

**CIVIL SERVICE**

**CIVIL SERVICE COMMISSION**

**Selection and Appointment**

**Performance Assessment Review**

**Proposed Amendments: N.J.A.C. 4A:4-2.15, 4A:6-5.1 and 5.3, and 4A:8-2.4**

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:6-28, and 11A:8-1 et seq.; and P.L. 2008, c. 29.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-050.

A **public hearing** concerning the proposed amendments will be held on:

Wednesday, April 10, 2013 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by May 17, 2013 to:

Henry Maurer, Director

Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

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## Summary

The Civil Service Commission proposes amendments to Title 4A of the New Jersey Administrative Code modeled upon a successful pilot program pertaining to the Performance Assessment Review (PAR) program in State service and affecting employees serving in the State Budget Specialist title series in the Department of the Treasury, as well as all employees of the Civil Service Commission. See *In the Matter of the Performance Assessment Review Program Pilot Program* (CSC, decided 6/20/12).

N.J.S.A. 11A:6-28 provides that the Commission shall establish an employee performance evaluation system for State employees in the career and senior executive services. The system must utilize standards and criteria related to job content and program goals. Existing N.J.A.C. 4A:6-5.1(b)2 provides, in part, that in State service, the PAR program shall use a three-level rating scale of Exceptional, Commendable, and Unsatisfactory.

The aforementioned pilot program established a five-level rating scale of Exceptional, Commendable, Successful, Needs Improvement/Development, and Unsatisfactory for the State employees already identified. However, because the contracts for some State employees currently provide for a three-level PAR rating scale, the Commission only proposes amendments to implement the five-level scale for non-represented State employees and represented State employees whose contracts do not require a three-level PAR rating scale.

It is noted that N.J.A.C. 4A:6-5.1, General provisions, paragraph (b)2 presently requires that the PAR program in State service use standardized forms and rating scales for different appraisal models to be designated by the former Department of Personnel (now Civil Service Commission), as well as a three-level rating scale as already described above. Subparagraph (b)2ii would be amended to change the name of the existing mid-level rating from Commendable

to Successful. This amendment would conform the mid-level rating in a three-level scale to the mid-level rating in the proposed five-level scale. Paragraph (b)2 would be further amended to make an exception to administering the now generally standard three-level rating scale in a cross-reference to subsection (d). Accordingly, subsection (d), which currently gives authority to the former Commissioner of Personnel (now Chairperson of the Civil Service Commission) to modify the PAR program based on specific employee or agency needs, would be amended to include the implementation for State service, unless precluded by a collective negotiations agreement, of a five-level rating scale. The amendment would go on to set forth the five possible ratings: Five – Exceptional Performance, Four – Commendable Performance, Three – Successful Performance, Two – Needs Improvement/Development, and One – Unsatisfactory Performance.

N.J.A.C. 4A:6-5.3, PAR use and review: State service, currently provides at subsection (a) that an employee receiving an annual PAR rating below Commendable (in the three-level rating scale) shall be denied an anniversary date increment. Consistent with the proposed amendment to N.J.A.C. 4A:6-5.1(b)2ii, all references in this section to “Commendable” in a three-level scale would be changed to “Successful.” Paragraph (a)1 permits an appointing authority to request an increment for an employee who was denied one because of an Unsatisfactory rating (in the three-level rating scale) but whose job performance subsequently improves. Paragraph (a)2 requires that an employee who receives an annual PAR rating below Commendable (in the three-level system) should be referred to the Employee Advisory Service. Subsection (a) and paragraphs (a)1 and 2 are proposed for amendment to apply to the proposed five-level rating scale, except that, in a five-level system, an employee receiving either the lowest annual PAR rating, One – Unsatisfactory Performance, or the next lowest, Two – Needs

Improvement/Development, would be denied an anniversary date increment. An employee receiving a One in the five-level scale might still receive an increment after 90 days where his or her performance subsequently improves. However, an employee receiving a Two would not only have the opportunity to demonstrate an improved performance within 90 days, but if he or she does demonstrate such improvement, the increment would be retroactively restored to the employee. An employee receiving the lowest rating in the five-level scale, like an employee in a three-level scale, should be referred to the Employee Advisory Service.

Existing N.J.A.C. 4A:6-5.3(b) states that employees not represented by a collective negotiations unit may appeal performance standards or a final PAR rating of Unsatisfactory or Commendable, in a three-level rating system, through noncontractual grievance procedures. Subsection (b) is proposed for amendment to delete a non-represented employee's option of appealing a Commendable rating in a three-level system. The subsection would also be amended to permit an appeal by an employee receiving a final rating of One – Unsatisfactory Performance or Two – Needs Improvement/Development in a five-level system.

Existing subsection (c) states that employees who are represented by a collective negotiations unit may appeal performance standards or a final PAR rating of Unsatisfactory or Commendable in a three-level scale as a noncontractual grievance in accordance with special procedures set forth in paragraphs (c)1, 2, and 3. Subsection (c) is proposed for amendment to provide that employees represented by a collective negotiations unit may, where the contract so provides, file an appeal utilizing the procedures set forth in a proposed new subsection (d), concerning PAR ratings and performance standards described in the proposed new paragraphs (c)1, 2, and 3. Proposed new paragraph (c)1 would permit such an employee to utilize the procedures in subsection (d) in the case of a three-level rating scale where the final rating is

Unsatisfactory, or where, if the contract specifically provides, the final rating is a rating of Successful (currently referred to as Commendable). Proposed new paragraph (c)2 would permit such an employee to utilize the procedures in subsection (d) in the case of a five-level rating scale where the final rating is either a One – Unsatisfactory or a Two – Needs Improvement/Development. Proposed new paragraph (c)3 would permit an appeal in the case of either a three-level or a five-level rating scale regarding performance standards.

Newly codified subsection (d) would provide an introductory heading for the existing procedures related to the Joint Union Management Panel (JUMP), which would apply where the requirements of subsection (c) are met (that is, only where the contract so provides). Recodified paragraphs (d)1, 2, and 3, which set forth the JUMP process, are not proposed for substantive amendment. Existing N.J.A.C. 4A:6-5.3(d), which permits an employee to appeal a final departmental decision, would be recodified as subsection (e) without substantive amendment.

Existing N.J.A.C. 4A:6-5.3(e), to be recodified as subsection (f), provides that a rating of Unsatisfactory in a three-level rating scale shall constitute evidence of incompetency, inefficiency, or failure to perform duties. This subsection is proposed for amendment to indicate that the same would be the case where an employee, in a five-level rating scale, receives a rating of One – Unsatisfactory Performance. Existing subsection (f), to be recodified as subsection (g), permits performance ratings to be used as a factor in promotions, with a cross-reference to N.J.A.C. 4A:4-2.15, as well as a factor in layoffs, with a cross-reference to N.J.A.C. 4A:8-2.4(h) (which sets forth standards for breaking a seniority tie, and includes instances in which PAR ratings may break the tie). An amendment is proposed to the layoff cross-reference to make it a cross-reference to two rules. A cross-reference to N.J.A.C. 4A:8-2.2(d)5, which pertains to the order in which lateral and demotional title rights shall be given, with performance

ratings being next-to-last in the order, just ahead of a permanent employee with the least seniority, is added.

N.J.A.C. 4A:4-2.15, Rating of examinations, is proposed for amendment at subsection (c). Existing subsection (c) sets forth the credit that an employee will be awarded in a promotional examination situation based on his or her final PAR rating. Paragraph (c)1 would be amended to clarify that the credits to be awarded are based on a three-level rating scale. N.J.A.C. 4A:4-2.15(c)1ii would be amended to change the reference to the mid-level rating in a three-level rating scale from the current “Commendable” to the term “Successful,” consistent with proposed amendments described above. New paragraph (c)2 is proposed to set forth the credit that an employee subject to a five-level rating scale would receive. Existing paragraph (c)2, which addresses the circumstance in which there is no final PAR rating on file for the candidate, and existing paragraph (c)3, which addresses situations in which the PAR rating of an employee was provided by a supervisor or PAR reviewer who is competing in the same promotional examination, are proposed for recodification as paragraphs (c)3 and 4, respectively, but are not proposed for substantive amendment.

N.J.A.C. 4A:8-2.4, Seniority, would be amended at paragraphs (h)2, 9, and 10 regarding the priority of seniority tie-breakers. Existing paragraph (h)2 addresses tie-breakers between an employee with a higher performance rating over an employee with a lower rating, so long as all tied employees were rated by the same supervisor. This paragraph would be amended to add that the tied employees must also have been subject to the same PAR rating scale. Existing Paragraph (h)9 addresses tie-breakers between an employee with the higher performance rating and an employee with a lower rating during the 12-month period prior to the effective date of the layoff plan. This paragraph would be amended to make this tie-breaker dependent on whether all

tied employees were rated by the same supervisor and subject to the same PAR rating scale. Existing Paragraph (h)10 addresses tie-breakers where an employee has earned the higher performance rating during the period between 24 and 12 months prior to the effective date of the layoff. This paragraph would be amended to make this tie-breaker dependent on whether all tied employees were rated by the same supervisor and subject to the same PAR rating scale.

The rules that are proposed for amendment would also be amended to reflect the provisions of P.L. 2008, c. 29. Pursuant to that law, the Department of Personnel was abolished and replaced with the Civil Service Commission, a State agency in, but not of, the Department of Labor and Workforce Development. The law also provided that the Commissioner of Personnel be replaced by a Chairperson of the Civil Service Commission. Therefore, amendments to reflect these changes, which would also include references to “an appropriate representative of the Civil Service Commission” or “Chairperson of the Civil Service Commission or designee,” as necessary, are proposed to N.J.A.C. 4A:4-2.15(a)1 and (i); 4A:6-5.1(a), (b)2, (c), and (d), 5.3(a)1, recodified (d)3, recodified (e), and recodified (e)3; and 4A:8-2.4(c)2 and (h)2, 9, 10, and 11.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The five-level rating scale would provide a more accurate evaluation system than the current three-level system, as it is intended to encapsulate a broader array of factors with which to evaluate employees. The expanded five-level scale would offer more flexibility to supervisors when making observations and reaching conclusions about employee performance and its

implications for the employee's development and improvement. Employees would also benefit from more accurate feedback about their job performance. In its expansion of the criteria used to evaluate employee performance, the new scale would also further the spirit and intent of N.J.S.A. 11A:6-28, which encourages the effective management and development of the civil service workforce. Additionally, the Commission can state that the pilot program instituted by *In the Matter of the Performance Assessment Review Program Pilot Program, supra*, has already proved successful, based on feedback from managerial and supervisory employees as to the efficacy of the five-level rating scale.

The proposed amendments regarding the five-level scale would not affect those employees whose current union contracts require a three-level rating scale.

Finally, it is noted that the proposed technical amendments to several rules in Title 4A of the New Jersey Administrative Code which would change terminology to reflect enactment of P.L. 2008, c. 29, are anticipated to have a positive social impact, by continuing to ensure that all users of the rules are aware of the new name of the rulemaking agency and the new titles of officials, such as the Chairperson of the Civil Service Commission.

### **Economic Impact**

A positive economic impact is anticipated due to these proposed amendments. State appointing authorities would benefit from a more flexible rating system that would enable them to more accurately identify employees who have performed better than expected or who may need assistance if their job performance falls short of expectations. Rewarding good performers, as already provided for in the rules, would assist employees in such areas as promotional examination scoring and breaking seniority ties in a layoff. Working to alleviate problems faced by other employees whose performance has not met with expectations would help the State



workforce to be more productive and provide taxpayers with more efficient public services. It would also help the employees who have fallen short by giving them valuable opportunities for improvement.

There could potentially be a negative economic impact for an employee subject to a five-level rating scale if he or she receives a rating of Two – Needs Improvement/Development and therefore is denied an anniversary date increment. However, the impact here would be mitigated by language providing that the employee would have the opportunity to demonstrate an improved job performance within 90 days, in which case the employee's increment would be restored to him or her retroactively.

The fact that a non-represented employee receiving a Commendable (to be renamed Successful) rating in a three-level scale would no longer be able to appeal that rating is not expected to have a negative economic impact since receipt of a Commendable (Successful) rating does not bring with it negative consequences, such as loss of an increment. However, it is acknowledged that not being able to challenge a Commendable (Successful) rating could have a minimally adverse impact in the case of promotional scoring or in layoff seniority tie-breakers. Nevertheless, the Commission has not received any appeals of Commendable (Successful) ratings since this provision was placed in the rules, and thus, any adverse impact would be minimal.

Similarly, an employee who is represented by a collective negotiations unit may now appeal the mid-level PAR rating of Commendable (Successful) according to noncontractual grievance procedures as set forth in existing N.J.A.C. 4A:6-5.3(c)1, 2, and 3, regardless of whether the employee's contract actually mentions the right to appeal the mid-level rating. The proposed changes to subsection (c) would provide that, while an appeal of a Successful (formerly

Commendable) rating by a union member will be limited to those employees covered by a contract that specifically provides the employee with the right to appeal that rating, no negative economic impact is expected to result. The language of any applicable contract would be honored and, as noted above with regard to non-represented employees, appeals of mid-level ratings have been not just rare but nonexistent.

The provisions of N.J.A.C. 4A:8-2.4(h) proposed for amendment would have a positive economic impact. Paragraph (h)2 would be amended to require that the tie-breaker described in this provision could only be effected when the employees are subject to the same rating scale, a necessary provision now that a five-level scale is being proposed to exist alongside the three-level scale. Similarly, paragraph (h)9 would be amended to condition the tie-breaker described in this provision on whether the employees are rated by the same supervisor and subject to the same rating scale. Paragraph (h)10 would be amended to impose the same condition for use of the tie-breaker described in this provision. These proposed amendments would protect affected employees from potentially arbitrary decisionmaking regarding PAR ratings and from invalid comparisons between employees rated under different systems. Accordingly, these proposed amendments would serve to limit the negative economic impact that layoffs may have on employees in these instances.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments would govern performance evaluations of employees working for the State of New Jersey and would not be subject to any Federal standards or requirements.

### **Jobs Impact**

It is not anticipated that any jobs would be generated or lost if the proposed amendments were adopted. The proposed amendments would govern performance evaluations of employees working for the State of New Jersey.

### **Agriculture Industry Impact**

It is not anticipated that the proposed amendments would have any agriculture industry impact. The proposed amendments would govern performance evaluations of employees working for the State of New Jersey.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments would govern performance evaluations of employees working for the State of New Jersey.

### **Housing Affordability Impact Analysis**

Since the proposed amendments concern performance evaluations of employees working for the State of New Jersey, they would have no impact on the number of housing units or the average cost of housing in New Jersey.

### **Smart Growth Development Impact Analysis**

Since the proposed amendments concern employment in the public sector, they would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 4

### SELECTION AND APPOINTMENT

#### SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

##### 4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the [Department of Personnel] **Chairperson of the Civil Service Commission or designee.**

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. [Credit] **When the PAR consists of a three-level rating scale, credit** shall be awarded as follows:

- i. Three points for Exceptional; or
- ii. One point for [Commendable] **Successful.**

**2. When the PAR consists of a five-level rating scale, credit shall be awarded as follows:**

- i. Three points for a rating of Five – Exceptional Performance;**
- ii. Two points for a rating of Four – Commendable Performance; and**
- iii. One point for a rating of Three – Successful Performance.**

[2.] **3.** When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed [Commendable] **Successful in the case of both a three-level rating scale and a five-level rating scale**, and credit shall be given for that rating.

[3.] **4.** Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority.

- i. All leaves with pay including sick leave injury (SLI);
  - ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff leaves of absence without pay;
- and

iii. In local service, leave without pay to fill elective office.

2. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

3. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the [five year] **five-year** period immediately preceding the announced closing date.

(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 or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years as of the announced closing date is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 100 percent, to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10-point maximum.

(h) The score earned by a candidate on an examination announced for more than one title area at a time shall be used for all examinations in those title areas for which the candidate files and is found eligible.

(i) A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the [Department of Personnel] **Chairperson of the Civil Service Commission or designee**.

(j) Ties in final earned ratings shall not be broken.

## CHAPTER 6

### LEAVES, HOURS OF WORK, AND EMPLOYEE DEVELOPMENT

#### SUBCHAPTER 5. PERFORMANCE EVALUATION

##### 4A:6-5.1 General provisions

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the [Department of Personnel] **Chairperson of the Civil Service Commission or designee** in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.

2. The PAR program shall use standardized forms and rating scales for different performance appraisal models to be designated by the [Department of Personnel] **Chairperson**

**of the Civil Service Commission or designee and, except as provided in (d) below, a three-level rating scale to include the following ratings:**

- i. Exceptional;
- ii. [Commendable] **Successful**; and
- iii. Unsatisfactory.

3. Each agency shall establish standardized rating cycles with a duration of one year. Within a particular standardized rating cycle, employees shall be rated at the same time, twice a year, with the interim and final ratings being six months apart.

(c) Each appointing authority shall maintain an employee's PAR evaluations in his or her personnel records and shall submit reports to [the Department of Personnel] **an appropriate representative of the Civil Service Commission** on all final PAR ratings of its employees in a form prescribed by the [Department] **Chairperson or designee**.

(d) The [Commissioner] **Chairperson of the Civil Service Commission or designee** may modify the PAR program based on specific employee or agency needs[.] **and implement for State appointing authorities, unless precluded by a collective negotiations agreement, a five-level rating scale to include the following ratings:**

- 1. Five – Exceptional Performance;**
- 2. Four – Commendable Performance;**
- 3. Three – Successful Performance;**
- 4. Two – Needs Improvement/Development; and**
- 5. One – Unsatisfactory Performance.**

4A:6-5.3 PAR use and review: State service



(a) [An] **In both a three-level and a five-level PAR rating scale, an** employee receiving an annual PAR rating below the [Commendable] **Successful** level shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment because of receiving an Unsatisfactory rating **in a three-level or a five-level rating scale**, but whose performance has subsequently improved. If approved by the [Department of Personnel] **Chairperson of the Civil Service Commission or designee**, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date. **In the case of a five-level rating scale, if an employee who had received a rating of Two – Needs Improvement/Development demonstrates an improved performance within 90 days following the rating, the increment shall be restored to the employee retroactively.**

2. An employee who receives an annual rating below the [Commendable] **Successful** level **in a three-level rating scale or an annual rating of One – Unsatisfactory Performance in a five-level rating scale** should be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(b) Employees who are not represented by a collective negotiations unit **or who are so represented but whose contract does not specify an appeal procedure**, may appeal performance standards or a final PAR rating of Unsatisfactory [or Commendable] **in a three-level rating scale or a final PAR rating of One – Unsatisfactory or Two – Needs Improvement/Development in a five-level rating scale** through noncontractual grievance procedures. See N.J.A.C. 4A:2-3.1. In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(c) Employees who are represented by a collective negotiations unit may [appeal performance standards or a final PAR rating of Unsatisfactory or Commendable as a noncontractual grievance in accordance with the following procedures:], **where the contract so provides, file an appeal utilizing the procedures set forth in (d) below, regarding the following PAR ratings and issues:**

**1. In the case of a three-level rating scale, a final PAR rating of Unsatisfactory, or, where specifically provided in the contract, a final PAR rating of Successful;**

**2. In the case of a five-level PAR rating scale, a final PAR rating of One – Unsatisfactory Performance or Two – Needs Improvement/Development; and**

**3. Performance standards, regardless of the number of levels in the rating scale.**

**(d) The following are the procedures that shall be utilized where the requirements of (c) above are met:**

1. Step One grievance procedures shall be conducted as set forth in N.J.A.C. 4A:2-3.4.

2. A grievant may appeal a Step One grievance decision to the PAR Joint Union Management Panel within 10 calendar days of receipt of the written decision at Step One, or a lack of timely response by the appointing authority. The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

i. The Joint Union Management Panel shall consist of one individual selected by the appointing authority, one individual selected by the affected negotiations representative and one neutral individual jointly selected by the appointing authority and the affected negotiations representative.

ii. The panel shall meet, provided there are at least four Second Step appeals to be heard. The panel shall meet one additional day each month for every four additional appeals to

be heard. When in any month there is no meeting because there are fewer than four appeals to be heard, there shall be a meeting the following month, so long as there are any cases to be heard.

iii. The appointing authority and union panel members shall discuss each appeal on the agenda and, with the assistance of the neutral panel member, attempt to jointly resolve the appeal.

iv. If the appointing authority and union cannot come to a joint resolution, the appeal shall be heard by the full panel. At any Second Step appeal hearing, the employee may be represented by a union steward, local union officer, and/or local union staff representative.

v. The parties may call witnesses and present evidence at the Second Step appeal hearing. However, each hearing shall conclude within approximately four hours. The neutral panel member shall control the admission of testimony and evidence to ensure adherence to this time frame.

vi. The panel shall issue a written decision within 10 days of the hearing. Each panel member shall have one vote.

3. Appeals from decisions of the Joint Union Management Panel may be made to the [Department of Personnel] **Civil Service Commission** in accordance with N.J.A.C. 4A:2-3.7(b).

[(d)] (e) An employee may appeal the final departmental decision to the [Merit System Board] **Civil Service Commission** within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable, or induced by improper motives.

3. The [Board] **Commission** shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

[(e)] **(f)** A rating of Unsatisfactory **in a three-level rating scale or a rating of One – Unsatisfactory Performance in a five-level rating scale** shall constitute evidence of incompetency, inefficiency, or failure to perform duties. In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

[(f)] **(g)** Performance ratings may be used as a factor in promotion (see N.J.A.C. 4A:4-2.15) and layoff (see N.J.A.C. 4A:8-2.2**(d)5** and 2.4(h)).

## CHAPTER 8

### LAYOFFS

#### SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

##### 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. 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. A police officer'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 unless the police officer waives all accumulated sick leave and seniority rights in effecting the transfer. 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 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(f), 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] **Chairperson of the Civil Service Commission or designee.**

3. If more than one employee has preferred status, priority will be determined on the basis of the class code 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 (**SES**), 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] **that** 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] **that** 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) 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 for all firefighters, and except where a law enforcement officer, including a sheriff's officer and a county correction officer, waives all accumulated seniority rights in the intergovernmental transfer. 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 **and were subject to the same PAR rating scale**. In local service, the performance rating system must have been approved by the [Department of Personnel] **Chairperson of the Civil Service Commission or designee**;

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] **12-month** period prior to the effective date of the layoff shall have priority over an employee with a lower rating, **provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale.** In local service, the performance rating system must have been approved by the [Department of Personnel] **Chairperson or designee;**

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, **provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale.** In local service, the performance



rating system must have been approved by the [Department of Personnel] **Chairperson or designee;**

11. Other factors as may be determined by the [Commissioner] **Chairperson or designee.**