

## CHAPTER 8

## LAYOFFS

## Authority

N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:4-7, 11A:4-9,  
11A:4-12, 11A:6-28, 11A:8-1 through 11A:8-4.

## Source and Effective Date

R.2000 d.12, effective December 9, 1999.  
See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 8, Layoffs, expires on July 2, 2003. See: 35 N.J.R. 345(a).

## Chapter Historical Note

Chapter 8, Layoffs, was adopted as R.1990 d.49, effective January 16, 1990. See: 21 N.J.R. 3340(a), 22 N.J.R. 169(a).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.1995 d.55, effective December 30, 1994. See: 26 N.J.R. 3518(a), 27 N.J.R. 482(a).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.1995 d.251, effective April 21, 1995. See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).

Pursuant to Executive Order No. 66(1978), Chapter 8, Layoffs, was readopted as R.2000 d.12, effective December 9, 1999. See: Source and Effective Date. See, also, section annotations.

## Cross References

Applicability of this chapter to SES members and positions, see N.J.A.C. 4A:3-2.3 and N.J.A.C. 4A:3-2.9.

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## SUBCHAPTER 1. PROCEDURES

## 4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority and merit points (see N.J.A.C. 4A:8-2.4), and shall designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

(c) The following provisions in this chapter shall not apply to veterans and disabled veterans: a layoff unit smaller than a department (see N.J.A.C. 4A:8-1.4) and time limitations on special reemployment rights (see N.J.A.C. 4A:8-2.3). Merit points (see N.J.A.C. 4A:8-2.4) shall not be used for veterans and disabled veterans in a layoff except when merit points provide a greater advantage to the veteran or disabled veteran than does seniority as compared to a non-veteran. The layoff rights of veterans and disabled veterans are more fully set forth in the provisions cited above.

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 (b), substituted "and merit points (see N.J.A.C. 4A:8-2.4), and shall" for "and" following "seniority"; and added (c).

## Case Notes

Negotiations with union concerning Department of Environmental Protection's reduction of employees' workweek were preempted by statute and regulations that created comprehensive demotional layoff scheme. *State v. Communications Workers of America, AFL-CIO*, 285 N.J.Super. 541, 667 A.2d 1070 (A.D.1995), certification denied.

Reduction in plumbing subcode official's work hours and compensation was motivated only by budgetary concerns and was done in good faith and did not violate Uniform Construction Code Act. *Voges v. Borough of Tinton Falls*, 268 N.J.Super. 279, 633 A.2d 566 (A.D.1993), certification denied 135 N.J. 466, 640 A.2d 848.

Statute which permitted lay off 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).

Authority to regulate causes of removal and suspension. *State v. Local 195, IFPTE*, 179 N.J.Super. 146, 430 A.2d 966 (App.Div.1981), certification denied, 89 N.J. 433, 446 A.2d 158.

Employee improperly removed after suspension for same infraction. *Newark v. Copeland*, 171 N.J.Super. 571, 410 A.2d 274 (App.Div.1980).

Dismissal of veterans protected by Veteran's Tenure Act in non-civil service county. *Cooper v. Imbriani*, 122 N.J.Super. 469, 300 A.2d 863 (App.Div.1973), affirmed, 63 N.J. 535, 310 A.2d 457 (1973).

Politically motivated layoffs reversed, while layoff due to reasons of economy upheld. *In re City of Orange Layoffs Appeal*, 97 N.J.A.R.2d (CSV) 639.

Layoff of clerk typist due to economy affirmed. *DiMarco v. Borough of Highlands, Department of Building and Grounds*, 97 N.J.A.R.2d (CSV) 599.

Demotion in good faith if position not necessary for agency's operation. *Henry, Kennedy and Wise v. Cape May County*, 97 N.J.A.R.2d (CSV) 147.

Municipality's decision to lay off and replace public employees with private contractors was done in good faith where private contract's savings were rationally related to legitimate governmental purpose. *Conklin and Ollearo v. Township of Milford*, 96 N.J.A.R.2d (CSV) 755.

Decision to lay off and demote Division of Developmental Disabilities employees was made in good faith for reasons of economy. *Orsati, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 743.

Department of Human Services acted in good faith when it imposed department-wide layoffs and demotions of its employees. *Cable, et al. v. Department of Human Services, Central Office*, 96 N.J.A.R.2d (CSV) 713.

Layoffs and demotions of Division of Family Development employees was done in good faith for reasons of economy. *Ambrass, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 696.

Employee layoff determinations which were made in good faith for economic and efficiency reasons were upheld. In the Matter of the Layoffs of *Guzman, et al.*, 96 N.J.A.R.2d (CSV) 625.

Department of Human Services 1992 layoffs were not motivated by bad faith. In the Matter of *Donna Marrinan, et al.*, 96 N.J.A.R.2d (CSV) 557.

Department of Human Services acted in good faith when laying off employees due to reduction in its salary account for fiscal 1993. *Cully, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 547.

Department of Human Services 1992 layoffs were not motivated by bad faith. *Barker, et al. v. Department of Human Services*, 96 N.J.A.R.2d (CSV) 539.

City's bona fide reduction of budget deficit supported large-scale layoffs. In the Matter of the City of Newark Layoffs, 96 N.J.A.R.2d (CSV) 361.

Good-faith layoff action supported by cut in federal salary funding and diminished need for position. *Billings v. City of Perth Amboy*, 96 N.J.A.R.2d (CSV) 314.

City's otherwise well-motivated layoff decision was not undermined by particularized ill will. *Peters v. City of Orange*, 96 N.J.A.R.2d (CSV) 227.

Government employer demonstrated good faith in lay-off action by showing necessity for reasons of economy. *Stagliano v. Camden County*, 96 N.J.A.R.2d (CSV) 215.

Administrative analyst's layoff in good faith when taken pursuant to departmental reorganization plan. *Bowring v. State Department of the Public Advocate*, 96 N.J.A.R.2d (CSV) 44.

Failure to show bad faith or discrimination defeats state agency personnel specialist's challenge to removal pursuant to reduction in force. *Bhanja v. Department of Personnel*, 96 N.J.A.R.2d (CSV) 41.

Evidence failed to establish bad faith cause of action in connection with layoffs and demotions in question. *Chepiga v. Mental Health and Hospitals*, 95 N.J.A.R.2d (CSV) 630.

Demotion of personnel assistants pursuant to reorganization of district under newly formed state operated school system was not in bad faith. *Dowling v. State Operated School District*, 95 N.J.A.R.2d (CSV) 603.

Demotions for reasons of economy were not arbitrary even though employees performed same tasks in lower positions. *Sowa v. Commerce and Economic Development*, 95 N.J.A.R.2d (CSV) 589.

Termination of handicapped offset machine operator was not discriminatory, but was in good faith for reasons of economy and efficiency. *Hansell v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 575.

Layoff of messenger by county clerk's office was in good faith when messenger's functions were performed by a fax machine and other employees. *Barnes v. Camden County*, 95 N.J.A.R.2d (CSV) 471.

Proof was lacking that reassignment of public defender office investigator was made in bad faith. *Jacobson v. New Jersey Public Defender*, 95 N.J.A.R.2d (CSV) 342.

Elimination of five water repairer positions to enable two electronic repairmen positions was in good faith for reasons of economy and efficiency. *Caggiano v. Township of Sparta*, 95 N.J.A.R.2d (CSV) 211.

Animosity towards public employee by others did not preclude layoff for economic reasons when those others had no role in layoff. *Matter of State Department of Corrections 1992 Layoffs*, 95 N.J.A.R.2d (CSV) 63.

Layoffs and demotions made in good faith. In the Matter of State Dept. Of Corrections 1992 Employee Layoffs, 95 N.J.A.R.2d (CSV) 63.

Employees failed to prove that layoffs and demotions were made in bad faith. In the Matter of the State Dept. Of Health 1993 F.Y. Layoffs, 95 N.J.A.R.2d (CSV) 45.

Reasonable, logical, and good faith efforts to accommodate budgetary reductions meant that layoffs were made in good faith for economic reasons. *Matter of State Department of Health 1993 Layoffs*, 95 N.J.A.R.2d (CSV) 45.

Layoffs of public employees were not motivated by bad faith, but by economic considerations and were justified. *Edwards v. Department of Community Affairs*, 95 N.J.A.R.2d (CSV) 29.

Act of councilmen in eliminating public employee's position was not for reasons of animosity, but was for reasons of economy and was justified. *De Prima v. Department of Administration and Finance*, 95 N.J.A.R.2d (CSV) 20.

Layoff of Director of Planning was in good faith in effort to achieve government economy. *DePrima v. Department of Administration and Finance*, 95 N.J.A.R.2d (CSV) 20.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4A:8-1.2 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 in the following manner:

1. First placing employees without permanent status in positions being vacated, reclassified or abolished;

2. In local service, next placing employees with the least seniority in positions being vacated, reclassified or abolished; and

3. In State service, next placing non-veterans with the fewest merit points, and then veterans and disabled veterans with the least seniority in positions being vacated, reclassified or abolished.

Amended by R.2000 d.12, effective January 3, 2000.  
See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).  
Rewrote (d).

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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. However, in departments or agencies with more than 1,000 employees, a different layoff unit consisting of a division or divisions of the department or agency may be approved by the Commissioner under the following conditions:

1. A request for a different layoff unit may be submitted by a department or agency to the Commissioner at least 45 days prior to the issuance of layoff notices. The request shall include the following information:
  - i. The need for a unit smaller than the department or agency;
  - ii. The functional and organizational structure of the department or agency;

iii. The number of employees and the funding source, bargaining unit, equal employment opportunity categories, job titles, class codes and salary ranges of employees in the proposed layoff unit;

iv. The effect upon employee layoff rights of the proposed layoff unit, including reasonable geographic considerations relating to the employees' job location;

v. The impact upon service to departmental clientele and the public; and

vi. Other factors that may be relevant.

2. Upon submission to the Commissioner of the request, the department or agency shall provide notice of the request to affected negotiations representatives.

3. The Commissioner shall provide a 20-day period for affected negotiations representatives to submit written comments and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, based on the totality of the information submitted pursuant to (a)1 above and the comments, if any, submitted pursuant to (a)3 above.

5. In no event shall a layoff unit have fewer than 1,000 employees; however, the Commissioner may approve the combining of divisions of a department or autonomous agency to create a layoff unit of 1,000 or more employees.

6. A layoff unit smaller than a department or agency shall not be approved if the layoff is the result of privatization or closure.

7. Notwithstanding the Commissioner's approval of a unit smaller than a department or autonomous agency, the layoff rights of a State employee who is a veteran or disabled veteran (see N.J.A.C. 4A:5-1) shall be exercised in the entire department or agency.

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

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.

3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and

negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

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

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

1. Each job location shall consist of a county.
2. The Commissioner of Personnel shall assign a job location to every facility and office within a department or autonomous agency.
3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

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

Amended by R.1995 d.251, effective May 15, 1995.  
See: 27 N.J.R. 612(a), 27 N.J.R. 1967(b).  
Amended by R.2000 d.12, effective January 3, 2000.  
See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).  
Rewrote (a).

#### Case Notes

Commissioner of Personnel's failure to consider factors other than the effect on those adversely impacted at the Board of Public Utilities by the potential expansion of the Department of Environmental Protection layoff unit to include the Board of Public Utilities required remand for reconsideration by the Commissioner of her decision denying the Department of Environmental Protection rate analysts' petition to expand layoff unit to include the Board of Public Utilities. In re Donohue, 329 N.J.Super. 488, 748 A.2d 598 (N.J.Super.A.D. 2000).

#### 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 and merit points 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.

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated Commendable or above in the most recent final PAR rating, shall have a right to accept an appointment in lieu of separation. Should an employee accept an appointment to such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

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 (e), inserted a reference to merit points determinations in the first sentence; and in (f), added 1.

#### 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 deter-

mined 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) Employees shall be ranked, for purposes of exercise of layoff rights, as follows:

1. In local service, permanent employees exercising layoff rights shall be ranked in order of seniority;
2. In State service, employees who are disabled veterans exercising layoff rights shall be ranked in order of seniority ahead of employees who are veterans, and em-

employees who are veterans exercising layoff rights shall be ranked in order of seniority ahead of employees who are non-veterans (see N.J.A.C. 4A:5-1); and

3. In State service, employees who are non-veterans exercising layoff rights shall be ranked in order of merit points.

(b) 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 layoff unit or, in the case of a permanent employee who is a veteran or disabled veteran (see N.J.A.C. 4A:5-1), within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations within the layoff unit or, in the case of a permanent employee who is a veteran or disabled veteran, within the department or autonomous agency (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.

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

(d) 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 as follows:
  - i. In local service, based on the level of the permanent title held and seniority;
  - ii. For non-veteran employees in State service, based on the class code of the permanent title held and merit points;
  - iii. For veterans and disabled veterans in State service (see N.J.A.C. 4A:5-1), based on the class code of the permanent title held and either seniority or merit points, whichever would provide the greater advantage to the veteran or disabled veteran;

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

5. 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 Unsatisfactory or equivalent rating;

6. 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. In local service, the position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4);

8. In State service, the non-veteran, permanent employee with the fewest merit points;

9. In State service, the permanent employee who is a veteran (see N.J.A.C. 4A:5-1) with either the least seniority or fewest merit points, whichever would provide the greater advantage to the veteran as compared to a non-veteran;

10. In State service, the permanent employee who is a disabled veteran (see N.J.A.C. 4A:5-1) with either the least seniority or fewest merit points, whichever would provide the greater advantage to the veteran as compared to a non-veteran.

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

(f) In local service, 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.

(g) 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 as follows:

1. In local service, on the basis of greater permanent, continuous service;
2. In State service, in the case of non-veteran employees, on the basis of greater merit points;

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.

(f) The name of an employee shall be removed from all applicable special reemployment lists where the employee receives an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A within 90 days of the effective date of a layoff resulting in the employee's separation from service.

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.

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

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

Added (f).

#### 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. An employee's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A shall be considered as continuous permanent service in the jurisdiction. 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. An employee's continuous permanent service in title, accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, shall not constitute continuous permanent service for purposes of seniority under this chapter. 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 (tie-breakers based on service shall include service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, except in the case of an intergovernmental transfer of a police officer or a firefighter):

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).

Amended by R.2001 d.420, effective November 19, 2001.  
See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

In (a) and (b), added second sentences in the introductory paragraphs; in (h) rewrote the introductory paragraph.

#### 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).