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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Justin Gabrys, Town  
of Dover

CSC Docket No. 2015-1800

Court Remand

ISSUED: **MAR - 9 2015** (CSM)

The Appellate Division, Superior Court of New Jersey, reversed and remanded the attached determination of the Civil Service Commission (Commission) *In the Matter of Justin Gabrys, Town of Dover (Dover)*, (CSC, decided September 19, 2012) which granted Dover's request to change Gabrys' resignation to an unpaid leave of absence and to retain his accrued seniority.

By way of background, Gabrys resigned from his position as a Police Officer with Dover and accepted an unclassified appointment to the title of County Investigator with Morris County effective June 27, 2011. Subsequently, due to the retirement of several Police Officers that left multiple senior-level positions in the Police Department vacant, Dover requested that the Commission relax the provisions of *N.J.A.C. 4A:4-2.6(b)* and *N.J.A.C. 4A:4-4.7(a)* so that Gabrys could return to employment with Dover as a Police Officer, retain all of his seniority rights prior to employment with Morris County, and that his name be restored to the promotional list for Police Sergeant (PM2580J). In support of its request, Dover indicated that it was willing to characterize the time Gabrys was employed with Morris County as an authorized unpaid leave of absence from Dover. The Commission denied Dover's request to place Gabrys on the Police Sergeant (PM2580J) eligible list. However, given Dover's verification that multiple senior-level positions were vacant, the Commission permitted the revision of Gabrys' record to reflect that he was on an unpaid leave of absence to accept an unclassified appointment so long as his unclassified appointment was discontinued by November

19, 2012.<sup>1</sup> Subsequently, the Dover Policeman's Benevolent Association, Local 107 (Local 107) appealed the Commission's decision to the Appellate Division, which reversed and remanded the matter in order for the affected parties to receive notice and to provide input to the Commission regarding Dover's request for rule relaxation. *See In the Matter of Justin Gabrys, Town of Dover*, Docket No. A-1007-12T1 (App. Div. December 19, 2014).

On remand, the parties were provided the opportunity to provide additional information and argument for the Commission to review in this matter. Local 107, represented by Lauren Sandy, Esq., presents that Gabrys' separation from employment with Dover was never intended to be a leave of absence since he gave the required 14 days notice and was paid \$36,177.50 for his unused leave. It also states that no exceptional circumstances exist pursuant to *N.J.A.C. 4A:6-1.1(a)2* to grant Gabrys a leave of absence for more than one year. In this regard, Local 107 notes that 21 Police Officers' promotional rights will be impacted, as it would appear that Gabrys has more seniority than they have regardless of his break in service. Further, it presents that there is no basis on which to relax the requirement that applicants for a Police Sergeant promotional examination have one year of continuous permanent service immediately before the closing date because at least 21 Police Officers could be promoted to Police Sergeant. Local 107 also states that Dover has recently eliminated one Police Captain position and two Police Lieutenant positions, which has resulted in all positions for senior officers being currently filled. Therefore, Local 107 maintains that if the rules are relaxed to permit Gabrys to characterize his resignation as an unpaid leave of absence in order to aggregate his seniority, injustice, unfairness, and inconsistency in the application of Civil Service law and rules would result.

In response, Dover, represented by Matthew J. Giacobbe, Esq., states that the Commission had good cause to relax the controlling regulatory provisions and change Gabrys' resignation to an unpaid leave of absence since he had more than 10 years of prior service as a Police Officer and had intimate knowledge of the policies and procedures of the Police Department. Thus, he would require no training upon his return. Additionally, as a resident of Dover, he is familiar with the community and the fact that his services were sought out by Morris County is a testament to his character and reputation within the law enforcement community. Thus, stripping Gabrys of his seniority and promotional opportunities would have significant public policy implications, particularly since he relied on the Commission's decision when he made the decision to resign from Morris County. Further, the appointing authority states that although there are other experienced officers in the police department, this does not necessarily qualify them to be superior officers. In fact, it argues that Gabrys' recruitment by Morris County suggests that he possesses superior law enforcement capabilities. Regardless, it

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<sup>1</sup> According to agency records, Gabrys' unclassified appointment as a County Investigator was discontinued on October 12, 2012 and he was returned to his position as a Police Officer with Dover.

emphasizes that by allowing Gabrys to retain his seniority does not guarantee his promotion to Police Sergeant – it only allows him to compete in the promotional examination for Police Sergeant. Under these circumstances, the appointing authority maintains that good cause exists to permit him to retain his seniority.

According to agency records, the current promotional list for Police Sergeant, Dover (PM5089M) contains the names of 15 eligibles and expires on August 6, 2017. It is noted that the list has not yet been certified and no appointments have been made.

### CONCLUSION

*N.J.A.C.* 4A:6-1.1(a)2 states that in local service, an appointing authority may grant permanent employees a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval by this agency. *N.J.A.C.* 4A:4-2.6(b) provides that in local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law. *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.

In its initial request to the Commission, the appointing authority indicated that several officers retired from the police department leaving several senior level positions vacant that needed to be filled and that it would benefit from Gabrys' expertise if he were permitted to return. Additionally, at the time of the initial request, there was no current eligible list for Police Sergeant available for use by the appointing authority. Essentially, the appointing authority represented that it would not have a sufficient pool of eligibles to fill its senior level supervisory law enforcement positions. Based on this information, the Commission determined it would be appropriate to relax the controlling regulatory provisions in order to ensure that the appointing authority would have a sufficient pool of potential eligibles for the promotional examination for Police Sergeant (PM5089M). Indeed, as the Commission noted in response to Local 107's petition for a stay of its prior decision (copy attached), permitting Gabrys' retention of his accumulated seniority would foster a competitive situation for the then upcoming promotional examination for Police Sergeant (PM5089M). *See In the Matter of Justin Gabrys, Town of Dover* (CSC, decided November 21, 2012).

However, the appointing authority has not rebutted Local 107's statement that one Police Captain and two Police Lieutenant positions were eliminated, leaving all positions for senior officers currently filled. Additionally, the list for Police Sergeant (PM5089M) contains the names of 15 eligibles. In other words,

even absent the employment of Gabrys, it is now clear that a competitive situation would have existed due to the elimination of senior level positions and the complete eligible list for Police Sergeant. Although the appointing authority argues that the other experienced officers in the police department are not necessarily qualified to be superior officers, it cannot be ignored that the Commission would not have taken the action that it did had it been aware that there were a sufficient number of qualified eligibles for senior level positions. Accordingly, there would have been no basis on which to grant the appointing authority's request to change Gabrys' resignation to an unpaid leave of absence and to retain his accrued seniority. As such, the Commission rescinds its September 19, 2012 and November 21, 2012 decisions and orders that Gabrys' County and Municipal Personnel System (CAMPS) record with Dover should be revised to indicate his resignation in good standing as a Police Officer effective June 26, 2011 and his appointment from the regular reemployment list for Police Officer with Dover effective October 15, 2012. *See N.J.A.C. 4A:4-7.10.* Additionally, his CAMPS record for Morris County should be revised to reflect his resignation from his unclassified appointment as a County Investigator. Finally, Gabrys' examination record for the promotional examination for Police Sergeant (PM5089M) should be revised to indicate that he is ineligible because he does not have the required three years of continuous permanent service prior to its closing date.

#### ORDER

Therefore, the Civil Service Commission orders that Justin Gabrys' County and Municipal Personnel System record with Dover be revised to indicate his resignation in good standing as a Police Officer effective June 26, 2011 and appointment from the regular reemployment list for Police Officer with Dover effective October 15, 2012. Additionally, his CAMPS record for Morris County should be revised to reflect his resignation from his unclassified appointment as a County Investigator. Finally, Gabrys' examination record for the promotional examination for Police Sergeant (PM5089M) should be revised to indicate that he is ineligible because he does not have the required three years of continuous permanent service prior to its closing date.

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 4<sup>TH</sup> DAY OF MARCH, 2015**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
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P.O. Box 312  
Trenton, New Jersey 08625-0312**

**Attachments**

**c: Matthew J. Giacobbe, Esq.  
Lauren Sandy, Esq.  
Justin Gabrys  
Pamela Ullman, DAG  
Kenneth Connolly  
Joseph Gambino**

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1007-12T1

IN THE MATTER OF JUSTIN GABRYS,  
TOWN OF DOVER.

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Submitted October 7, 2014 – Decided December 19, 2014  
Before Judges Messano and Hayden.

On appeal from the Civil Service Commission,  
Docket No. 2013-165.

Loccke, Correia, Linsky & Bukosky, attorneys  
for appellant Police Benevolent Association,  
Local 107 (Marcia J. Tapia, of counsel and on  
the brief).

Cleary Giacobbe Alfieri Jacobs, LLC, attorneys  
for respondent Town of Dover (Matthew J.  
Giacobbe and Gina L. Anton, on the brief).

John J. Hoffman, Acting Attorney General,  
attorney for respondent Civil Service  
Commission (Pamela N. Ullman, Deputy Attorney  
General, on the statement in lieu of brief).

PER CURIAM

Intervener, Police Benevolent Association, Local 107 (the union), appeals from the final agency decision of the Civil Service Commission granting the Town of Dover's request to relax the Commission's rules in order to (1) change Officer Justin Gabrys' employment record from a resignation to an authorized unpaid leave of absence; and (2) permit Gabrys to retain his seniority and tenure from the time of his resignation in order to sit for the

promotional exam for sergeant. For the reasons that follow, we reverse and remand for the union to receive notice of Dover's request for a rule relaxation prior to the Commission making a decision on Dover's request.

Gabrys was a police officer with Dover from January 16, 2001 through June 26, 2011, when he resigned from the police department in order to accept a position with the Morris County Prosecutor's Office. On July 18, 2012, Dover filed a request with the Commission for a rule relaxation regarding "the reemployment and promotional eligibility" of Gabrys. In its request, Dover stated that "several police officers retired from the Town['s] Police Department leaving several senior-level positions vacant and in need of fulfillment." Dover specifically sought a relaxation of the Commission's rules regarding eligibility criteria for promotional examinations under N.J.A.C. 4A:4-2.6(b), and restoration of Gabrys' name on the promotional list for sergeant under N.J.A.C. 4A:4-4.7(a). Additionally, Dover's request required the Commission to relax its rule regarding leaves of absence under N.J.A.C. 4A:6-1.1(a)(2).

The stated purpose of Dover's request was to enable Gabrys to return to the Dover police department "with seniority rights and promotional eligibility" in order to fill one of the open senior-level positions. To accomplish this, Dover requested the

Commission to characterize Gabrys' employment with the Morris County Prosecutor's Office as an authorized unpaid leave of absence instead of a resignation. This revision would permit Gabrys to retain his permanent Civil Service status and accumulated seniority with Dover, thereby enabling him to be placed on the list of those eligible for appointment to the position of sergeant.

In the Commission's September 20, 2012 final decision, the Commission granted Dover's request to revise Gabrys' records to reflect that he was on an authorized unpaid leave of absence during his time with the Morris County Prosecutor's Office. The Commission also determined that Gabrys' service before his leave of absence would be aggregated upon his reemployment with Dover thereby making him eligible to sit for the next promotional exam for sergeant.

Prior to issuance of the final decision, neither the Commission nor Dover advised the union of Dover's request. Upon learning of the decision, the union filed a motion with the Commission seeking to intervene as a party of interest, for the Commission to reconsider its decision, and for a stay pending appeal. Additionally, the union filed a notice of appeal with this court. On November 21, 2012, the Commission granted the union's request to intervene, noting that the "decision could [a]ffect some of its members[.]" However, the Commission dismissed



the union's request for reconsideration due to the pending appeal and denied the motion for a stay.<sup>1</sup> This appeal followed.

We begin by stating our standard of review. Our role in reviewing an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011) (citing Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). The reviewing court "should not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees, 194 N.J. 413, 422 (2008) (citing In re Herrmann, 192 N.J. 19, 28 (2007)). The party challenging the agency's action has the burden of proving that the action was arbitrary, capricious, or unreasonable. DiNapoli v. Bd. of Educ., 434 N.J. Super. 233, 236 (App. Div.) (citing In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div.), certif. denied, 188 N.J. 219 (2006)), certif. denied, 217 N.J. 589 (2014).

However, no deference is accorded to an agency's determination of a strictly legal issue. Norfolk S. Ry. Co. v. Intermodal Props., LLC, 215 N.J. 142, 165 (2013) (internal citations omitted). As such, "[w]e review the agency's legal

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<sup>1</sup> This court granted a stay on April 3, 2013.

conclusions de novo." DiNapoli, supra, 434 N.J. Super. at 236 (citing City of Atlantic City v. Trupos, 201 N.J. 447, 463 (2010)).

Further, "our appellate obligation requires more than a perfunctory review." Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002). Our role is not merely to "rubber-stamp" an agency's actions but "to engage in a 'careful and principled consideration of the agency record and findings.'" Williams v. Dep't of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000) (quoting Mayflower Sec. Co., Inc. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). Indeed, "if there exists in the reviewing mind a definite conviction that the determination below went so wide of the mark that a mistake must have been made, the record can be appraised as if the matter were being decided at its inception." 613 Corp. v. State, Div. Of State Lottery, 210 N.J. Super. 485, 495 (App. Div. 1986).

The union argues on appeal that the Commission's decision inappropriately ignored its own regulations. The union asserts that no rule relaxation was needed because numerous qualified Dover police officers without any break in service were eligible to take the necessary tests and fill any vacancies. In addition, the union argues that the Commission should not have relaxed its own regulations because the relaxation affected several of its members but no notice was provided to the union or the affected

officers pursuant to N.J.A.C. 4A:1-1.2(c). We agree that the final decision is impermissibly flawed because the notice to affected parties required by N.J.A.C. 4A:1-1.2(c) was not given here.

The New Jersey Constitution requires that civil service appointments and promotions "be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive[.]" N.J. Const. art. VII, § 1, ¶ 2. To further that constitutional mandate, "the Legislature, under the New Jersey Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, has declared that the selection and advancement of state employees should be dependent on considerations of merit, N.J.S.A. 11A:1-2(c), and determined on the basis of relative knowledge, skill, and ability, N.J.S.A. 11A:1-2(a)." In re Police Sergeant, 176 N.J. 49, 57 (2003). By prescribing requirements for appointment and advancement based on merit and ability, "the Act seeks to put civil service positions beyond political control, partisanship, and personal favoritism." Comm'n Workers of Am. v. N.J. Dep't of Pers., 154 N.J. 121, 126 (1998) (citations omitted).

The Commission has promulgated administrative regulations to effectuate its statutory mandates. See N.J.A.C. 4A:1-1 to 10-3.2. According to N.J.A.C. 4A:1-1.2(c),

These rules shall be considered the means by which the statutory purposes of the merit employment system are carried out. The Commissioner or the Board may relax these rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

When N.J.A.C. 4A:1-1.2(c) was first proposed in 1987, the agency explained that its purpose was to allow relaxation of the rules "where strict adherence would result in injustice, unfairness or inconsistency with the overall objectives of the Merit system." 19 N.J.R. 1827 (Oct. 5, 1987). The agency stated that the "intent of N.J.A.C. 4A:1-1.2(c) was to provide a mechanism . . . to prevent the strict application of the rules to create an inequitable situation not intended by N.J.S.A. 11A." Ibid. The agency amended the proposed rule to include a provision that affected parties be notified of rule relaxation requests. Ibid.

Here, the union was not notified as required under the rule relaxation regulation despite the fact that its members were affected by the request. Indeed, the Commission itself recognized that the union should have been a participant in the earlier proceeding as the "decision could [a]ffect some of its members[.]" Hence, the Commission's decision to relax its rules and regulations was made without following N.J.A.C. 4A:1-1.2(c). As administrative regulations have the force of law, an "agency ordinarily must enforce and adhere to, and may not disregard, the

regulations it has promulgated." Cnty. Of Hudson v. Dep't of Corr., 152 N.J. 60, 70 (1997); see also In re CAFRA Permit No. 87-0959-5, 152 N.J. 287, 306-07 (1997) (noting that administrative agencies must follow its own rules and regulations). Consequently, the Commission was not free to ignore the clear mandate in the regulation that the regulations could be relaxed "on notice to affected parties[.]"

Dover claims that the agreement of the employer and the employee to relax the rule and the need for experienced police officers in Dover were sufficient to meet the regulation's requirement of good cause for rule relaxation. Dover utilizes In re Martinez, 403 N.J. Super. 58 (App. Div. 2008), to support its contention that the Commission can relax its rules in response to an agreement of the employer and the employee, and even though other affected individuals were not notified of the requested rule relaxation when it was proposed. Id. at 64, 73-75. Dover's reliance is misplaced here. In Martinez, the Merits System Board<sup>2</sup> relaxed a rule concerning the taking of a promotional test as a result of the settlement of a lawsuit that showed that the affected individual had been improperly bypassed for promotion. Id. at 63-64. Thus, waiving the rule was granted not solely because of the joint request but also because the Board found that the waiver was

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<sup>2</sup> Now the Civil Service Commission. N.J.S.A. 11A:2-1.

an equitable remedy to make the employee whole and put him in the position he would have been in if not for the improper bypass.

No such extraordinary situation existed here. Gabrys resigned to obtain other employment and if he desired to return to the employment of Dover after his voluntary resignation, he would be employed from the ordinary reemployment list under the normal course of procedures governing the Civil Service statutes. See N.J.A.C. 4A:4-3.9. To not follow the applicable leave, promotional and seniority regulations certainly affects the seniority of the other police officers who continued working for the Dover police department. Thus, the union should have been notified and been able to provide input before a decision was made on the request because, as the Commission later recognized in permitting intervention, the decision affected some of its members. N.J.A.C. 4A:1-1.2(c). The Commission has offered no reasonable explanation for its failure to follow the expressed language of its regulation.

In our view, the plain language and stated intent of the regulation requires the affected parties receive notice and an opportunity to provide input before the Commission determines pursuant to the rule whether "strict adherence would result in injustice, unfairness or inconsistency with the overall objectives of the Merit System." 19 N.J.R. 1827. Consequently, we are

constrained to reverse the final decision of the agency and remand for proceedings in accord with this opinion.

Reverse and remand. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

  
CLERK OF THE APPELLATE DIVISION



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Justin Gabrys, Town of Dover

CSC Docket No. 2013-1002

Request for Reconsideration and Stay

ISSUED: (CSM) NOV 21 2012

The Dover Policeman's Benevolent Association, Local 107 (Local 107), represented by Michael A. Bukosky, Esq., petitions the Civil Service Commission (Commission) to allow it to intervene and request reconsideration and a stay of the Commission's decision rendered on September 19, 2012, which permitted Justin Gabrys to be placed on an unpaid leave of absence from his position as a Police Officer with the Town of Dover (Dover) to accept an unclassified appointment as a County Investigator.

By way of background, Gabrys resigned from his position as a Police Officer with Dover and accepted an unclassified appointment to the title of County Investigator with Morris County effective June 27, 2011. Subsequently, due to the retirement of several Police Officers that left multiple senior-level positions in the Police Department vacant, Dover requested that the Commission relax the provisions of N.J.A.C. 4A:4-2.6(b) and N.J.A.C. 4A:4-4.7(a) so that Gabrys could return to employment with Dover as a Police Officer, retain all of his seniority rights prior to employment with Morris County, and that his name be restored to the promotional list for Police Sergeant (PM2580J). In support of its request, Dover indicated that it was willing to characterize the time Gabrys was employed with Morris County as an authorized unpaid leave of absence from Dover. The Commission denied Dover's request to place Gabrys on the Police Sergeant (PM2580J) eligible list. However, given Dover's verification that multiple senior-level positions were vacant, the Commission permitted the revision of Gabrys'



record to reflect that he was on an unpaid leave of absence to accept an unclassified appointment so long as it was done by November 19, 2012.<sup>1</sup>

In its request, Local 107 presents that permitting Gabrys to rescind his resignation and re-establish employment with Dover affects many other Police Officers' seniority rights to promotions, demotions, layoffs, selections for shifts, and selections for vacations. Additionally, it emphasizes that the members of Local 107 were never informed of Dover's request to the Commission and did not have an opportunity to provide comment in that matter. Further, Local 107 contends that the Commission violated its own rules by permitting the change of Gabrys' record to an unpaid leave of absence. In this regard, it submits a copy of Gabrys' June 12, 2011 letter of resignation to Dover and documentation indicating that he was entitled to receive \$36,177.50 in payment for his "accumulated time" during employment with Dover. Local 107 maintains that the Commission violated the PBA contract in both ignoring and modifying its own rules to effect an improper taking of taxpayer money. Moreover, Local 107 argues that permitting Gabrys to retain his seniority and allowing him to participate in the next promotional examination for Police Sergeant is unfair to the other Police Officers who did not leave employment with Dover and notes that there are many capable employees readily available for immediate promotion. While Local 107 has no objection to Gabrys returning to employment with Dover, it maintains that placing him on an unpaid leave of absence is clearly an attempt to evade the rules and was an abuse of the Commission's discretion.

In a supplemental submission, Local 107 asserts that Dover violated *N.J.S.A.* 40A:14-136 concerning leaves of absences without pay for members of a municipal police department and *N.J.A.C.* 4A:6-1.1(a)2. In this regard, it underscores that Gabrys resigned from his position as a Police Officer with Dover and he received payment for his accumulated sick leave in accordance with Local 107's contract with the appointing authority. Thus, it is evident that Gabrys did not request a leave of absence without pay, nor, as required by *N.J.S.A.* 40A:14-136, did Morris County request that Gabrys be placed on a leave of absence without pay so that it could utilize his services. Further, Local 107 notes that *N.J.A.C.* 4A:2-6.1 only permits a resignation to be rescinded *prior* to its effective date or if the resignation was as a result of duress or coercion, neither of which are present in this case.

Additionally, Local 107 contends that its members will suffer irreparable harm if the Commission's decision is not stayed since the seniority of the Police Officers who did not leave employment with Dover will be affected. It also provides certifications from Chief of Police Harold Valentine and Local 107 President James Pritchard, certifying that the Commission's decision has already impacted morale of

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<sup>1</sup> According to agency records, Gabrys' unclassified appointment as a County Investigator was discontinued on October 12, 2012 and he was returned to his position as a Police Officer with Dover.

the Police Department in a negative manner as it has compromised the rights and expectations of other Police Officers. Further, Local 107 maintains that staying the Commission's decision will not cause substantial injury to Dover and will in fact protect the public interest since there are at least 21 Police Officers who could be promoted to Police Sergeant. In support of its positions, Local 107 relies on Valentine's certification that he cannot find any exceptional circumstances that would warrant relaxation of Civil Service rules and the fact that Dover had recently altered its Table of Organization eliminating one Police Captain and two Police Lieutenants. As such, all positions for senior officers are currently filled. Finally, Local 107 argues that the public interest has been compromised since allowing Gabrys to return to employment at top salary evidences the circumvention of Civil Service rules and its collective negotiations agreement with Dover.

In response, Dover, represented by Matthew J. Giacobbe, Esq., states that Local 107 offers no authority to demonstrate that it circumvented either *N.J.S.A. 40A:14-136* or *N.J.A.C. 4A:6-1.1(a)2* to the detriment of its membership. Rather, Dover contends that Local 107 merely posits that Gabrys' departure from the Police Department was more akin to a resignation than an unpaid leave of absence. However, Dover maintains that it has consistently characterized Gabrys' separation from employment as a resignation. Thus, the Commission was aware of and considered Gabrys' resignation when it rendered its decision. Dover emphasizes that Local 107 does not object to Gabrys' return, it is only objecting to his entitlement to seniority upon his return. Further, Dover states that it justified its reasons for requesting a relaxation of *N.J.A.C. 4A:6-1.1(a)2* and the Commission approved its request.

Dover underscores that *N.J.S.A. 11A:1-2(a)* and (c) provide that it is the public policy of the State to select and advance employees on the basis of their relative knowledge, skills, and abilities and to encourage and reward meritorious performance. In this case, it states that Gabrys served as a Police Officer with Dover for more than 10 years. Thus, he has knowledge of the policies and procedures of the Police Department and required no training upon his return. As such, when Gabrys expressed a desire to return, Dover acknowledged a need for his services upon the departure of multiple senior members of its Police Department. With respect to Gabrys' terminal leave payment, Dover states that this is of no consequence to the matter at hand and is a collective negotiations issue beyond the scope of the Commission's jurisdiction. Moreover, in reliance on the Commission's decision, Dover adopted a resolution on October 23, 2012 and rehired Gabrys effective October 15, 2012. Thus, staying the Commission's decision would result in injury to Gabrys as he relied on the determination when he made the decision to leave Morris County. Accordingly, Dover maintains that the Commission acted within its authority by permitting Gabrys' return.

In reply, Local 107 maintains that Dover has not advanced any facts to support good cause justification for relaxation of Civil Service rules and the suggestion that Gabrys will suffer irreparable harm is unsupported. Further, it notes that Dover's resolution to rehire Gabrys indicates that it was "subject to applicable N.J. Department of Personnel regulations and background check" and the back dating of the hire date to October 15, 2012 is improper. Additionally, Local 107 states that the "background check" had not yet been completed by the date of the resolution and that there is no rule which permits an employee who resigns to change the resignation into a leave of absence with full benefits and seniority.

### CONCLUSION

Initially, since Local 107 was not aware of the Commission's prior decision until its issuance, and since that decision could effect some of its members, it is appropriate for the Commission to allow Local 107 to present this petition as a party in interest. However, the Commission has received a Notice of Appeal that Local 107 filed with the Superior Court of New Jersey, Appellate Division. Therefore, since the jurisdiction of the Appellate Division has been invoked, the Commission cannot review the request for reconsideration. To again vest jurisdiction in this agency would generally require a remand or other action by the Appellate Division. Nevertheless, given that Local 107 has filed an appeal with the Appellate Division, the Commission will consider its request for a stay. See *N.J.A.C. 4A:2-1.2(f)*.

The following factors are provided by *N.J.A.C. 4A:2-1.2(c)* in evaluating petitions for stays or interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In the present matter, Local 107 has not demonstrated a clear likelihood of success on the merits. *N.J.S.A. 40A:14-136, Leave of Absence Without Pay; Retention of Pension and Retirement Benefits*, states:

Leave of absence without pay may be granted by the authority in charge, to a member or officer of a municipal police department or force, in order that his services may be made available to the State or a county, or to a State or county department or agency. A request for a leave of absence shall be made in writing by the member or officer and the State or county, or the State or county department or agency, desiring his service, but no such leave of absence shall be used to displace an incumbent. Any such leave of absence shall not be for more

than one year, but may be extended, in the same manner as originally granted, but in the aggregate, shall not exceed 5 years. Neither membership in the municipal police department or force, nor pension or retirement rights shall be affected by such leaves of absence, but pension contributions shall be payable notwithstanding such leaves of absence. Upon the expiration of any such leave of absence, the member or officer shall return to his original duties and resume his office, position or employment with the said department or force and be entitled to all salary adjustments, increments, seniority and pension rights, as if no leave had been granted (emphasis added).

Although Local 107 argues that Dover is attempting to circumvent this statutory provision by characterizing Gabrys' acceptance of an unclassified appointment as a leave of absence without pay, it is clear that *N.J.S.A. 40A:14-136* does not apply to this situation. Clearly, the intent and thrust of *N.J.S.A. 40A:14-136* is to permit an officer of a municipal police department to take an unpaid leave of absence while making contributions to the pension system and upon return, be entitled to seniority as if no leave had been granted. This was not the effect of the Commission's decision. Stated differently, if *N.J.S.A. 40A:14-136* applied, Dover and Gabrys would have been required to make pension contributions during his leave of absence and, upon his return, Gabrys would be entitled to seniority with Dover for the time equal to the amount he was on an unpaid leave of absence. As stated in the initial decision, Gabrys' seniority is to be aggregated, that is, his permanent service before and after the leave of absence is combined.

With respect to the extension of the leave of absence beyond one year, although Chief Valentine states that there are no exceptional circumstances that would warrant the approval of such a request, he is not the appointing authority for Dover. In this case, the representative of the appointing authority for Dover requested the leave of absence and the extension, which was granted by the Commission. Additionally, Gabrys did not rescind his resignation. Rather, Dover requested that he be placed on an unpaid leave of absence due the staffing needs of its Police Department. Regarding Dover's payment of terminal leave to Gabrys, this is a matter covered under its collective negotiations agreement with Local 107. The Commission does not have jurisdiction to enforce or interpret items which are contained in a collective bargaining agreement negotiated between the employer and the majority representative. See *In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). Regardless, as noted by Dover, this matter is irrelevant as the Commission considered the fact that Gabrys had resigned from his position as a Police Officer.

Moreover, the Commission has previously placed employees on a retroactive leave of absence without pay in those cases where it was requested by the appointing authority. See *In the Matter of Thomas Cocco* (Commissioner of

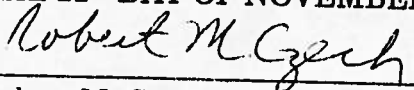
Personnel, decided January 2, 2002) (Rescission of resignation to place appellant on a leave of absence granted where appointing authority supported the request so the appellant would be able to begin employment with no break in service); *In the Matter of Dawn Maroldi* (MSB, decided November 1, 1995) (Appellant who resigned from her full-time position and had intervening temporary service prior to her return to her full-time title, permitted to have her personnel record reflect a leave of absence instead of a break in service). *See also, In the Matter of Gwen Augun* (MSB, decided August 29, 2007) (Several requests for retroactive extension for leave of absence from employee's career service position approved).

In response to the argument that the members of Local 107 will suffer irreparable harm and suffer a hardship if the stay is not granted, the harm that they would suffer is competing with Gabrys in an upcoming promotional examination for Police Sergeant and some members possibly having less seniority than him in the case of a layoff. They also claim that they will be harmed based on internal seniority-related privileges not under the auspices of the Commission, such as "officer-in-charge payments." However, these matters can be remedied if the petitioner should prevail in its appeal to the Appellate Division. Finally, the Commission notes that the dual purpose of the Civil Service system is to ensure efficient public service for State and local governments and to provide appointment and advancement opportunities to Civil Service employees based on their merit and abilities. These interests are best served when more, rather than fewer, qualified individuals are presented with employment opportunities. *See Communications Workers of America v. New Jersey Department of Personnel*, 154 N.J. 121 (1998). Thus, the public interest is served by permitting Gabrys to aggregate his seniority as it would not only provide Dover with an experienced Police Officer, it will foster a competitive situation in the upcoming Police Sergeant's examination.

### ORDER

Therefore, it is ordered that the request for reconsideration be dismissed and stay be denied.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 21<sup>ST</sup> DAY OF NOVEMBER, 2012



Robert M. Czech  
Chairperson  
Civil Service Commission

**Inquiries  
and  
Correspondence**

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

**Attachment**

**c: Michael Bukosky, Esq.  
Matthew J. Giacobbe, Esq.  
William E. Close  
Justin Gabrys  
Kenneth Connolly  
Joseph Gambino**



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Justin Gabrys, Town  
of Dover

CSC Docket No. 2013-165

Administrative Appeal

ISSUED: SEP 20 2012 (CSM)

The Town of Dover (Dover), represented by Matthew J. Giacobbe, Esq., requests that the Civil Service Commission (Commission) relax the provisions of *N.J.A.C. 4A:4-2.6(b)* and *N.J.A.C. 4A:4-4.7(a)* with regard to the reemployment and promotional eligibility of Justin Gabrys, a former Police Officer with Dover.

By way of background, Gabrys was appointed as a Police Officer with Dover effective January 16, 2001. On June 26, 2011, Gabrys resigned from his position as a Police Officer with Dover and accepted an unclassified appointment to the title of County Investigator with Morris County, effective June 27, 2011. It is noted that during his tenure with Dover, Gabrys' name appeared as the 2<sup>nd</sup> ranked eligible on the promotional list for Police Sergeant (PM2580J), which expired on March 6, 2012.<sup>1</sup> It is also noted that prior to resigning from Dover, Gabry's applied for the promotional examination for Police Sergeant (PM089M), which initially had a closing date of September 21, 2010. However, similar to all Police Sergeant announcements issued in September 2010, the subject announcement was amended and reissued on September 1, 2011 in order to allow those who became eligible during the 12 months between the initial and amended announcements the opportunity to apply. Therefore, the closing date and the date by which eligibility were to have been met was November 30, 2011. See *In the Matter of Police Sergeant Promotional Lists* (CSC, decided August 17, 2011). Applicants like Gabrys, who

<sup>1</sup> The promotional list for Police Sergeant (PM2580J) promulgated on March 7, 2008 and was initially set to expire on March 6, 2011. However, in accordance with *In the Matter of Promotional Lists for Public Safety Titles* (MSB, decided April 7, 2004), the list was extended to the maximum possible duration of four years. See *N.J.S.A. 11A:4-6*.

submitted an application, were not required to submit a new application. Nevertheless, since he is now employed by Morris County, he would be deemed ineligible to the PM5089M since he is no longer employed with Dover.

In its request to the Commission, Dover presents that several Police Officers retired from the Police Department leaving multiple senior-level positions vacant. It states that Gabrys has expressed a willingness to return to Dover to serve in a senior-level position and that Dover would benefit from his return. As such, in light of the recent retirements, Dover has determined that it would be best served by Gabrys' return to employment with its Police Department. However, Dover maintains that Gabrys should not be punished or prejudiced because of his transfer to the Morris County Prosecutor's Office. Accordingly, Dover states it is willing to characterize the time Gabrys was employed with the Morris County Prosecutor's Office as an authorized unpaid leave of absence from Dover, thereby entitling him to retain continuous permanent service with it. Under these circumstances, Dover requests that Gabrys be permitted to return to employment with Dover and retain all of his seniority rights prior to his employment with the Morris County Prosecutor's Office. Additionally, it requests that it be permitted to place his name on the Police Sergeant (PM2580J) eligible list.

#### CONCLUSION

*N.J.A.C. 4A:6-1.1(a)2* states that in local service, an appointing authority may grant permanent employees a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval by this agency. *N.J.A.C. 4A:4-2.6(b)* provides that in local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law. *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.

Initially, the Commission cannot grant Dover's request regarding Gabry's placement on the Police Sergeant (PM2580J) eligible list. *N.J.A.C. 4A:4-4.7(a)8* states that an eligible may be removed from the eligible list for discontinuance of an eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to an appropriate representative of the Civil Service Commission, that his or her name be restored to the promotional list. As there is no current eligible list for Police Sergeant, the appointing authority's request to relax this provision is inappropriate.



In the matter at hand, Dover requests that Gabrys be considered to be on an unpaid leave of absence from his permanent position as a Police Officer during his tenure as an unclassified County Investigator with Morris County so that, upon its reemployment of Gabrys, his prior permanent service with Dover could be aggregated. In this regard, Gabrys would have the three years of continuous service needed to establish eligibility for a *prospective* Police Sergeant promotional examination. The longstanding interpretation of *N.J.A.C. 4A:4-2.6(b)* is that permanent service before and after a leave of absence is combined, or aggregated, to fulfill the time in grade requirement. See e.g., *In the Matter of George L. Venturi, et al.* (MSB, decided June 2, 1998).

Given Dover's verification that several Police Officers retired from the Police Department leaving multiple senior-level positions vacant and Gabrys' expressed willingness to return to Dover, it is appropriate to permit the revision of Gabrys' County and Municipal Personnel (CAMPS) record with Dover to reflect that he is on an unpaid leave of absence to accept an unclassified appointment. However, Gabrys, Dover, and Morris County should take steps to discontinue his unclassified appointment and discontinue his unpaid leave of absence by no later than Monday, November 19, 2012. Upon the discontinuance during this time frame of Gabrys' unclassified appointment as a County Investigator with Morris County, his leave of absence without pay will be discontinued and he may return to his position as a Police Officer with Dover. Should the parties be able to effect these transactions by or before November 19, 2012, Gabrys should be admitted to the promotional examination for Police Sergeant (PM5089M). Conversely, if Gabrys, Dover, and Morris County do not discontinue his unclassified appointment by November 19, 2012, his CAMPS record cannot be revised to reflect an unpaid leave of absence to accept an unclassified appointment and Gabrys cannot be admitted to the promotional examination for Police Sergeant (PM5089M). Should the parties desire to effect this transaction after November 19, 2012, Gabrys may be appointed in accordance with the provision of regular reemployment, but he will not be able to aggregate his seniority. See *N.J.A.C. 4A:4-7.10(c)*. Additionally, given the unique circumstances of this situation, this matter shall not be used as precedent in any other matter.

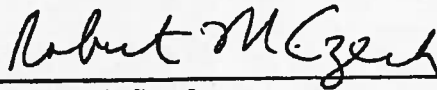
#### ORDER

Therefore, it is ordered that Justin Gabrys' CAMPS record with Dover be revised to indicate that he is on an unpaid leave of absence to accept an unclassified appointment effective June 26, 2011 from his position as a Police Officer. Upon the discontinuation of his unclassified appointment as a County Investigator by no later than November 19, 2012, Gabrys is to return to his permanent position as a Police Office with Dover. However, if Gabrys does not discontinue his unclassified appointment as a County Investigator on or before

November 19, 2012, his CAMPS record should not be revised to reflect an unpaid leave of absence.

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 19<sup>TH</sup> DAY OF SEPTEMBER, 2012**



**Robert M. Czech**  
Chairperson  
Civil Service Commission

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and  
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Justin Gabrys  
Kenneth Connolly  
Joseph Gambino