



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Anthony Valdivia,
City of Union City

CSC Docket No. 2017-3382

Request for Rule Relaxation

ISSUED: **MAY 19 2017** (SLK)

The City of Union City (Union City) requests that the provisions of *N.J.A.C.* 4A:4-7.1A be relaxed in order to permit the retroactive intergovernmental transfer of Anthony Valdivia from the title of Sheriff's Officer, Hudson County to the title of Police Officer, Union City.

By way of background, Valdivia was appointed as a Sheriff's Officer with the Hudson County's Sheriff's Office (Hudson County) effective July 1, 2015. Accordingly, his 12-month working test period commenced on July 1, 2015. Union City states that it appointed Anthony Valdivia as a Police Officer effective December 4, 2015. Further, Union City indicates that, on December 8, 2015, it sent the forms to the Division of Agency Services (Agency Services) to complete the intergovernmental transfer. However, Agency Services does not have a record that it received the paperwork. On or about May 29, 2017, Union City discovered that there was no record that Valdivia's intergovernmental transfer, effective December 4, 2015, was ever recorded. Thereafter, Union City contacted Agency Services. Although Valdivia, Hudson County, and Union City agreed to the terms of the intergovernmental transfer to Union City as a Police Officer, Agency Services advised that, even if it had received the request for the intergovernmental transfer, it would have been unable to process the request since Valdivia had not achieved permanent status as a Sheriff's Officer. In this regard, since Valdivia had not completed his 12-month working test period, absent rule relaxation procedures, an intergovernmental transfer could not be processed as he had not achieved permanent status in a substantially similar title. See *N.J.A.C.* 4A:4-7.1A(a).

In its request to the Civil Service Commission (Commission), Union City states that Valdivia is an exemplary employee who it would not want to see penalized due to its misinterpretation of the Civil Service rules and regulations concerning intergovernmental transfers and an internal administrative error. It presents that Union City, Hudson County, and Valdivia agreed to the transfer, and it was always the intent of the parties to ensure all rules were followed to ensure he maintained his permanent status as a Police Officer, as evidenced by the parties' execution of the intergovernmental transfer agreement. Therefore, it requests a rule relaxation be granted and Valdivia's intergovernmental transfer be approved retroactive to December 4, 2015.

A review of the intergovernmental transfer agreement indicates that Hudson County approved Valdivia's separation effective December 3, 2015 and Union City's records indicate that it approved his transfer effective December 4, 2015.

CONCLUSION

N.J.A.C. 4A:4-7.1A(a) states that an intergovernmental transfer is the movement of a *permanent* employee between governmental jurisdictions operating under Title 11A or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within one year of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A (emphasis added).

N.J.A.C. 4A:4-5.2(d) states in pertinent part that persons appointed to entry level law enforcement officer titles shall serve a 12-month working test period in order to obtain permanent status.

N.J.A.C. 4A:1-1.2(c) provides that a rule may be relaxed for good cause, in a particular circumstance, in order to effectuate the purposes of Title 11A of the New Jersey Statutes Annotated.

The intergovernmental transfer rules permit the transfer of permanent State, county and municipal employees between jurisdictions without loss of permanent status, subject to the approval of the transferring agency, the receiving agency, the transferring employee, and Agency Services. In this case, Valdivia was not permanent since he had not completed his working test period as Sheriff's Officer. However, all parties agreed to the transfer, and Union City indicates that Valdivia is an exemplary employee who it would not want to see penalized due to its misinterpretation of the Civil Service rules and regulations concerning intergovernmental transfers and its internal administrative error. Although Valdivia should not have been transferred prior to this agency's approval and prior to his completing his working test period, given Union City's administrative error

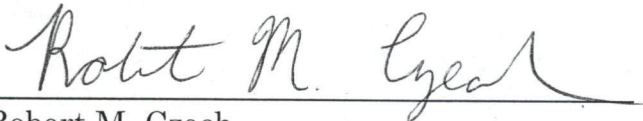
and Valdivia's successful completion of his working test period as a Police Officer, Union City, good cause exists to permit his permanent transfer to Union City effective December 4, 2015. *See In the Matter of Nicholas Rizzitello, Police Officer, Newark* (CSC, decided June 9, 2010). *See also, In the Matter of Kenneth Dowzycki* (MSB, decided December 1, 2004).

ORDER

Therefore, it is ordered that this request be granted and the personnel records of Anthony Valdivia reflect his intergovernmental transfer from Hudson County to the City of Union City effective December 4, 2015.

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 17th DAY OF MAY, 2017



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