

B-47



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of William Hawkins,
Department of Human Services

CSC Docket No.2016-2495

Request for Enforcement

ISSUED: JAN 24 2017 (CSM)

William Hawkins, represented by Lawrence Popp, Esq., requests enforcement of the attached decision rendered on February 4, 2015 ordering that his title seniority as a Police Officer with the Borough of Somerdale (Somerdale) be applied to his current title of Senior Police Officer, Human Services, Department of Human Services.

By way of background, Hawkins intergovernmentally transferred to the State Department of Human Services (Human Services) from Somerdale from the title of Police Officer to the title of Senior Police Officer, Human Services effective October 13, 2007. At that time, the appellant *did not opt* to waive his accumulated seniority upon transfer, but Human Services subsequently advised him that his seniority as a Police Officer with Somerdale since August 14, 1993 could not be included as part of his in-title seniority as a Senior Police Officer, Human Services. In its prior determination, the Civil Service Commission (Commission) found that the appellant's title seniority as a Senior Police Officer, Human Services should include his title seniority as a Police Officer with Somerdale.

In his request for enforcement, the appellant states that Human Services only partially followed the Commission's order. Specifically, he states that Human Services revised his start date to August 14, 1993 but did not utilize this date as the starting date for his job classification. As a result, this has prevented him from being able to obtain the work schedule he desires. Although he grieved the matter through his union to the second step of the process, he was advised that the matter should be pursued as an enforcement matter with the Commission. Thus, based on

his in-title seniority as a Senior Police Officer, Human Services, the appellant requests that he be permitted to have Saturdays and Sundays off on the 6:00 a.m. to 2:00 p.m. shift. Additionally, the appellant asserts that since his overall seniority was moved back to 1993, his vacation leave entitlement should also be adjusted consistent with his continuous years of service in accordance with *N.J.A.C. 4A:6-1.2(a)2*. Therefore, the appellant maintains that he is entitled to 78 additional vacation days which is reflective of what he should have been credited between 2008 and 2016.

By letter dated August 8, 2016, Human Services advised the appellant that it did not have the authority to provide him with accrued vacation leave benefit time from 2008 through 2014 since vacation time not taken within a given year shall accumulate and be granted during the next succeeding year only. *See N.J.S.A. 11A:6-2(f)*. However, Human Services adjusted the appellant's leave credit for calendar years 2015 and 2016 by a total of 20 days. Therefore, for calendar years 2015 and 2016, the appellant was credited with 25 working days of vacation for his over 20 years of continuous permanent service since August 1993. *See N.J.S.A. 11A:6-2(e) and N.J.A.C. 4A:6-1.2(a)1(iv)*.

A review of the appellant's Personnel Management Information System (PMIS) record with Human Services indicates that he entered permanent service on August 14, 1993.

CONCLUSION

In the present matter, there is no basis on which to grant the appellant's request for enforcement. In compliance with the Commission's order, Human Services revised the appellant PMIS record to indicate that he entered permanent service on August 14, 1993. With respect to his concern about title seniority as a Senior Police Officer, Human Services, retention of accumulated seniority rights in the context of an intergovernmental transfer means that all seniority gained in the prior jurisdiction shall be retained for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. *See N.J.A.C. 4A:4-7.4(b)*. *See In the Matter of Police Sergeant, Clark* (CSC, decided February 11, 2009), *vacated in part on other grounds on reconsideration* (CSC, decided May 27, 2009). As such, the appellant's seniority, including title seniority, for Civil Service related programs such as promotional examination eligibility and layoff rights determinations accrue as of August 14, 1993. However, the crux of the appellant's concern is how Human Services assigns such things as work locations and shifts based on how seniority is determined through a collective negotiations agreement. It has been well established that the Commission only has jurisdiction over the aforementioned Civil Service seniority-related programs. Any other internal seniority-related programs, for such things as job bidding or shift assignment, would be either established by policy or covered in a collective negotiations

agreement. The Commission does not have jurisdiction to enforce or interpret grievance procedures or other items which are contained in a collective negotiations agreement negotiated between the employer and the majority representative. See *In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001) and *In the Matter of James H. Kennedy* (CSC, decided October 7, 2009).

Regarding his request to be credited with the difference in vacation leave he should have earned from 2008 to 2016 had his continuous permanent service been appropriately recorded, consistent with the Commission's 2015 order, Human Services credited the appellant with 20 additional days of vacation leave for calendar years 2015 and 2016. Accordingly, the appellant now is credited vacation leave in accordance with his 20 years of continuous permanent service. However, *N.J.S.A. 11A:6-2(f)* provides that vacation days not taken in a given year shall accumulate and be granted during the next succeeding year only. Thus, since the accumulation of vacation leave is statutory, it cannot be relaxed by the Commission. See e.g., *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Moreover, the appellant was well aware of the fact that he was only being credited with 12 days of vacation leave each year consistent with *N.J.S.A. 11A-6.2(a)* after he transferred to Human Services in 2007 but did not raise the issue of his entitlement until 2016. Therefore, his request is denied.

ORDER

Therefore, it is ordered that the request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JANUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: William Hawkins
Lawrence Popp, Esq.
Christina Mongon
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of William Hawkins,
Department of Human Services

Administrative Appeal

CSC Docket No.2015-1227

ISSUED: **FEB - 5 2015**

(CSM)

William Hawkins requests that his title seniority as a Police Officer with the Borough of Somerdale (Somerdale) be applied to his current title of Senior Police Officer, Human Services.

By way of background, Hawkins intergovernmentally transferred to the Department of Human Services from Somerdale from the title of Police Officer to the title of Senior Police Officer, Human Services effective October 13, 2007. In accordance with legislative changes to the intergovernmental transfer program that became effective on August 2, 2006, the appellant was provided the option to waive all of his accumulated seniority and sick leave. *See N.J.S.A. 11A:2-28*. A review of the intergovernmental transfer agreement for the appellant indicates that he *did not opt* to waive his accumulated seniority upon transfer to the Department of Human Services.

In his October 29, 2014 request to the Civil Service Commission (Commission), Hawkins requests that his accumulated title seniority from Somerdale as a Police Officer be applied to his intergovernmental transfer to the title of Senior Police Officer, Human Services. Hawkins states that his hire date as a Police Officer with Somerdale was August 1, 1993 and, as a result of a pending reassignment, discovered that the information in his personnel record appears to be incorrect. In this regard, the appellant explains that reassignments are based on in-title seniority and when he questioned his overall in-title seniority on record, the appointing authority advised him that he only possessed seven years of in-title seniority. Thus, Hawkins maintains that it does not appear that his overall in-title

seniority was accurately calculated to include the seniority he gained as a Police Officer with Somerdale prior to his intergovernmental transfer. The appellant emphasizes that this inaccuracy will have a significant impact on his work schedule, as reassignments are based on seniority and he notes that he was told when he transferred in 2007 that even though the titles were different, his seniority would be transferred. Hawkins also asserts that he was inaccurately informed of his potential options when he effected his intergovernmental transfer in 2007, as he was told that a waiver of his accumulated sick time was mandatory, but the intergovernmental transfer agreement indicates that unused sick leave shall be carried forward by the transferee, except for those in Firefighter titles. Thus, since he serves in a Police Officer title, the appellant is unclear as to why he was required to waive his rights and argues that he was inaccurately advised of his options at the time of transfer.

Although provided the opportunity, the appointing authority did not provide any additional argument or information for the Commission to consider in this matter.

CONCLUSION

N.J.S.A. 11A:2-28(a) provides for the intergovernmental transfer of law enforcement officers and permits them the option to waive all accumulated seniority and sick leave. Stated differently, the parties to an intergovernmental transfer of a law enforcement officer can choose whether to waive or *not to waive accumulated seniority*. If the latter were to occur, a transferred Police Officer would retain accumulated seniority after the transfer. Prior to the adoption of *N.J.S.A. 11A:2-28* on August 2, 2006, the rules governing intergovernmental transfers specifically excluded retention of seniority for a Police Officer who intergovernmentally transferred to another jurisdiction as a Police Officer. On the other hand, a Sheriff's Officer who intergovernmentally transferred to another jurisdiction as a Sheriff's Officer, under the prior rule, would have automatically retained his or her seniority as the rule did not exclude the retention of seniority.

Conversely, where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, the receiving jurisdiction is required to request that the Chairperson of the Civil Service Commission or designee approve the title, based on the following criteria: 1) the titles(s) shall have substantially similar duties and responsibilities; 2) the education and experience requirement for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title; 3) there shall be no special skills, licenses, certification or registration requirements for the new title which are not also mandatory for the former title; and 4) any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title. See

N.J.A.C. 4A:4-7.1A(c)2. Thus, it is clear that intergovernmental movements contemplate the movement of employees between titles that have been determined to be substantially similar. In those cases where the titles involved have been determined to be substantially similar, such as from Police Officer to Senior Police Officer, Human Services, it has been the practice of the Commission to process the intergovernmental transfer.

Permitting the retention of seniority accrued in dissimilar law enforcement titles would result in a direct conflict with rules regarding seniority calculations in the event of a layoff. Seniority for police titles is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have) lateral or demotional rights to the current permanent title. See *N.J.A.C.* 4A:8-2.4(b). This is significantly different from how seniority is determined for non-police titles, where seniority is based on continuous permanent service in the jurisdiction, regardless of title. See *N.J.A.C.* 4A:8-2.4(a). For purposes of intergovernmental transfers, the Police Officer and the Senior Police Officer, Human Services titles are both entry level titles for their respective series. Thus, movement from one to the other is considered a lateral, rather than promotional or demotional action. Moreover, as stated above, the Commission has considered them substantially similar for the purposes of intergovernmental transfers. In this regard, according to the job specification for Police Officer, incumbents are primarily assigned a tour of duty, on foot, or in an automobile, to patrol a designated area and to provide assistance and protection for persons, to safeguard property, to assure observance of the law, and to apprehend lawbreakers. The job specification for Senior Police Officer, Human Services indicates that incumbents, under direction of a Police Sergeant, or other supervisor in the police unit of an institution or cluster of institutions under the jurisdiction of the Department of Human Services, during an assigned tour of duty does varied tasks involved in patrolling buildings and grounds and safeguarding the peace and safety of clients, residents, employees, and property; does related work as required.

In other words, since the Police Officer and the Police Officer, Human Services title series are substantially similar, in accordance with *N.J.A.C.* 4A:8-2.1(a) and (b), an intergovernmental transferee to the Senior Police Officer, Human Services title, if agreed to as part of an intergovernmental transfer, should have any title seniority as a Police Officer be also considered as title seniority for Senior Police Officer, Human Services. Although the Police Officer, Human Services title series is used exclusively in State service, while, the Police Officer title series is only utilized in local service, under the controlling regulatory provision, as the titles are substantially similar, they in theory, would have lateral or demotional rights to a Police Officer title. As such, Hawkins' title seniority as a Senior Police Officer, Human Services should include his title seniority as a Police Officer with Somerdale.

With respect to his concern about waiving his accumulated sick time, participating in the intergovernmental transfer program is solely at the option of the receiving agency and transferring employee; thus, all terms must be agreed upon by the parties prior to an employee leaving one jurisdiction for another and this agency does not have standing to create a binding retroactive agreement between parties that would change these terms. In the instant matter, Hawkins agreed to waive his accumulated sick time prior to intergovernmentally transferring to the Department of Human Services. The Department of Human Services can require this as a condition of the transfer and this agency cannot change this term.

ORDER

Therefore, it is ordered that the request be granted in part and William Hawkins is to retain the accumulated title seniority gained prior to his intergovernmental transfer.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF FEBRUARY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: William Hawkins
Alma Miley
Christina Mongon
Kenneth Connolly
Joseph Gambino