

Layoffs of pharmacists were made in good faith. *Gordon v. Department of Military and Veterans' Affairs*, 95 N.J.A.R.2d (CSV) 6.

Layoffs of the pharmacists pursuant to decision of departments to use contractors for pharmaceutical substances rather than in-house pharmacists were justified for economic reasons. *Gordon v. Department of Military and Veterans Affairs*, 95 N.J.A.R.2d (CSV) 6.

Layoff of employee was proper. *Adewusi v. Atlantic County Department of Administration*, 95 N.J.A.R.2d (CSV) 5.

Layoff of landscape artist from county land office for reasons of efficiency and economy was not unjustified. *Adewusi v. Atlantic County*, 95 N.J.A.R.2d (CSV) 3.

Bad faith in eliminating jobs; proof. *Privitera v. Treasury Department*, 94 N.J.A.R.2d (CSV) 693.

Proof that layoff was instituted for reason other than economy, efficiency or other related reason. *Meybohm v. Treasury Department*, 94 N.J.A.R.2d (CSV) 665.

No bad faith was established; jobs abolished. In the Matter of the Essex County Layoffs, 94 N.J.A.R.2d (CSV) 601.

Township acted for reasons of efficiency and economy when it laid off employees. *Aiello v. Township of Brick*, 93 N.J.A.R.2d (CSV) 719.

Layoff of long-time employee was not in bad faith. *Acchitelli v. Department of Environmental Protection and Energy*, 93 N.J.A.R.2d (CSV) 716.

Employees failed to prove that township acted in bad faith in laying them off. *Winslow Township Police Department Communications Operators v. Winslow Township*, 93 N.J.A.R.2d (CSV) 713.

County department acted for reasons of economy and efficiency in layoff. *LaMorte v. Ocean County Department of Consumer Protection*, 93 N.J.A.R.2d (CSV) 669.

Good faith elimination of position. *Vida v. Jersey City State College*, 93 N.J.A.R.2d (CSV) 594.

Elimination of former job title; not bad faith. *Barcheski v. Perth Amboy Department of Public Works*, 93 N.J.A.R.2d (CSV) 565.

City acted in good faith. In the Matter of Atlantic City Layoffs, 93 N.J.A.R.2d (CSV) 533.

Demotion in lieu of layoff; good faith. *Murphy v. Lacey Township Police Department*, 93 N.J.A.R.2d (CSV) 487.

Layoff was for economic reasons. *Wright v. Department of Human Services*, 93 N.J.A.R.2d (CSV) 374.

Department-wide temporary layoffs done in good faith. *Department of Personnel Employees v. Department of Personnel*, 93 N.J.A.R.2d (CSV) 328.

Excessive absenteeism and lateness warranted removal. *Thomas v. Bergen Pines County Hospital*, 93 N.J.A.R.2d (CSV) 316.

City utility department eliminated position in good faith. *Rudolph v. Egg Harbor City Utility Department*, 93 N.J.A.R.2d (CSV) 313.

Good faith lay off. *Dobiles v. Union County*, 93 N.J.A.R.2d (CSV) 274.

Elimination of code enforcement officer position was in bad faith. *Sholty v. Bloomfield Township Department of Community Development and Inspections*, 93 N.J.A.R.2d (CSV) 221.

Layoff of borough engineering aid was in "good faith". *Wudecki v. Fair Lawn Department of Engineering*, 93 N.J.A.R.2d (CSV) 164.

Division of Motor Vehicles acted in "good faith". *Field Monitors v. Division of Motor Vehicles*, 93 N.J.A.R.2d (CSV) 103.

Layoff was result of compliance with environmental protection laws; laid off workers lacked necessary skills. *Towns v. Carteret Borough Sewage Disposal Plant*, 93 N.J.A.R.2d (CSV) 99.

Layoff of city employee was in good faith. *Chadwick v. Township of Lakewood*, 93 N.J.A.R.2d (CSV) 61.

Layoff was for reasons of economy. *Cope v. Township of Parsippany-Troy Hills*, 93 N.J.A.R.2d (CSV) 6.

Layoff; good-faith necessity to achieve economy. In the Matter of Bergen County Layoffs, 92 N.J.A.R.2d (CSV) 761.

Layoff was in good faith. *Jones v. New Jersey Board of Regulatory Commissioners*, 92 N.J.A.R.2d (CSV) 743.

Layoff of employees done in good faith. *Boker v. City of Long Branch*, 92 N.J.A.R.2d (CSV) 661.

Layoff was for political reason. *Johnston v. Camden County*, 92 N.J.A.R.2d (CSV) 617.

Layoff of director of occupational therapy was in good faith for reasons of economy. *Gaines et al. v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 516.

Layoff of administrative analyst was in good faith for reasons of economy. *Exter v. Dept. of Commerce & Economic Development*, 92 N.J.A.R.2d (CSV) 514.

Department of Human Services employee failed to establish that Department's decision to eliminate position was taken in bad faith. *Frizino v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 428.

Laying off of parking enforcement officer was based in good faith. *Moore v. Township of Middletown*, 92 N.J.A.R.2d (CSV) 420.

School employee's layoff was for reasons of economy, efficiency, or other related reasons. *Sparany v. Brick Township School District*, 92 N.J.A.R.2d (CSV) 396.

Layoff of former assistant violations clerk of borough's department of revenue and finance was not taken in good faith for reason of economy, efficiency. *Glab v. Borough of Belmar*, 92 N.J.A.R.2d (CSV) 377.

City acted in good faith when data processing manager was laid off. *Baldwin v. Department of Financial Management, Ocean City*, 92 N.J.A.R.2d (CSV) 367.

Layoff; good faith. *Dimaria v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 238.

"Good faith" layoff. *Davis v. Department of Central Services, Camden County*, 92 N.J.A.R.2d (CSV) 190.

Layoff; purposes of economy and efficiency. *Wooten v. Hillside Police Dept.*, 92 N.J.A.R.2d (CSV) 176.

There was no bad faith on the part of the appointing authority with respect to layoff rights. *Loughrey v. McCorkle Training School*, 92 N.J.A.R.2d (CSV) 13.

Layoff was in good faith. N.J.S.A. 11A:8-1, 11A:8-4. *Freeman v. City of East Orange*, 91 N.J.A.R.2d (CSV) 7.

Municipal layoff of permanent employees improper; proper procedures not followed; burden of proof lies with employee (citing former N.J.A.C. 4:1-16.3 and 16.6). *Clark v. City of Paterson*, 6 N.J.A.R. 25 (1980).

Layoff in bad faith; employees may be laid off for purposes of economy; however, CETA employees may not replace permanent employees (citing former N.J.A.C. 4:1-16.1); emergency, temporary, provisional and probationary employees must be laid off prior to permanent employees (citing former N.J.A.C. 4:1-16.2); lay off for economic purposes not to be in bad faith (citing former N.J.A.C. 4:1-16.3). *Tyler et al. v. City of Paterson*, 2 N.J.A.R. 272 (1979).

#### 4A:8-1.1A (Reserved)

Emergency New Rule, R.2009 d.133, effective March 25, 2009 (to expire May 24, 2009).

See: 41 N.J.R. 1535(a).

Adopted concurrent new rule, R.2009 d.206, effective May 24, 2009, with changes effective June 15, 2009.

See: 41 N.J.R. 1535(a), 41 N.J.R. 2459(a).

In (b), substituted “, safety and welfare,” for “and safety” and “protection, law enforcement, fire safety” for “welfare, law enforcement”; and in (e), substituted “Leave an employee takes under the State Family Leave Act (see N.J.S.A. 34:11B-1 et seq.) or the Federal Family and Medical Leave Act (see 42 U.S.C. §§12101 et seq.)” for “A Federal Family and Medical Leave Act leave or other leave for medical or family reasons”.

Repealed by R.2009 d.382, effective December 21, 2009.

See: 41 N.J.R. 3139(a), 41 N.J.R. 4701(a).

Section was “Temporary layoffs”.

#### 4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the Department of Personnel;
2. Granting voluntary furloughs to employees (see N.J.A.C. 4A:6-1.23);
3. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;
4. Providing employees with optional temporary demotional title changes; and
5. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employees’ right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

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

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

Petition for Rulemaking.

See: 41 N.J.R. 3850(b).

#### Case Notes

Demotions of fire department personnel due to reasons of economy affirmed. *Layoffs, City of East Orange Fire Department*, 97 N.J.A.R.2d (CSV) 666.

Termination of security officer due to reasons of economy and efficiency affirmed. *Alexander v. Town of Boonton Housing Authority*, 97 N.J.A.R.2d (CSV) 579.

Reduction in hours of county’s Cultural and Heritage Commission employees was done in good faith for reasons of economy and efficiency. *Bogutz, et al. v. Camden County*, 96 N.J.A.R.2d (CSV) 574.

Labor relations specialist failed to prove that demotion in lieu of layoff was motivated by bad faith. *Crooms v. Newark School District*, 94 N.J.A.R.2d (CSV) 73.

Salary reductions; good faith. *Moynihan v. Borough of Belmar*, 92 N.J.A.R.2d (CSV) 172.

#### 4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;
2. Separating non-permanent employees;
3. Returning provisional employees to their permanent titles;
4. Reassigning employees; and
5. Assisting potentially affected employees in securing transfers or other employment.

(b) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by first placing employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

(c) Appointing authorities shall consult with affected negotiations representatives prior to initiating measures under this section.

(d) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

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

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

Rewrote (d).

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

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

Rewrote (b) through (d).

Petition for Rulemaking.

See: 41 N.J.R. 3850(b).

#### Case Notes

There was no bad faith in displacement of employee. *Snyder v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 709.

#### 4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;
2. The projected effective date of layoff;
3. Sample copies of the layoff notice and the projected date for issuance;
4. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;
5. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;
6. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;
7. A summary of consultations with affected negotiations representatives; and
8. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received a rating below Commendable or equivalent in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a) 5 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;

2. Providing needed assistance to the appointing authority;
3. Directing implementation of appropriate alternative or pre-layoff measures; or
4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) Upon approval of the layoff plan, the Department of Personnel shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

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), deleted a former 4, and recodified former 5 through 9 as 4 through 8; in (b), substituted "below Commendable" for "of Marginally Below Standards or Significantly Below Standards" following "rating"; and in (c), made an internal reference change.

Petition for Rulemaking.

See: 41 N.J.R. 3850(b).

#### Case Notes

Municipal ordinance allocating to mayor authority to lay off subordinates of municipal clerk did not violate doctrine of separation of powers. *City Council, City of Orange Tp. v. Brown*, 249 N.J.Super. 185, 592 A.2d 260 (A.D.1991).

#### 4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. An autonomous agency is one which is in, but not under the supervision of, a principal department.

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.
2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.
3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.
4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

- i. The need for a unit larger than a department;
- ii. The functional and organizational structure of the local jurisdiction;
- iii. The number of employees, funding source and job titles in the proposed unit;
- iv. The effect upon employee layoff rights; and
- v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. Each job location shall consist of a county.
2. The Commissioner of Personnel shall assign a job location to every facility and office within a department or autonomous agency.
3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-

2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

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).

Rewrote (a).  
Amended by R.2003 d.304, effective August 4, 2003.  
See: 35 N.J.R. 345(a), 35 N.J.R. 3551(b).

Rewrote (a).  
Petition for Rulemaking.  
See: 41 N.J.R. 4833(b).

**Case Notes**

Commissioner of Personnel's failure to consider factors other than the effect on those adversely impacted at the Board of Public Utilities by the potential expansion of the Department of Environmental Protection layoff unit to include the Board of Public Utilities required remand for reconsideration by the Commissioner of her decision denying the Department of Environmental Protection rate analysts' petition to

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).

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).