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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of David Cupon,  
Phillipsburg

CSC Docket No.2015-146

Administrative Appeal

ISSUED: **SEP - 4 2014**

(SLD)

The Town of Phillipsburg and David Cupon, Police Officer, request the transfer of his accumulated seniority from Warren County to Phillipsburg.

By way of background, David Cupon intergovernmentally transferred to Phillipsburg from Warren County from the title of Sheriff's Officer to the title of Police Officer, effective December 16, 2012. In accordance with legislative changes to the intergovernmental transfer program that became effective on August 2, 2006, the appellant was provided the option to waive all of his accumulated seniority and sick leave. *See N.J.S.A. 11A:2-28.* A review of the intergovernmental transfer agreement for the appellant indicates that he opted to waive his accumulated seniority upon transfer to Phillipsburg. Additionally, Phillipsburg acknowledged that seniority would not be retained after effectuation of the transfer.

In its June 20, 2014 request to the Civil Service Commission (Commission), Phillipsburg requests that the appellant's accumulated seniority from Warren County be reinstated, retroactive to the date of his intergovernmental transfer. Phillipsburg explains that it had negotiated with the appellant and agreed that he would carry over his seniority from his previous employer. However, until a recent complaint made by the union, it was unaware that the appellant had mistakenly waived his seniority.

## CONCLUSION

*N.J.S.A.* 11A:2-28(a) provides for the intergovernmental transfer of law enforcement officers, including Sheriff's Officers, and permits them the option to waive all accumulated seniority and sick leave. Stated differently, the parties to an intergovernmental transfer of a law enforcement officer, including a Sheriff's Officer, can choose whether to waive or *not to waive accumulated seniority*. If the latter were to occur, a transferred Police Officer or Sheriff's Officer would retain accumulated seniority after the transfer. Prior to the adoption of *N.J.S.A.* 11A:2-28 on August 2, 2006, the rules governing intergovernmental transfers specifically excluded retention of seniority for a Police Officer who intergovernmentally transferred to another jurisdiction as a Police Officer. On the other hand, a Sheriff's Officer who intergovernmentally transferred to another jurisdiction as a Sheriff's Officer, under the prior rule, would have automatically retained his or her seniority as the rule did not exclude the retention of seniority.

Conversely, where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, the receiving jurisdiction is required to request that the Chairperson of the Civil Service Commission or designee approve the title, based on the following criteria: 1) the titles(s) shall have substantially similar duties and responsibilities; 2) the education and experience requirement for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title; 3) there shall be no special skills, licenses, certification or registration requirements for the new title which are not also mandatory for the former title; and 4) any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title. See *N.J.A.C.* 4A:4-7.1A(c)2. Thus, it is clear that intergovernmental movements contemplate the movement of employees between titles that have been determined to be substantially similar. In those cases where the titles involved have been determined not to be substantially similar, such as from Sheriff's Officer to Police Officer, it has been the practice of the Chairperson of the Civil Service Commission or designee to review those cases *on an individual basis* to determine if the specific employee involved is performing substantially similar work. If this is the case, the provisions of *N.J.A.C.* 4A:4-7.1A(c)2 have generally been relaxed in order to effect the transfer. However, the Commission does not intend this exception to mean that the movement between dissimilar law enforcement titles warrants retention of seniority accrued in the dissimilar title, even if agreed to by an appointing authority and the transferee.

Permitting the retention of seniority accrued in dissimilar law enforcement titles would result in a direct conflict with rules regarding seniority calculations in

the event of a layoff. Seniority for police titles<sup>1</sup> is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have) lateral or demotional rights to the current permanent title. See *N.J.A.C. 4A:8-2.4(b)*. This is significantly different from how seniority is determined for non-police titles, where seniority is based on continuous permanent service in the jurisdiction, regardless of title. See *N.J.A.C. 4A:8-2.4(a)*. The Police Officer and Sheriff's Officer titles are both entry level titles for their respective series. Thus, movement from one to the other is considered a lateral, rather than promotional or demotional action. However, the two title series are *not* substantially similar. In this regard, according to the job specification for Police Officer, incumbents are primarily assigned a tour of duty, on foot, or in an automobile, to patrol a designated area and to provide assistance and protection for persons, to safeguard property, to assure observance of the law, and to apprehend lawbreakers. Conversely, the job specification for Sheriff's Officer indicates that incumbents primarily maintain order and security in the courtroom, serve court processes, perform criminal identification, ballistics and investigations, and apprehend violators of the law. In other words, since the Police Officer and Sheriff's Officer title series are dissimilar, in accordance with *N.J.A.C. 4A:8-2.1(a)* and (b), an incumbent in the Police Officer title would not have lateral or demotional rights to a Sheriff's Officer title. As such, the controlling regulatory provision concerning seniority for layoff purposes does not permit utilization of service in dissimilar law enforcement titles in the calculation of seniority.

The Commission also notes that but for a brief interlude between May 15, 1995 and June 2, 1996, title or "class" seniority had always been the basis in the rules for seniority calculations in the administration of police layoffs. For example, prior to May 15, 1995, *N.J.A.C. 4A:8-2.4(a)* defined seniority for layoff purposes as "the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral demotional rights to the current permanent title." However, the rule was amended and from May 15, 1995 to June 2, 1996, it provided that an employee's continuous amount of permanent service in a jurisdiction, regardless of title, was the basis for seniority determinations in the layoff process. This rule change resulted in multiple petitions not to apply the provision to the public safety community. See *In the Matter of East Orange Fire Department Demotions* (MSB, decided November 1, 1995), *aff'd on reconsideration* (MSB, decided June 25, 1996) and *In the Matter of East Orange Police Department Promotions* (MSB, decided November 1, 1995).

Subsequently, numerous petitions were received from the public safety community to amend the rule to limit the seniority of incumbents in police and fire titles to the amount of continuous permanent service in an employee's current

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<sup>1</sup> This includes Sheriff's Officers and County Correction Officers since *N.J.S.A. 52:17B-66 et seq.* requires entry level employees to complete a police training course. See *N.J.A.C. 4A:8-2.4(b)1*.

permanent title and to other titles that would have lateral or demotional rights to the current permanent title. After three public hearings were held on the matter in April 1996, "overwhelming support" was found for the proposed amendments, and the rule was amended effective June 3, 1996. See 28 *N.J.R.* 2841. Thus, seniority, for layoff purposes involving police titles is only based on an employee's permanent service, or "time in grade," in a specific title series, either Police Officer or Sheriff's Officer.

Moreover, by way of analogy, in the case of a lateral title change between dissimilar titles under the provisions of *N.J.A.C.* 4A:4-7.6(c), employees do not retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights. This is essentially what occurs when the Commission makes an exception to *N.J.A.C.* 4A:4-7.1A(c) to permit the intergovernmental transfer of a Sheriff's Officer to the dissimilar title of Police Officer.

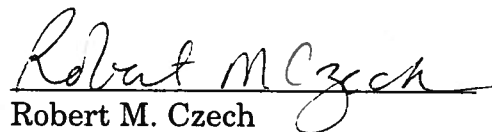
As such, the Commission finds that it would be inappropriate to permit the retention of title seniority between dissimilar titles after an exception is made to effect an intergovernmental transfer. Therefore, it declines to grant Phillipsburg's instant request for the appellant to retain his accumulated seniority for Civil Service purposes, such as seniority for layoff and examination eligibility purposes. However, it must be noted that this decision does not preclude Phillipsburg, a local entity, from including the appellant's accumulated seniority from Warren County in making determinations concerning the appellant's benefits (*i.e.*, salary step placement, shift assignment and/or leave time allotments) as provided for in the controlling negotiations agreement.

### ORDER

Therefore, it is ordered that the request to retain the accumulated seniority of David Cupon 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 3RD DAY OF SEPTEMBER, 2014



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