



STATE OF NEW JERSEY

In the Matter of Omar Akel and
Kenneth Ross, Police Sergeant
(PM4594C), Middletown Township

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

CSC Docket Nos. 2022-1490 and
2022-1485

Examination Appeal

ISSUED: JULY 25, 2022 (JH)

Omar Akel and Kenneth Ross appeal the determinations of the Division of Agency Services (Agency Services) which found that they lacked the required amount of permanent status in a title to which the examination was open for the promotional examination for Police Sergeant (PM4594C), Middletown Township.

By way of background, Akel and Ross were appointed to the Police Officer title in Long Branch effective January 2, 2015 and January 2, 2018, respectively. Effective January 1, 2021, Akel and Ross intergovernmentally transferred from Long Branch to Middletown in the title of Police Officer. A review of each of their intergovernmental transfer agreements finds that the appellants requested to waive their rights to all accumulated seniority and to all accumulated sick leave. The receiving agency in the intergovernmental transfer agreement acknowledged their requests and certified that their accumulated seniority and accumulated sick leave would not be retained after the effectuation of the intergovernmental transfer.

The announcement for the subject examination was issued on October 1, 2021 and open to employees in the competitive division who had an aggregate of three years of continuous permanent service and were serving in the Police Officer title as of the December 31, 2021 closing date. Accordingly, Agency Services found Akel and Ross ineligible as they did not possess three years of continuous permanent service in Middletown as of the December 31, 2021 closing date. It is noted that 37 eligible candidates were admitted to the subject examination which was administered on February 26, 2022.

On appeal, Akel and Ross maintain that their “total time gainfully employed under the title of Police Officer on [January 2, 2015 and January 2, 2018, respectively,] with the City of Long Branch is less than 1 month shy of [7 years and 1 year, respectively].” They contend that “at the time of my transfer neither myself nor my receiving agency were aware that waiving my seniority (as defined under [N.J.A.C.] 4A:8-2.4) would include my eligibility for testing.” They further explain that Police Chief R. Craig Weber “advised that this was not the intended result and that both he and I were under the impression that waiving seniority applied only to matters within the operation of the department (i.e. vacation preference, time off, being held over on shift). Both myself and the agency I am employed by are in agreement that the seniority forfeited in the IGT paperwork process was not intended to forfeit any seniority regarding promotional requirements. Both myself and the agency I am employed by are requesting in writing that the rule regarding the forfeiture of seniority for promotional exams be relaxed in order to allow me to sit for the upcoming Police Sergeant Exam.”

In a subsequent submission, the appellants provide copies of their initial appeal letters with the following added sentence, “This request has also been endorsed by the sending agency’s Commanding Officer, Captain Frank Rizzuto and Appointing Authority, City of Long Branch, Business Administrator, George Jackson.” In support of their appeals, they submit a signature sheet which provides, “Endorsed:” next to the signatures from R. Craig Weber, Chief of Police, Middletown Township; Anthony P. Mercantante, Township Administrator, Middletown Township; Frank Rizzuto, Officer in Charge, City of Long Branch Police Department; and George Jackson, Business Administrator, City of Long Branch.

CONCLUSION

At the outset, it is noted that the only mechanism that allows an employee of one Civil Service jurisdiction to carry over his or her permanent service to another Civil Service jurisdiction is an intergovernmental transfer. An intergovernmental transfer permits 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 the Civil Service Commission (Commission). Specifically, 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. In other words, the parties to an intergovernmental transfer can agree *not to waive accumulated seniority*. 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 in the receiving jurisdiction. See N.J.A.C. 4A:4-7.4(b). If this were to occur, a Police Officer who intergovernmentally transferred to another jurisdiction as

a Police Officer would retain accumulated seniority after the transfer. Conversely, *N.J.A.C.* 4A:4-7.4(c) specifically provides that those law enforcement officers who intergovernmentally transfer and waive all accumulated seniority rights shall *not* retain seniority for purposes of determining *promotional*, layoff or demotional rights and sick and vacation leave entitlements.

As noted previously, to establish eligibility for the subject examination, a candidate must possess an aggregate of three years of *continuous* permanent service in the Police Officer title as of the December 31, 2021 closing date. See *N.J.A.C.* 4A:4-2.6(b). Pursuant to *N.J.A.C.* 4A:4-2.6(a), aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15. In this regard, *N.J.A.C.* 4A:4-2.15(d)3 provides:

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.

Furthermore, *N.J.A.C.* 4A:4-7.4 (Retention of rights) provides, in pertinent part, that in the case of an intergovernmental transfer in accordance with *N.J.A.C.* 4A:4-7.1A, those law enforcement officers who intergovernmentally transfer and waive all accumulated seniority rights shall not retain such seniority for purposes of determining *promotional*, layoff or demotional rights and sick and vacation leave entitlements. As such, the appellants' seniority for Civil Service-related programs such as promotional examination eligibility accrue as of January 1, 2021. In other words, given that the appellants opted to waive all accumulated seniority, their "total time gainfully employed under the title of Police Officer" begins on January 1, 2021 for the purposes of the subject promotional examination.

With respect to the appellants' request that "the rule regarding the forfeiture of seniority for promotional exams be relaxed," as noted above, *N.J.S.A.* 11A:2-28(a) and related rules do not mandate that law enforcement officers waive all accumulated seniority but rather, provide the *option* of waiving seniority. As such, the gravamen of the present matter is the agreed upon terms between the appellants and the receiving agency in the appellants' respective intergovernmental transfer agreements. In this regard, it is noted that while the Commission approves the appropriateness of an intergovernmental transfer, the terms of the agreement are determined by the transferring agency, the receiving agency and the transferring employee. Specifically, the transfer of seniority is solely at the option of the receiving agency and the transferring employee. As such, the terms of the Intergovernmental Transfer Agreement are not reviewable by the Civil Service Commission.

The intergovernmental transfer agreement, in the “Employee Agreement” section, provides, “A Waiver of all accumulated seniority and/or sick leave shall be afforded to those in Law Enforcement titles. Please see the attached waiver”; and the “Sending Jurisdiction Agreement” section provides, “Transferees shall retain accumulated seniority rights and sick leave, except for those transferring in the title of Firefighter or those in Law Enforcement titles who have signed the attached waiver.” The attached waiver provides, in pertinent part:

New Jersey Civil Service Commission
 Division of Classification and Personnel Management - Intergovernmental Services Unit
 P.O. Box 313, Trenton, New Jersey 08625-0313
INTERGOVERNMENTAL TRANSFER WAIVER OF RIGHTS
Law Enforcement Waiver Requests
 (Request to Waive All Accumulated Seniority and/or Sick Leave)

I _____ hereby request to waive the following rights:
Transferee Name

SENIORITY WAIVER	
Employees seeking intergovernmental transfers in Law Enforcement titles shall be granted the option to waive retention of rights to <u>all accumulated seniority</u> . By authorized signature of transferee below, a waiver has been requested:	
<input type="checkbox"/> I request to waive my rights to all accumulated seniority and authorize the Civil Service Commission to facilitate an intergovernmental transfer as specified in the attached Intergovernmental Transfer Agreement (DPF-721).	
Transferee's Signature: _____	Date: _____

SICK LEAVE WAIVER	
Employees seeking intergovernmental transfers in Law Enforcement titles shall be granted the option to waive retention of rights to <u>all accrued sick leave</u> . By authorized signature of transferee below, a waiver has been requested:	
<input type="checkbox"/> I request to waive my rights to all accrued sick leave and authorize the Civil Service Commission to facilitate an intergovernmental transfer as specified in the attached Intergovernmental Transfer Agreement (DPF-721). By signing this waiver, I further acknowledge that no supplemental compensation for accrued sick leave has or will be paid to me.	
Transferee's Signature: _____	Date: _____

RECEIVING AGENCY ACKNOWLEDGEMENT OF WAIVER	
As the Receiving Agency's authorized signing authority, I _____ by signing below, acknowledge such waiver signed by the above named transferee and certify that accumulated seniority and/or sick leave will not be retained after effectuation of the intergovernmental transfer.	
Appointing Authority Signature: _____	Date: _____

A review of the appellants’ respective intergovernmental transfer agreements and attached waivers finds that they checked, signed and dated the “Seniority Waiver” section and the appointing authority for Middletown signed and dated the “Receiving Agency Acknowledgment of Waiver.” In addition, although the appellants claim that they and Chief Weber believed that “waiving seniority applied only to matters within the operation of the department,” as indicated above, *N.J.A.C. 4A:4-7.4* clearly states that for those law enforcement officers who intergovernmentally transfer and waive all accumulated seniority rights shall not retain such seniority for purposes of

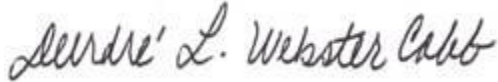
determining promotional purposes. Furthermore, it is noted that the Commission does not have jurisdiction to address issues regarding internal policies such as seniority for shift bidding or vacation scheduling. Moreover, to amend the appellants' respective intergovernmental transfer agreements to allow their waived seniority to be restored for the sole purpose of benefiting two individuals to the potential detriment of the 37 other eligibles who met the above noted requirements, is unwarranted. *See In the Matter of Police Sergeant (PM5103N), Borough of Carteret* (CSC, decided February 20, 2013) and *In the Matter of Police Sergeant, Clark* (CSC, decided May 27, 2009). As such, the Commission finds no good cause to restore the appellants' seniority with Long Branch for eligibility purposes.

ORDER

Therefore, it is ordered that these appeals 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 20TH DAY OF JULY 2022



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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

c: Omar Akel
Kenneth Ross
Anthony Mercantante
Division of Agency Services
Records Center