



STATE OF NEW JERSEY

In the Matter of Michael McCabe,
Police Officer, Milltown

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

CSC Docket No. 2023-2812

Administrative Appeal

ISSUED: July 19, 2023 (JH)

Milltown, represented by Heather J. Fay, Esq., requests the relaxation of *N.J.A.C.* 4A:4-7.1A(a)1 to permit the intergovernmental transfer of Michael McCabe from the title of Police Officer Palisades Interstate Park, Palisades Interstate Park Commission, to the title of Police Officer, Milltown.

In the present matter, McCabe, the Palisades Interstate Park Commission, and Milltown reached an agreement as to the terms of transfer. The agreement provides, in pertinent part, that McCabe waives all accumulated seniority and sick leave in accordance with *N.J.S.A.* 11A:2-28(1) a and b. However, this request was unable to be processed on the basis that McCabe is serving provisionally, pending promotional examination procedures, in the title of Police Officer Palisades Interstate Park.

In this regard, Milltown indicates that “Steven Shallop, Superintendent for PIP states that McCabe was provisionally appointed as a Police Officer for the PIP on July 16, 2022 and completed the full Basic Course for Police Officers on December 9, 2022 . . . While McCabe is serving provisionally pending promotional examination procedures in the title of Police Officer, he has underlying permanent status in the title of Security Officer. Additionally, McCabe has taken and passed the open competitive [2022] Law Enforcement Examination (LEE) and achieved a score of

94.260.¹ Further, McCabe has been performing the duties of a Police Officer for PIP since his appointment and to the title in July 2022. However, there is no current promotional announcement Police Officer for the PIP from which to regularly appoint McCabe.” Milltown emphasizes that “due to recent and upcoming retirements in the Milltown Police Department, there is an immediate public safety need for it to hire additional law enforcement personnel who have completed the full Basic Course for Police Officers.” Therefore, Milltown requests the relaxation of *N.J.A.C. 4A:4-7.1A(a)1* to permit the intergovernmental transfer of McCabe. Milltown confirms that it will subject McCabe to a complete 12 month working test period in the title of Police Officer.

CONCLUSION

N.J.A.C. 4A:4-7.1A(a)1 provides, in pertinent part, that an intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes and that non-permanent employees serving in entry level law enforcement titles who were appointed from an eligible list and who have completed the required Police Training Commission training course may intergovernmentally transfer upon consent of the sending and receiving jurisdictions, but will be required to complete the full 12-month working test period with the receiving jurisdiction. *N.J.A.C. 4A:4-5.2(d)* provides, 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 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 Division of Agency Services. Although the terms of transfer in this case were agreed to by the transferring agency, the receiving agency and the transferring employee, it will not be able to be processed, absent rule relaxation procedures, since McCabe is not permanent in the title of Police Officer Palisades Interstate Park.²

¹ It is noted that announcements for the 2022 LEE were issued on January 3, 2022 and applications were due no later than February 28, 2022. A review of the record finds that announcements for Police Officer Palisades Interstate Park (S0230D) and Police Officer (M0094D), Milltown, were included in the 2022 LEE. It is noted that McCabe applied for Police Officer (M0102D), New Brunswick.

² *N.J.S.A. 11A:4-1.3*, which went into effect on August 4, 2021, permits a municipality to hire a person, exempt from the requirement to take the entry level law enforcement examination conducted by the Civil Service Commission, who has successfully completed the full Basic Course for Police Officers at a school approved and authorized by the New Jersey Police Training Commission. Subsequently, *N.J.S.A. 11A:4-1.3* was amended effective July 18, 2022 to provide:

As noted previously, McCabe has underlying permanent status in the title of Security Officer with the Palisades Interstate Parkway Commission. In addition, McCabe has been performing the duties of a Police Officer Palisades Interstate Park since his provisional appointment to the title in July 2022. Furthermore, he successfully completed the requirements for the Basic Course for Police Officers and he achieved a passing score on the 2022 LEE. In this regard, it is noted that in State service, in some instances, a candidate's score on the LEE is utilized when processing promotional announcement for some State entry level law enforcement titles. However, there is no current promotional announcement or promotional eligible list for Police Officer Palisades Interstate Park from which to regularly appoint McCabe. Given these unique circumstances, including Milltown's immediate and pressing need for fully trained Police Officers, good cause exists to relax the provisions of *N.J.A.C. 4A:4-7.1A* to permit the intergovernmental transfer of McCabe to the title of Police Officer, Milltown.

N.J.S.A. 11A:2-28(1)a and *b* provide that law enforcement officers shall be granted all privileges under the intergovernmental transfer program, including the option to waive all accumulated sick leave and seniority rights, and that the waiver of accumulated sick leave and seniority rights shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Division of Agency Services. *See also, N.J.A.C. 4A:4-7.1A(b)2*. In this case, McCabe signed an agreement, which was acknowledged by the receiving agency, indicating that he waives all accumulated seniority and all accrued sick leave. Accordingly, accumulated seniority and sick leave do not transfer. *See N.J.A.C. 4A:4-7.4(c)*.

Permanent entry-level officers and entry-level officers serving in a working test period who are employed by a municipal or county police department, county sheriff's department, or State or county correctional facility shall not be appointed by a different municipal or county police department, county sheriff's department, or State or county correctional facility utilizing the provisions of this section and municipal or county police departments, county sheriff's departments, or State or county correctional facilities may not utilize the provisions of this section to circumvent the intergovernmental transfer process regulations established by the Civil Service Commission for officers which requires written authorization from the departing authority, including, but not limited to, the New Jersey Department of Corrections.

See N.J.S.A. 11A:4-1.3d.

ORDER

Therefore, it is ordered that this request be granted. Additionally, Michael McCabe's 12-month working test period shall commence upon appointment as a Police Officer, Milltown.

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 19TH DAY OF JULY, 2023

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