

Case Notes

Statements made in report of background check of police officer applicant. *Pollinger v. Loigman*, 256 N.J.Super. 257, 606 A.2d 1113 (A.D.1992).

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(i) 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 disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. 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).

Administrative correction.

See: 31 N.J.R. 1186(a).

Petition for Rulemaking.

See: 37 N.J.R. 1540(b), 2703(a).

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

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

In introductory paragraph (b), added language regarding extension of disposition due date.

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).

Initial Decision (2007 N.J. AGEN LEXIS 59) adopted, which concluded that a police officer did not meet his burden of showing that the rationale stated for not promoting him to sergeant on two separate occasions was pre-textual; it was not the appointing authority's burden to be more specific in identifying the information, namely the individuals promoted did not have serious or sustained disciplinary records worse than the officer, but it was the officer who had the burden of showing specific irregularities in the reason given for the bypasses that would have made them pre-textual. *In re Bradley*, OAL Dkt. No. CSV 5837-02, 2007 N.J. AGEN LEXIS 354, Final Decision (March 14, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 160) adopted, which concluded that the evidence demonstrated that a police officer was the least qualified of all three individuals for the two available Police Sergeant positions; his non-appointment to both positions was based upon his lack of appropriate qualification as compared to the other two candidates and the non-appointment had nothing to do with any actions by the appointing authority, which may have nonetheless acted under any basic misunderstanding relative to the interpretations of veterans' preferences. *In re Cresong*, OAL Dkt. No. CSV 8214-04, 2006 N.J. AGEN LEXIS 217, Final Decision (February 22, 2006).

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).

Initial Decision (2007 N.J. AGEN LEXIS 825) adopted, which found that a clerical worker was properly removed at the end of her working test period where she was absent for an astounding 50 days, blatantly disregarded sick-leave procedures, and failed to give adequate notice that she would not be coming to work. *In re Barnes*, OAL Dkt. No. CSV 3764-06, 2008 N.J. AGEN LEXIS 540, Final Decision (January 30, 2008).

Procedural violations of N.J.A.C. 4A:4-5.1 et seq., including the non-receipt of progress reports, may create a presumption of bad faith; however, that presumption can be rebutted via evidence that the employee was otherwise aware of work performance and other deficiencies during the working test period. Thus, where a county correction officer was advised of his performance deficiencies, had been disciplined during the working test period, and had been warned regarding excessive usage of leave time, there was ample evidence that the officer's attendance and performance was less than satisfactory during the working test period; therefore, whether or not he actually received the progress reports would not change the conclusion that the officer's working test period was conducted in good faith and that his release was for legitimate, work-related reasons. *In re Matus*, OAL Dkt. No. CSV 5064-07, 2007 N.J. AGEN LEXIS 1029, Final Decision (December 5, 2007).

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

Repeal and New Rule, R.1989 d.569, effective November 6, 1989.

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

Amended by R.1990 d.346, effective July 16, 1990.

See: 22 N.J.R. 1300(a), 22 N.J.R. 2143(a).

Changes made to accurately reflect N.J.S.A. 45:14B-1 et seq. concerning the licensing of psychologists.

Amended by R.1993 d.46, effective January 19, 1993.

See: 24 N.J.R. 3596(a), 25 N.J.R. 292(a).

Redesignated existing (b)-(g) as (c)-(h); added new (b).

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)2 and (e).

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

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

Rewrote (d)1; deleted former (d)2; recodified former (d)3 as (d)2.

Law Review and Journal Commentaries

Public Employment—Police. Steven P. Bann, 136 N.J.L.J. No. 14, 70 (1994).

Case Notes

Merit System Board in the Department of Personnel had not acted arbitrarily and capriciously in finding that an applicant for employment as a police officer was unfit for police work based on the results of the Minnesota Multiphasic Personality Inventory (MMPI) test which found that the applicant was, among other things, manipulative, irresponsible, and easily frustrated; the MMPI test is nationally used and officially recognized by the Board in N.J.A.C. 4A:4-6.5(f)5 and the applicant's own expert relied on the MMPI test when evaluating her. In re Vey, 135 N.J. 306, 639 A.2d 718, 1994 N.J. LEXIS 178, 10 I.E.R. Cas. (BNA) 951, 10 I.E.R. Cas. (BNA) 955 (1994).

Remand was required where record did not disclose basis for agency's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. Matter of Vey, 124 N.J. 534, 591 A.2d 1333 (1991).

Applicant found to be psychologically unfit for real estate analyst position properly removed from certified list for such position. Cooper v. Department of Community Affairs, 96 N.J.A.R.2d (CSV) 255.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision or situation being appealed.

2. An appeal must be filed with the Department of Personnel as indicated on the notice advising of disqualification.

(b) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

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.

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Deleted (a)3; deleted (b) and (c); and recodified former (b)2 as (b).

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 within the same governmental jurisdiction

(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. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

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 through 2.7, 7.6 and 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) In local service, a permanent transfer shall require the consent of both organizational units and the approval of the Chair/CEO of the Civil Service Commission. In State service, the consent of the affected employee shall also be required.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. In State service, 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 Chair/CEO of the Civil Service Commission.

(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 Chair/CEO of the Civil Service Commission 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 Chair/CEO of the Civil Service Commission 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.

Amended by R.1997 d.411, effective October 6, 1997.

See: 29 N.J.R. 2732(b), 29 N.J.R. 4279(b).

In (a)1, added second sentence.

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

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

Amended by R.2010 d.220, effective October 18, 2010.

See: 42 N.J.R. 1114(a), 42 N.J.R. 2400(a).

In the introductory paragraph of (b), substituted "through 2.7, 7.6 and 7.8" for "et seq., 4A-47.6 and 4A:4-7.8"; rewrote the introductory paragraph of (c); in (c)2, substituted "In State service, the" for "The"; in (d), inserted a comma following "purpose"; in (d) and (f)2, substituted "Chair/CEO of the Civil Service Commission" for "Commissioner of the Department of Personnel"; and in (e)1, substituted "Chair/CEO of the Civil Service Commission" for "Commissioner".

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:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within 90 days of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction and the affected employee, and the approval of the Department of Personnel.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and 40A:14-122.8.

2. The optional waiver of accumulated sick leave and seniority rights by a law enforcement officer, including a sheriff's officer and a county correction officer, shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Department of Personnel.

(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Department of Personnel approve the title, based on the following criteria:

i. The title(s) shall have substantially similar duties and responsibilities;

ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;

iii. There shall be no special skills, licenses, certification or registration requirements for the new title which are not also mandatory for the former title; and

iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

(e) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the priority of an open competitive list with regard to an intergovernmental transfer; N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; N.J.A.C. 4A:6-1.2, Vacation leave, 4A:6-1.3, Sick leave, and 4A:6-1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for layoff purposes; and N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

New Rule, R.2001 d.420, effective November 19, 2001.
See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).
Amended by R.2007 d.358, effective November 19, 2007.
See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).
Added (b)2.

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 transferred in accordance with N.J.A.C. 4A:4-7.1, intergovernmentally transferred (except as provided in (c) below) in accordance with N.J.A.C. 4A:4-7.1A or is 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) In the case of an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A, those law enforcement officers, including sheriff's officers and county correction officers, who waive all accumulated seniority rights, and all firefighters, shall not retain such seniority for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements.

(d) 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.

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

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

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

In (b), rewrote the first sentence.

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

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

In (b), substituted "(other than an employee transferring to police officer or transferring to firefighter)" for "(other than an employee in a police officer or firefighter title)."

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In (b), substituted "except as provided in (c) below" for "other than an employee transferring to police officer or transferring to firefighter"; added new (c); and recodified former (c) and (d) as (d) and (e).

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. Stampler*, 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.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation entitlements.

2. In State service, the employee's rate of compensation on direct movement as adjusted or workweek, work

year and the employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(c) If the nature of the work, education and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, if the new title is in the competitive division, and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures shall be waived, permanent status retained, and aggregate seniority granted, if the employee has previously held the title on a permanent basis during current continuous service. See N.J.A.C. 4A:8-2.4(e).

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Commissioner.

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), (c) and (d).

4A:4-7.7 Appeals

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.