



**STATE OF NEW JERSEY**

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

In the Matter of Torian Perry, Fire  
Fighter, Ewing Township

CSC Docket No. 2018-1842

Administrative Appeal

**ISSUED: April 2, 2018 (RE)**

Ewing Township (Ewing) petitions the Civil Service Commission (Commission) to relax the provisions of *N.J.A.C.* 4A:4-7.1A(a) in order to permit the permanent transfer of Torian Perry, in the title of Fire Fighter, Atlantic City to the title of Fire Fighter, Ewing.

By way of background, Perry was appointed as Fire Fighter with Atlantic City on May 13, 2013. At the time of his appointment, Atlantic City was subject to the provisions of Title 11A, New Jersey Statutes. Accordingly, his merit and fitness for the position was ascertained through the competitive testing process and completion of a working test period in compliance with Civil Service law and rule. Effective November 9, 2016, in accordance with *N.J.S.A.* 52:27BBBB-1 *et. seq.*, the Municipal Stabilization and Recovery Act (MSRA), Atlantic City was deemed a municipality in need of stabilization and recovery and the Director, Division of Local Government Services, New Jersey Department of Community Affairs, assumed all of the functions, powers, privileges and immunities of the governing body of Atlantic City. Thereafter, the Division of Local Government Services and this agency entered into a Memorandum of Understanding where the parties agreed that the Director, Division of Local Government Services and/or his designee shall exercise authority and discretion granted in the MSRA with respect to the provisions of Title 11A, and the regulations promulgated thereunder, and that the provisions of Title 11A, and the regulations promulgated thereunder, shall not apply. Therefore, while it is deemed a municipality in need of stabilization and recovery in accordance with MSRA, the provisions of Title 11A and the regulations promulgated thereunder do not apply to Atlantic City.

Subsequently, Perry sought an intergovernmental transfers to Ewing. However, as noted above, Atlantic City currently does not operate under the provisions of Title 11A and Title 4A. As such, Perry does not have permanent civil service status. The provisions of *N.J.A.C. 4A:-7.1A(a)* are only available to permanent career service employees working in State, county or municipal Civil Service jurisdiction.

In the present matter, in its January 3, 2018 request, Ewing states that it has a critical need for additional, trained Fire Fighters. It explains that due to recent information regarding the response to calls, it found that the Fire Department is understaffed and has an immediate need to cover shift and staffing requirements with fully trained and qualified personnel. In this regard, Ewing notes that it wants to implement a 24/7 operation, in a very short time frame, to staff a daytime firefighting operation which requires little or no volunteer support, and to supplement the volunteer forces at nights and on weekends. As such, it has a critical need for trained personnel. Therefore, Ewing underscores that it is essential to public safety that the intergovernmental transfer be processed immediately. As Perry has the requisite knowledge, skills, abilities and training and was selected and appointed by Atlantic City in accordance with the provisions of Title 11A, Ewing requests that the provisions of *N.J.A.C. 4A:-7.1A(a)* be relaxed in order to permit his retroactive intergovernmental transfer effective January 22, 2017.

## CONCLUSION

*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 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. Absent rule relaxation procedures, transfers in this case cannot be processed since the transfers involve employees who are serving in a jurisdiction where the provisions of Title 11A and Title 4A do not apply.

*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. However, as noted above, Perry is not currently permanent employee in a governmental jurisdiction operating under Title 11A.

In the instant matter, it is appropriate for the Commission to permit the intergovernmental transfer of Perry from Atlantic City to Ewing in the title of Fire Fighter. But for the fact that Atlantic City is currently deemed a municipality in need of stabilization and recovery in accordance with MSRA and the provisions of Title 11A and Title 4A do not apply, Perry satisfies the criteria for participation in the intergovernmental transfer program. In this regard, the record demonstrates that he was permanently appointed as Fire Fighter in Atlantic City in accordance with Civil Service law and rules and completed his working test period. Additionally, the former Commissioner of Personnel and the Commission have previously permitted employees of non-Civil Service jurisdictions to participate in the intergovernmental transfer program under particular circumstances. *See In the Matter of Police Officers to Sheriff's Officers, Gloucester County Sheriff's Office* (CSC, decided May 27, 2009) (Commission permitted the intergovernmental transfers of four permanent non-Civil Service Police Officers to career service Sheriff's Officer titles with the Gloucester County Sheriff's Office due to their layoffs as a result of consolidation of services); *In the Matter of Dennis Gaspari* (Commissioner of Personnel, decided September 13, 2002) (Although Somerset County Board of Social Services is not a Civil Service jurisdiction, as federal regulations require that its operations be merit-based, Commissioner permitted employee to participate in the intergovernmental transfer program); *In the Matter of Ronald P. Laielli, et al., Fire Fighter, Ventnor* (Chairperson, decided July 31, 2017); and *In the Matter of Marlboro Municipal Utilities Authority Employees* (CSC, decided March 16, 2011) (Commission permitted retroactive intergovernmental transfers of six employees who were laid off from the Municipal Utilities Authority).

Moreover, Ewing has indicated that there is a public safety need for the immediate appointment of trained Fire Fighters, as it is currently implementing a 24/7 operation in a very short time frame. There is nothing in the record to indicate that any other party would be harmed by permitted the transfers and the public interest is served by ensuring sufficient staffing levels of critical public safety positions. Therefore, it is appropriate to relax the provisions of *N.J.A.C. 4A:4-7.1A(a)* to permit the retroactive intergovernmental transfer of Perry from the title of Fire Fighter, Atlantic City to Fire Fighter, Ewing.

### **ORDER**

Therefore, it is ordered that this request, seeking the transfer of Torian Perry in the title of Fire Fighter, Atlantic City to the title of Fire Fighter, Ewing, be granted.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27<sup>TH</sup> DAY OF MARCH, 2018



Deirdre L. Webster Cobb  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Torian Perry  
Maeve Cannon, Esq.  
Jason Holt  
Hilary Hyser  
Kelly Glenn  
Records Center