

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. *Sholtz 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:8-1.2 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).

#### 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) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

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

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

#### 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. Any seniority listings maintained including records of preferred seniority maintained by the appointing authority pursuant to N.J.A.C. 4A:8-2.4(b)2;

5. 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;

6. 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;

7. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;

8. A summary of consultations with affected negotiations representatives; and

9. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In State service, and 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 of Marginally Below Standards or Significantly Below Standards 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)6 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).

**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).

**4A:8-1.6 Layoff notice**

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and
2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

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

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

#### Case Notes

Insufficient notification of charges. Dept. of Law and Public Safety v. Miller, 115 N.J.Super. 122, 278 A.2d 495 (App.Div.1971).

Employer's lay off procedure triggers additional salary award to laid-off employees for failure to comply with state's notice requirements. Baylor, et al. v. Phillipsburg Municipal Utilities Authority, 97 N.J.A.R.2d (CSV) 78.

## SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

### 4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;

3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the Department of Personnel:

1. Licensure or certification;
2. Specialized education;
3. Specialized client-based or program experience; or
4. Service as a trainee in a specialized area of operation leading to advancement to a primary title with specialized credentialing.

(e) Affected negotiations representatives shall be given reasonable notice and permitted to be present at any meeting with individual employees where layoff rights are discussed.

(f) See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

Amended by R.1994 d.441, effective September 6, 1994.  
See: 26 N.J.R. 2182(a), 26 N.J.R. 3705(b).  
Amended by R.1995 d.251, effective May 15, 1995.  
See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

## Case Notes

County prosecutor's office and other offices of county governmental structure were "one governmental jurisdiction", and eligible persons on county-wide special reemployment list were entitled to fill positions in county prosecutor's office and to displace provisional appointees. Matter of Chief Clerk, 282 N.J.Super. 530, 660 A.2d 1217 (A.D.1995).

**4A:8-2.2 Exercise of lateral and demotional rights**

(a) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then to the job locations selected by the employee within the department or autonomous authority. The employee shall select individual job locations in preferential order from the list of all job locations (see N.J.A.C. 4A:8-1.5(c)) and indicate:

1. Job locations at which he or she will accept lateral title rights; and
2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(b) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;
2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;
3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be determined based on the level of the permanent title held and seniority;

4. The position held by the employee serving in a working test period with the least seniority;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Significantly Below Standards or equivalent rating;

6. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months)

performance rating in his or her permanent title was Marginally Below Standards or equivalent rating;

7. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4(a)).

(d) Employees serving in their working test periods shall be provided rights to their probationary titles in the same order as (c)1 through 4 above.

(e) When an employee in a professional title is granted demotional title rights to a para-professional or non-professional title, or when an employee in a para-professional title is granted demotional title rights to a non-professional title, displacement may be made only on the basis of greater permanent continuous service. See N.J.A.C. 4A:4-2.5 for definitions of professional, para-professional and non-professional titles.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.

1. 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.

(g) 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.

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".

## 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(f)). 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 and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) A special reemployment list shall not have an expiration date. 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. 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 a lower class code (State service) or lower level (local service).

(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 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).

#### 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

(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(f) 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 seniority, which means greater seniority 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(f), will have preferred seniority.

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 seniority. Records of preferred seniority shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred seniority, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee 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(f) 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.

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).

#### 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).