

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Selection and Appointment

Performance Assessment Review

Adopted Amendments: N.J.A.C. 4A:4-2.15, 4A:6-5.1 and 5.3, and 4A:8-2.4

Proposed: March 18, 2013 at 45 N.J.R. 525(a)

Adopted: February 12, 2014, by the Civil Service Commission, Robert M. Czech,
Chair/CEO.

Filed: February 12, 2014 d. , without change.

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:6-28, and 11A:8-1 et seq.; and
P.L. 2008, c. 29.

Effective Date: March 17, 2014.

Expiration Dates: N.J.A.C. 4A:4 – 2/20/16.

N.J.A.C. 4A:6 – 12/3/15.

N.J.A.C. 4A:8 – 12/23/15.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on this rule proposal was held on April 10, 2013 in Trenton, New Jersey. Christopher Myers served as hearing officer. One person provided comments at that time. No written comments were received during the public comment period. The hearing officer recommended adoption of the proposal without

change. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Summary of Public Comments and Agency Responses:

COMMENT: Deborah Spencer, Secretary, International Federation of Professional and Technical Engineers (IFPTE) Local 195, expressed opposition to the proposed five-tier PAR rating system. Instead, she supports the three-tier system that she describes as negotiated in good faith between the State and the union. She stated that the three-tier system is unbiased, while the proposed five-tier system would negatively impact seniority, layoffs and promotions.

RESPONSE: Initially, it must be noted that the proposal does not affect any PAR rating system provisions in existing union contract agreements. See N.J.A.C. 4A:6-5.1(d). Further, there would be no negative impact on an employee's seniority rights in either layoffs or promotions. In particular, the proposed amendment to N.J.A.C. 4A:8-2.4(h), governing seniority tie-breakers in layoffs, would require that the tied employees be subject to the same PAR rating system and rated by the same supervisor; otherwise, the seniority tie-breaker provisions would remain intact.

However, the Commission believes that the five-tier PAR rating system would be significantly more beneficial to affected employees, as well as their supervisors and managers, than the current three-tier PAR rating system. It would provide a

broader, more flexible, and more accurate rating system by which employees will be evaluated on their job performance. Specifically, the availability of additional tiers – Commendable Performance and Needs Improvement/Development – would give supervisors and managers a better tool with which to assess employees’ job performance, while providing employees with more precise feedback in their evaluations and information on areas for improvement.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments would govern performance evaluations of employees working for the State of New Jersey and would not be subject to any Federal standards or requirements.

Full text of the adoption follows:

CHAPTER 4

SELECTION AND APPOINTMENT

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Chairperson of the Civil Service Commission or designee.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. When the PAR consists of a three-level rating scale, credit shall be awarded as follows:

i. Three points for Exceptional; or

ii. One point for Successful.

2. When the PAR consists of a five-level rating scale, credit shall be awarded as follows:

- i. Three points for a rating of Five – Exceptional Performance;
- ii. Two points for a rating of Four – Commendable Performance; and
- iii. One point for a rating of Three – Successful Performance.

3. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Successful in the case of both a three-level rating scale and a five-level rating scale, and credit shall be given for that rating.

4. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority.

- i. All leaves with pay including sick leave injury (SLI);

ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff leaves of absence without pay; and

iii. In local service, leave without pay to fill elective office.

2. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

3. 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.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five-year period immediately preceding the announced closing date.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years as of the announced closing date is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 100 percent, to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10-point maximum.

(h) The score earned by a candidate on an examination announced for more than one title area at a time shall be used for all examinations in those title areas for which the candidate files and is found eligible.

(i) A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Chairperson of the Civil Service Commission or designee.

(j) Ties in final earned ratings shall not be broken.

CHAPTER 6

LEAVES, HOURS OF WORK, AND EMPLOYEE DEVELOPMENT

SUBCHAPTER 5. PERFORMANCE EVALUATION

4A:6-5.1 General provisions

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the Chairperson of the Civil Service Commission or designee in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.

2. The PAR program shall use standardized forms and rating scales for different performance appraisal models to be designated by the Chairperson of the Civil Service Commission or designee and, except as provided in (d) below, a three-level rating scale to include the following ratings:

- i. Exceptional;
- ii. Successful; and
- iii. Unsatisfactory.

3. Each agency shall establish standardized rating cycles with a duration of one year. Within a particular standardized rating cycle, employees shall be rated at the same time, twice a year, with the interim and final ratings being six months apart.

(c) Each appointing authority shall maintain an employee's PAR evaluations in his or her personnel records and shall submit reports to an appropriate representative of the Civil Service Commission on all final PAR ratings of its employees in a form prescribed by the Chairperson or designee.

(d) The Chairperson of the Civil Service Commission or designee may modify the PAR program based on specific employee or agency needs and implement for State appointing authorities, unless precluded by a collective negotiations agreement, a five-level rating scale to include the following ratings:

1. Five – Exceptional Performance;
2. Four – Commendable Performance;
3. Three – Successful Performance;
4. Two – Needs Improvement/Development; and
5. One – Unsatisfactory Performance.

4A:6-5.3 PAR use and review: State service

(a) In both a three-level and a five-level PAR rating scale, an employee receiving an annual PAR rating below the Successful level shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment because of receiving an Unsatisfactory rating in a three-level or a five-level rating scale, but whose performance has subsequently improved. If approved by the Chairperson of the Civil Service Commission or designee, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date. In the case of a five-level rating scale, if an employee who had received a rating of Two – Needs Improvement/Development demonstrates an improved performance within 90 days following the rating, the increment shall be restored to the employee retroactively.

2. An employee who receives an annual rating below the Successful level in a three-level rating scale or an annual rating of One – Unsatisfactory Performance in a five-level rating scale should be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(b) Employees who are not represented by a collective negotiations unit or who are so represented but whose contract does not specify an appeal procedure, may appeal performance standards or a final PAR rating of Unsatisfactory in a three-level rating scale or a final PAR rating of One – Unsatisfactory or Two – Needs Improvement/Development in a five-level rating scale through noncontractual

grievance procedures. See N.J.A.C. 4A:2-3.1. In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(c) Employees who are represented by a collective negotiations unit may, where the contract so provides, file an appeal utilizing the procedures set forth in (d) below, regarding the following PAR ratings and issues:

1. In the case of a three-level rating scale, a final PAR rating of Unsatisfactory, or, where specifically provided in the contract, a final PAR rating of Successful;

2. In the case of a five-level PAR rating scale, a final PAR rating of One – Unsatisfactory Performance or Two – Needs Improvement/Development; and

3. Performance standards, regardless of the number of levels in the rating scale.

(d) The following are the procedures that shall be utilized where the requirements of (c) above are met:

1. Step One grievance procedures shall be conducted as set forth in N.J.A.C. 4A:2-3.4.

2. A grievant may appeal a Step One grievance decision to the PAR Joint Union Management Panel within 10 calendar days of receipt of the written decision at Step One, or a lack of timely response by the appointing authority. The appeal

shall be accompanied by material presented at Step One and any written records or decisions from Step One.

i. The Joint Union Management Panel shall consist of one individual selected by the appointing authority, one individual selected by the affected negotiations representative and one neutral individual jointly selected by the appointing authority and the affected negotiations representative.

ii. The panel shall meet, provided there are at least four Second Step appeals to be heard. The panel shall meet one additional day each month for every four additional appeals to be heard. When in any month there is no meeting because there are fewer than four appeals to be heard, there shall be a meeting the following month, so long as there are any cases to be heard.

iii. The appointing authority and union panel members shall discuss each appeal on the agenda and, with the assistance of the neutral panel member, attempt to jointly resolve the appeal.

iv. If the appointing authority and union cannot come to a joint resolution, the appeal shall be heard by the full panel. At any Second Step appeal hearing, the employee may be represented by a union steward, local union officer, and/or local union staff representative.

v. The parties may call witnesses and present evidence at the Second Step appeal hearing. However, each hearing shall conclude within

approximately four hours. The neutral panel member shall control the admission of testimony and evidence to ensure adherence to this time frame.

vi. The panel shall issue a written decision within 10 days of the hearing. Each panel member shall have one vote.

3. Appeals from decisions of the Joint Union Management Panel may be made to the Civil Service Commission in accordance with N.J.A.C. 4A:2-3.7(b).

(e) An employee may appeal the final departmental decision to the Civil Service Commission within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable, or induced by improper motives.

3. The Commission shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

(f) A rating of Unsatisfactory in a three-level rating scale or a rating of One – Unsatisfactory Performance in a five-level rating scale shall constitute evidence of incompetency, inefficiency, or failure to perform duties. In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

(g) Performance ratings may be used as a factor in promotion (see N.J.A.C. 4A:4-2.15) and layoff (see N.J.A.C. 4A:8-2.2(d)5 and 2.4(h)).

CHAPTER 8

LAYOFFS

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter, except for police and fire titles as set forth in (b) below, is the amount of continuous permanent service in the jurisdiction, regardless of title. An employee's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A shall be considered as continuous permanent service in the jurisdiction. Seniority shall be based on total calendar years, months, and days in continuous permanent service regardless of work week, work year, or part-time status.

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) For police and fire titles in State and local service, seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional

rights to the current permanent title. A police officer's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, shall be considered as continuous permanent service in the jurisdiction unless the police officer waives all accumulated sick leave and seniority rights in effecting the transfer. Seniority shall be based on total calendar years, months, and days in title regardless of work week, work year, or part-time status.

1. A police title is any law enforcement rank or title where entry level employees are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course.

2. A fire title is any uniform fire department rank or title.

3. If two or more employees in a police or fire title have equal seniority, the tie shall be broken in the order of priority set forth in (h) below, except that the fifth tie-breaking factor shall give priority to the employee with greater continuous permanent service, regardless of title.

4. A county or municipal appointing authority may elect to provide, through adoption of an ordinance or resolution, as appropriate, that employees in police and fire titles may exercise previously held demotional rights, pursuant to N.J.A.C. 4A:8-2.2(f) against employees in any layoff unit in the jurisdiction. Such ordinance or resolution shall not be given effect during a layoff unless adopted at least 90 days prior to submission of the layoff plan (see N.J.A.C. 4A:8-1.4).

(c) Preferred status, which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred status.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred status. Records of preferred status shall be maintained by the appointing authority in a manner acceptable to the Chairperson of the Civil Service Commission or designee.

3. If more than one employee has preferred status, priority will be determined on the basis of the class code of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(d) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff;

4. In State service, employment in the Senior Executive Service (SES), provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(e) Suspensions, other leaves of absence without pay, and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence, and periods of layoff that began on or after March 1, 1987. In local service, deductions will be made only for such suspensions, leaves of absence, and periods of layoff that began on or after July 1, 1988.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff and reappointment shall be deducted from the employee's seniority.

(g) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary, or interim appointment shall continue to accrue seniority in their permanent titles.

(h) Tie-breakers based on service shall include service accumulated prior to an intergovernmental transfer effected in accordance with N.J.A.C. 4A:4-7.1A, except for all firefighters, and except where a law enforcement officer, including a sheriff's officer and a county correction officer, waives all accumulated seniority rights in the intergovernmental transfer. If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson of the Civil Service Commission or designee;

3. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes;

4. The employee with the greater seniority in the title before a break in service shall have priority;

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary, or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. The employee with the higher performance rating during the 12-month period prior to the effective date of the layoff shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson or designee;

10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor and were subject to the same PAR rating scale. In local service, the performance rating system must have been approved by the Chairperson or designee;

11. Other factors as may be determined by the Chairperson or designee.