

3. In State service, in the case of veterans (see N.J.A.C. 4A:5-1), on the basis of greater permanent, continuous service or greater merit points, whichever would provide the greater advantage to the veteran as compared to a non-veteran;

4. In State service, in the case of disabled veterans (see N.J.A.C. 4A:5-1), on the basis of greater permanent, continuous service or greater merit points, whichever would provide the greater advantage to the disabled veteran as compared to a non-veteran.

5. Notwithstanding (g)1 through 4 above, when a provisional or probationary employee is serving in the previously held title, that employee shall be subject to displacement, regardless of the seniority or merit points of that employee.

6. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

(h) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.

(i) In State service, when employees are granted demotional title rights, the employees shall exercise these rights as follows:

1. Disabled veterans (see N.J.A.C. 4A:5-1) shall be entitled to exercise these rights without regard to whether the disabled veteran has greater seniority or merit points than the employee being displaced.

2. Veterans (see N.J.A.C. 4A:5-1) shall be entitled to exercise these rights without regard to whether the veteran has greater seniority or merit points than the employee being displaced; and

3. Non-veterans shall be entitled to exercise these rights on the basis of greater merit points than the employees against whom they are exercising their displacement rights, except that if the employee being displaced is a veteran, the non-veteran must have both greater seniority and greater merit points.

Amended by R.1990 d.555, effective November 19, 1990.

See: 22 N.J.R. 2629(b), 22 N.J.R. 3482(c).

Reference to "State service" deleted; rule applies to both local and State service.

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

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

Administrative change.

See: 27 N.J.R. 2384(b).

Administrative correction.

See: 27 N.J.R. 3156(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 (c)4 substituted "seniority" for "probationary time" and in (d) substituted "rights to their probationary titles" for "lateral title rights".

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

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

Rewrote the section.

#### Case Notes

Layoff of township employees for reasons of economy was upheld where no bad faith was shown. *Taylor v. Township of Irvington*, 96 N.J.A.R.2d (CSV) 441.

State agency's demotion of contract administrator taken in good faith when part of state-wide reduction in force and contract administrator failed to demonstrate bad faith. *Foster v. New Jersey Department of Environmental Protection and Energy*, 96 N.J.A.R.2d (CSV) 80.

#### 4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(g)). These rights are subject to the following limitations:

1. In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.

2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take

priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over transfers except appointments pursuant to N.J.A.C. 4A:8-1.6(f)1, and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) In local service, employees shall be placed on a special reemployment list for an unlimited duration. In State service, veterans and disabled veterans, and those other employees who have exercised a lateral, demotional or prior held right within their department or agency, shall be placed on a special reemployment list for an unlimited duration. Non-veteran employees who are separated from State service in a layoff shall be placed on a special reemployment list for a period of five years.

1. In State service, on or after January 1, 2001, for job titles which do not have a preexisting special reemployment list, non-veteran employees shall be ranked on the list based on the employee's permanent title and merit points at the time of layoff, in accordance with the method for calculating merit points in effect at the time of certification of the list. Disabled veterans and then veterans shall be ranked at the head of the list in order of these employees' permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list. In the case of State service job titles which have a special reemployment list that predates January 1, 2001 and in local service, ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list.

2. An employee who accepts an appointment to a position in another department or agency in lieu of 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 (State service) or lower level (local service), 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.

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.

#### 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 and merit points

(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. 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. 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 (g) 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(g), 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 in the following order:

i. In local service, priority will be determined on the basis of the class level of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title;

ii. In State service, priority for employees who are disabled veterans (see N.J.A.C. 4:5-1) will be determined on the basis of the class code of the permanent title from which each disabled veteran was laid off or demoted and the seniority held in the higher title;

iii. In State service, priority for employees who are veterans (see N.J.A.C. 4A:5-1) will be determined on the basis of the class code of the permanent title from which each veteran was laid off or demoted and the seniority held in the higher title;

iv. In State service, priority for non-veteran employees will be determined on the basis of the class code of the permanent title from which each non-veteran 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) 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 (g) 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.

(i) In State service, if two or more employees have equal merit points, the tie shall be broken in the following order of priority:

1. 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(g) shall have all permanent continuous service in that title aggregated for seniority purposes;

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

3. 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 during that period;

4. 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 during that period;

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

(j) In State service, beginning January 1, 2001, merit points shall be calculated based on a combination of seniority and performance. Employees in their working test period shall be considered to have a performance rating of Commendable. Merit points shall be calculated as follows:

1. The employee shall be awarded one point for each year of seniority, except for any year beginning January 1, 2001 and thereafter in which the employee received an Unsatisfactory final PAR rating.

2. Beginning January 1, 2001, for each final PAR rating of Commendable, one point shall be added to the employee's points for seniority, as calculated under (j)1 above.

3. Beginning January 1, 2001, for each final PAR rating of Exceptional, 2.5 points shall be added to the employee's points for seniority, as calculated under (j)1 above.

4. If the employee's final PAR rating for a given rating period is Unsatisfactory, no points shall be added to the employee's points for seniority, as calculated under (j)1 above, for that rating period.

5. When there is no final PAR rating on file for an employee for a given rating period, the final rating for that period shall be deemed Commendable and points shall be added accordingly.

EXAMPLE: Emily has 20 years of seniority. As she never received an Unsatisfactory PAR rating, Emily is awarded points for all 20 years. Although Jacob has 21 years of seniority, in 2001 he received an Unsatisfactory PAR rating. Therefore, Jacob also is awarded points for 20 years of seniority instead of 21.

A layoff is effective on January 1, 2003. Emily and Jacob each have final PAR ratings on file with the appointing authority personnel office between January 1, 2001 and that date. Emily's final PAR rating in 2001 was Commendable and in 2002 Exceptional. She receives one point for her rating of Commendable and 2.5 points for her rating of Exceptional, for a total of 3.5 points added to her 20 years of seniority. As a result, her merit points total 23.5. Meanwhile, as already noted, Jacob had a final PAR rating of Unsatisfactory in 2001 and, in 2002, a final PAR rating of Commendable on file with the appointing authority personnel office. Therefore, he receives no points for his rating of Unsatisfactory and one point for his rating of Commendable, which is added to his 20 years of seniority. As a result, his merit points total 21.

6. In any year when fewer than 85 percent of the career service employees in a department or agency have received final PAR ratings, as calculated by the following March 1 for the preceding calendar year, merit points shall not be awarded for career service employees in that department or agency for that year.

i. If the Department of Personnel finds that fewer than 85 percent of the career service employees in a department or agency did not receive final PAR ratings in a given year due to an effort by employees to ensure that PAR compliance would be below 85 percent, all career service employees in that department or agency shall receive merit points for that year, notwithstanding the provisions of (j)6 above.

7. The Commissioner shall calculate, on an annual basis by March 1 for the preceding calendar year, a parity index for each State department and agency. The parity index shall compare the final PAR ratings of minority career service employees in the department or agency to the final PAR ratings of white career service employees in the same department or agency.

i. "Minority" means the four race/ethnic categories defined in N.J.A.C. 4A:7-1.1(d)2 through 5. "White" means the race/ethnic category defined in N.J.A.C. 4A:7-1.1(d)1.

ii. The parity index shall be calculated as follows:

(1) The number of minority career service employees in the department or agency who received an Exceptional final PAR rating shall be divided by the total number of minority career service employees in the department or agency;

(2) The number of white career service employees in the department or agency who received an Exceptional final PAR rating shall be divided by the total number of white career service employees in the department or agency;

(3) The figure determined in (j)7ii(1) above shall be divided by the figure determined in (j)7ii(2) above to arrive at the parity index.

iii. Notwithstanding the provisions of (j)7 above, the parity index shall not be calculated for any department or agency in which the total number of minority career service employees is 30 or less.

iv. For any year in which the parity index for a department or agency is below 70 percent, merit points shall not be awarded for employees in that department or agency.

v. For any year in which the parity index for a department or agency is 80 percent or higher, merit points shall be awarded for employees in that department or agency.

vi. For any year in which the parity index for a department or agency is below 80 percent but not less than 70 percent, the Commissioner shall convene an audit team, to be comprised of employees of the Department of Personnel and the department or agency, including the affirmative action officer for the department or agency or his or her designee. The following procedures regarding the audit shall be followed:

(1) The audit team shall review the PAR ratings of the employees in the department or agency for that year and prepare and submit to the Commissioner, the department or agency and affected negotiations representatives a report regarding the PAR ratings;

(2) Within 20 days of receipt of the report, the department or agency and affected negotiations representatives may submit comments regarding the report to the Commissioner;

(3) Following a review of the comments submitted, if any, the Commissioner shall make a determination regarding whether the department or agency's PAR ratings can be used to award merit points for that year;

(4) The Commissioner may direct a department or agency to take such remedial or corrective actions, as appropriate, to ensure the effective operations of the PAR program.

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).

#### 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).