is temporarily transferred shall retain promotional rights in the promotional unit scope from which he or she has transferred.

(b) An employee who is either transferred or reassigned shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. In State service, an employee's rate of compensation, anniversary date and administrative leave entitlements shall be retained.

(c) An employee who is permanently transferred due to a combining of functions or operations of two or more organizational units shall retain promotional rights in the prior promotional unit scope only for promotional examinations he or she has filed for or taken.

(d) An employee who is reassigned from one promotional unit scope to another shall retain no promotional rights in the former unit.

Case Notes

Temporary transfers of classified personnel are subject to regulations promulgated by the Dep't of Civil Service (citing former N.J.A.C. 4:1-15.5). *Zamboni v. Stamler*, 199 N.J.Super. 378, 489 A.2d 1169 (App.Div.1985).

4A:4-7.5 Transfer during a working test period

(a) An employee who is serving a working test period may only be transferred due to a transfer or combining of functions or operations, or the exercise of lateral displacement rights in the course of layoff procedures.

(b) An employee who is permanently transferred during the working test period due to a combining of functions or operations or the exercise of lateral displacement rights shall be permitted to complete working test period in the new organizational unit.

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.

4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.