

**MUNICIPAL CIVIL SERVICE COMMISSION  
LOCAL RULES & REGULATIONS**



**CITY OF NEWBURGH  
NEWBURGH ENLARGED CITY SCHOOL DISTRICT  
NEWBURGH HOUSING AUTHORITY**

**REVISED EDITION- JUNE 2011**

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**Rules for the Classified Service Of The**  
**NEWBURGH MUNICIPAL CIVIL SERVICE COMMISSION**

**Purpose and Effect**

It is hereby declared to be the purpose of these rules to provide an orderly and uniform system for the administration of civil service in The City of Newburgh on a basis of merit and fitness as provided in the Civil Service Law of the State of New York. These rules have the force and effect of law, and apply to all positions in the classified service of the City of Newburgh, the Newburgh Enlarged City School District and the Newburgh Housing Authority. These rules may be amended by the Commission after a public hearing, subject to the approval of the State Civil Service Commission.

## **RULE I**

### **DEFINITIONS**

Unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the terms mentioned, whenever used in these rules, shall be construed as follows:

1. "Commission" means the Civil Service Commission of the City of Newburgh.
2. "Employee" means the incumbent of a position appointed to the position in accordance with these rules and the Civil Service Law.
3. "Position" means an aggregation of duties to be performed and responsibilities to be exercised by one person in a civil division.
4. "Eligible List" means an official record established and maintained by the Commission as a public record which contains the names of those persons who have successfully completed an examination, listed in order of their final ratings from the highest to the lowest rank.
5. "Part-Time Employment" means any employment or combination of one or more employments in a civil division in which an individual works fifty percent or less of the time prescribed as the standard work week by the governing body or other appropriate authority of the civil division or where the employee earns not more than one-half (1/2) of the rate assigned to the position if the position has been allocated to a graded salary schedule.
6. "Transfer" means the change, without further examination, of a permanent employee from a position under the jurisdiction of one appointing authority to a similar position under the jurisdiction of another appointing authority, or to a position in a different title under the jurisdiction of the same appointing authority.
7. "Reassignment" means the change, without examination, of a permanent employee from one position to another similar position in the same title under the jurisdiction of the same appointing authority.
8. "Civil Division" means each county, town, city, village, school district, community college, public authority, or special district.

## **RULE II**

### **ORGANIZATION OF THE COMMISSION**

The Commission shall designate one of its members as Chairperson. Two Commissioners shall constitute a quorum for the transaction of business. The Commission may appoint a Secretary who shall not be a Commissioner, and such other employees within available appropriations as it may deem necessary or proper to carry out the purpose of these rules and the law. It shall fix the duties of these employees. The Commission shall keep true and accurate minutes of all its meetings and proceedings which shall be open for public inspection.

**RULE III**

**EXEMPT CLASS**

Positions approved by the State Civil Service Commission for placement in the exempt class pursuant to Section 41 of the Civil Service Law shall be listed in Appendix A of these rules.

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## **RULE IV**

### **NON-COMPETITIVE CLASS**

#### **1. Non-Competitive Positions; Approval and Designation**

Positions approved by the State Civil Service Commission pursuant to Section 42 of the Civil Service Law for placement in the non-competitive class shall be listed in Appendix B of these rules. The municipal Commission shall designate titles in Appendix B that involve confidentiality or require the performance of functions influencing policy for the purposes of excluding such positions from the statutory provisions on removal and disciplinary proceedings.

#### **2. Nomination for Non-Competitive Appointment**

A position in the non-competitive class may be filled by the appointment of a person who meets the minimum qualifications established for such position by the Commission. A nomination for such an appointment shall state the qualifications of the nominee and shall be filed, prior to any appointment, by the appointing authority with the Commission. Such appointment shall become effective only after approval by the Commission.

## **RULE V**

### **LABOR CLASS**

#### **1. Approval of Labor Class Positions**

Positions approved by the State Civil Service Commission pursuant to Section 43 of the Civil Service Law for placement in the labor class shall be listed in Appendix C of these rules.

#### **2. Filling of a Labor Class Position**

A position in the labor class may be filled by the appointment of any person selected by the appointing officer of the agency where a vacancy exists. The Commission may require applicants for employment in the labor class to qualify in such examinations of their fitness for employment as may be deemed practicable.

**RULE VI**

**UNCLASSIFIED SERVICE**

Positions approved by the State Civil Service Commission pursuant to Section 35 of the Civil Service Law for placement in the unclassified service shall be listed in Appendix D of these rules.

## **RULE VII**

### **RECRUITMENT OF PERSONNEL**

#### **1. Residence Requirements for Municipal Positions**

A. An applicant must at the time of examination and for at least one month immediately prior thereto be a resident of the municipality in which appointment is to be made or any reasonable combination of municipalities both in and outside of New York State contiguous to the municipality in which appointment is to be made. Residence requirements may be suspended or reduced by the Commission in cases where recruitment difficulty makes such requirements disadvantageous to the public interest.

B. When preference in certification is given to residents of a municipality pursuant to subdivision 4-a of Section 23 of the Civil Service Law, an eligible must have been a resident of such municipality for at least one month prior to the date of certification in order to be included in a certification as a resident of such municipality and must be a resident of such municipality at the time of appointment.

#### **2. Announcements of Examinations**

The public announcement of an open-competitive examination shall specify the application fee, if any, the title, the duties of the position, the minimum qualifications required, the salary or salary range if known, the issue date, the final date for filing applications, the subjects or scope of the examination and the relative weights thereof, application fee(s) and waivers, post offer of employment medical requirements, special testing requirements and religious observance arrangements and, if known, the date and place of the examination. Public notice of open-competitive examinations shall be made at least twenty-five days before the date of the examination and must be conspicuously posted in a public place for fifteen days. The last day for filing applications shall be not less than ten days before the date of the examination.

**RULE VIII**  
**APPLICATIONS**

**1. Receipt and Disposition of Applications**

A. Applications of candidates for positions in the classified service must be submitted to the Commission on the form and in the manner prescribed by the Commission.

B. The burden of establishing qualifications to the satisfaction of the Commission shall be upon the applicant.

C. The Commission shall notify applicants of the disposition of their applications. Applicants for competitive examination shall be given notice of their approval or disapproval at least seven days before the examination.

**2. Release of Application Information**

A candidate's application for appointment or examination may be exhibited, upon request, to the appointing officer to whom his/her name is certified, or to the appointing officer's representative, provided, however, that information therein relating to the candidate's national origin or indicating whether his/her citizenship is by birth or naturalization shall not be divulged. Before a candidate's application for examination is exhibited to the appointing officer or an authorized representative, all reference therein to the candidate's natural origin or to the basis of his/her citizenship shall be concealed.

## **RULE IX**

### **DISQUALIFICATION**

#### **1. Notification of Disqualification**

An applicant who is disqualified for an examination or appointment shall be notified of the reasons for such disqualification and afforded an opportunity to submit facts in opposition to such disqualification.

#### **2. Verification of Qualifications**

Any applicant who refuses to permit the Commission to investigate matters necessary for the verification of his/her qualifications or who otherwise hampers, impedes or fails to cooperate with the Commission in such investigation shall be disqualified for examination, or, after examination, for certification and appointment.

#### **3. Disrespect for Processes of Law**

A record of disrespect for the requirements and processes of law may be grounds for disqualification for examination or, after examination, for certification and appointment.

**RULE X**  
**EXAMINATIONS**

**1. Examinations Prepared & Rated by the New York State Civil Service Department**

A. For examinations prepared and rated by the State Civil Service Department, the provisions of the rules and regulations of the State Civil Service Commission and Department shall govern the rating of examinations, the review of examination papers by candidates and the filing of appeals.

B. The State Civil Service Commission shall have sole and exclusive authority to correct any errors in rating upon appeal or otherwise.

**2. Examinations Prepared and/or Rated by the Municipal Civil Service Commission**

A. The Commission shall adopt a system to conceal the identity of the candidates' papers in a written examination until such written examination has been rated.

B. Rating keys shall be prepared for each examination held. Such keys shall be a permanent part of the record of each examination. The marking of an examination shall be made on the scale of 100, with 70 the passing score. The Commission may, after the announcement of an examination is made, subdivide the written examination into parts and require a passing mark of 70 in each of the parts in order that candidates be considered further for eligibility. Notice of such arrangements shall be given in the instructions of the written examination.

C. Applications and examination records and papers of candidates shall be preserved in accordance with the policies of the State Commissioner of Education and the State Civil Service Commission. Whenever an oral examination shall be prescribed as part of an examination, every effort shall be made to insure that a stenographic or recording device record of all the questions and answers be made a part of the examination records.

D. Every candidate in an examination shall be notified in writing of his/her final rating. Except for continuous recruitment examination, he/she shall also, if successful, be notified of his/her relative position on any eligible list established as a result of the examination.

E. Except for candidates in continuous recruitment examinations, any candidate receiving such notice may inspect his/her examination papers in the office of the Commission and in the presence of a designated representative of the Commission, provided he/she makes his/her request for such inspection, in writing, within ten (10) days of the date of the postmark of such notice. The examination papers of a candidate shall be exhibited only to the candidate except that a candidate may bring a consultant to review the record of an oral examination. The consultant must be approved by the Commission prior to the review and may not be an individual who was in any way involved in the preparation, conduct, or administration of the examination.

F. A candidate who wishes to appeal to the Commission from his/her rating in one, or more, or all of the subjects of an examination must submit such appeal in writing within twenty days after the earliest date on which his/her examination papers were made available for his/her inspection. Such appeal must show that a manifest error was made in the original rating. Such appeal shall be considered as opening all of the candidate's papers for review, whether resulting in a higher or lower standing. No change in rating shall be made as a result of an appeal unless it shall affect the candidate's relative position on the eligible list.

G. There shall be no reviews of examinations conducted on a continuous recruitment basis other than for a computational check of the candidate's answers against the key answers; nor shall there be reviews of practical or performance examinations.

### **3. Examinations Generally**

A. The Commission may at any time during the life of an eligible list, resulting from an examination except as provided in 1.b., correct any clerical or computational errors in the ratings of candidates who compete in the examination.

B. Any changes in an eligible list pursuant to this rule shall not affect the status of any person previously appointed from such eligible list.

#### **4. Examination Material Security**

In order to prevent the unauthorized publication and dissemination of examination material, the following acts are prohibited except as authorized by the Commission.

A No person shall copy, record or transcribe any examination question or answer; or remove from the examination room or possess outside the examination room, any question sheet, answer sheet or booklet, scrap papers, notes or any other papers or materials relating to such examination.

B A candidate in an examination shall not at any time communicate with an examiner concerning the conduct or content of such examination; and shall not directly or indirectly communicate to any other person information concerning the content of such examination until completion of the testing of all candidates.

No examiner, proctor or other person charged with the supervision of a candidate or group of candidates during an examination shall have authority to waive the provisions of this subdivision. A person who is found by the Commission to have violated the provisions of this subdivision or any similar provision of the rules of any other civil service jurisdiction within the State of New York shall be disqualified from appointment to the position for which the examination is being held and may be disqualified from being a candidate for any civil service examination for a period of five years.

## **RULE XI**

### **ELIGIBLE LISTS**

#### **1. Passing Grade and Ranking**

Every candidate who attains a passing score in an examination as a whole and who meets the standards prescribed, if any, for separate subjects or parts of subjects of the examination shall be eligible for appointment to the position for which he/she was examined and his/her name shall be entered on the eligible list in the order of his/her final rating; but if two or more eligibles receive the same final rating, they shall be ranked in accordance with such uniform, impartial procedure as prescribed by the Commission.

#### **2. Eligible List Establishment**

A. The date of the establishment of the eligible list shall be the date fixed by Commission resolution and shall be entered on the eligible list. The eligible list shall contain any additions of veteran's credits and, in the case of promotion examinations, seniority credits.

B. The duration of all eligible lists shall be fixed by Commission resolution prior to the establishment of such lists, but shall not be less than one nor more than four years. The date of establishment of a list and its duration shall be given to all successful candidates at the time when notice of standing on the eligible list is given to such candidates. Where the duration of an eligible list is fixed at less than four years the Commission may, by resolution, prior to the expiration date of such list, extend the duration of the list up to the maximum limitation of four years, provided that eligibles on such list are notified in writing of the extension of the eligible list.

#### **3. Public Inspection of Eligible Lists**

Eligible lists shall be open to public inspection at the office of the Commission. The names of persons who failed to receive a passing examination score shall not be disclosed to the public.

#### **4. Eligible List Error Correction**

The Commission shall have power in its discretion to correct any error and amend any eligible list where it appears that an error has been made.

**5.**

**Eligible List Revocation**

The Commission shall have power to revoke any eligible list where the provisions of these rules were not properly or sufficiently carried out; provided, however, that an eligible list shall not be revoked except after notice and an opportunity to be heard has been given to all persons whose names appear on the list. The reasons for such action shall be recorded in the minutes of the Commission and reported to the State Civil Service Commission within 30 days.

## **RULE XII**

### **CERTIFICATION FOR APPOINTMENT**

#### **1. Appropriate Eligible List Determination/Certification**

The Commission shall determine the eligible list most nearly appropriate for the position to be filled, and shall certify to the appointing authority a sufficient number of eligibles from which selection for appointment may be made. When the name of any eligible is included in a certification for appointment, the names of all other eligibles on the list having the same final rating as such eligible shall be included in such certification.

#### **2. Duration of Certification**

A certification issued by the Commission to an appointing officer shall be valid for a period of thirty days from the date of its issuance. After the expiration of such thirty-day period, no appointment shall be made except from a new certification. The Commission, for good cause shown, may extend a certification up to a maximum of sixty days upon request of an appointing authority.

#### **3. Failure to Respond to a Canvass Inquiry**

When an eligible is canvassed for appointment or is offered appointment in writing and fails to state his/her willingness to accept such appointment within four business days after the mailing of such canvass or offer, he/she may be considered ineligible when making selection for such particular appointment. When an eligible fails to respond to two successive canvass letters, his/her name shall be restricted from further certification from the eligible list. Thereafter, the eligible may request that his/her name be restored to active status on such list, provided the list is still in existence. The eligible's name may be restored to active status on such list if the Commission in its discretion determines that the reasons for the previous non-response are satisfactory.

#### **4. Certification Declination**

The name of the person declining appointment shall be eliminated from further certification from the eligible list unless declination is for one or more of the following reasons:

(a) insufficiency of compensation offered when below minimum of grade of the position for which the examination was held;

(b) geographical location of employment;

(c) temporary inability, physical or otherwise, which must be satisfactorily explained by the eligible in writing;

(d) other reason deemed acceptable by the Commission. The Commission shall enter upon the eligible list the reasons for its action in such cases.

### **5. Rule of Three**

Except as otherwise provided in these rules, appointment or promotion to a position in the competitive class shall be made by the selection of a person on the most nearly appropriate eligible list who is willing to accept such appointment and whose final rating in the examination is equal to or higher than the final rating of the third highest ranking eligible on the list indicating willingness to accept such appointment. The term "ranking" as used in these rules refers to the order in which the names of eligibles appear on the eligible list.

### **6. Nomination to Fill Vacancy After Open-Competitive Examination**

Whenever a vacancy exists in a position in the competitive class and an open-competitive examination duly advertised results in three or fewer approved applicants for the examination, the appointing officer may nominate to the Commission one of the applicants who may be certified for appointment to fill the vacancy without further examination, provided that he/she has already qualified in an examination of equivalent character within the last four years from the date of nomination.

### **7. Declination for Salary**

Whenever one or more eligibles shall have declined any appointment offered because of salary and an eligible whose relative standing is lower on the list and who was reachable on the certification only because of the declination, shall have been appointed to the position, the salary of such appointee shall not be increased, except by a service or a class-wide increase, within a period of six months after his/her appointment beyond that offered to the persons so declining.

**8. Restriction on Certification for Reclassified Position**

An open-competitive, promotion or preferred eligible list shall not be certified for filling a permanent competitive class vacancy created by reclassification of a permanently encumbered competitive class position if the appointment or promotion from such list would require the layoff of a permanent employee; but, this provision shall not apply if the incumbent whose position was reclassified has, following such reclassification, either refused to take an examination for such reclassified position or failed to qualify for appointment, examination or promotion to such position.

**9.** Whenever a vacancy exists in a position in the competitive class and an open competitive examination duly advertised results in three or fewer approved applicants, and the announced minimum qualifications for the position included a requirement of possession of a license or certificate in a profession issued by the State of New York, the Commission may waive the examination and certify for appointment to the appointing authority the names of such qualified applicants, provided, however, that such applicants have been licensed or certified in the profession by the State of New York.

**RULE XIII**  
**PROMOTIONS**

**1. Eligibility for Promotion**

In order to be eligible to participate in a promotion examination or to be promoted a candidate must have been employed in a competitive class or noncompetitive class position on a permanent basis in a lower grade, either in direct line of promotion or in a related or collateral line of promotion as determined by the Commission. The Commission shall determine the minimum period of such service for eligibility to enter a promotion examination, and may also prescribe a minimum period of such service as a qualification for promotion from the resulting eligible list.

**2. Promotion from the Non-Competitive Class**

Promotion examinations for non-competitive class employees shall, in addition to the requirements of Civil Service Law, Section 52 (12), require that applicants shall have been employed in a full-time position.

**3. Successive Nominations for Non-Competitive Promotion**

Any candidate who is nominated for non-competitive examination for promotion to a position and who fails to appear for such examination or who fails to pass two successive examinations for such promotion shall not thereafter be eligible for employment in such position, except by appointment or promotion from an eligible list following competitive examination.

## **RULE XIV**

### **PROBATIONARY TERM**

#### **1. Probationary Term**

A. Except as otherwise provided in these rules, every permanent appointment from an open-competitive list and every permanent appointment to a position in the non-competitive, exempt or labor class shall be for a probationary term of not less than eight nor more than fifty-two weeks.

B. The probationary term for a Trainee position, in which an appointee is required to serve a specified training term, shall be not less than twelve nor more than fifty-two weeks.

C. Every permanent appointment from a promotion eligible list shall be for a probationary term of not less than eight nor more than twenty-six weeks. Upon written notice of the appointing authority the probationary period upon promotion may be waived and the appointee given a permanent appointment.

D. An appointment shall become permanent upon the retention of the probationer after his/her completion of the maximum period of probation or upon earlier written notice following completion of the minimum period of probation that his/her probationary term is successfully completed. A copy of such notice shall be sent to the Commission.

E. If the conduct or performance of a probationer is not satisfactory, his/her employment may be terminated at any time after the completion of the minimum period of probation, and on or before completion of the maximum period of probation in the manner as prescribed in these rules.

#### **2. A. Transfers to Positions in the Same Civil Division**

Every transfer from a position to another in the same civil division shall require a probationary term of not less than a minimum of eight weeks nor more than twenty-six weeks. If the conduct or performance of the probationer is not satisfactory, employment in such position may be terminated at any time after the completion of the minimum period of probation, and on or before the completion of the maximum period of probation.

## **2. B. Transfers to Positions Under Different Appointing Authorities in Different Civil Divisions**

Every transfer from a position in one civil division to a position in another civil division shall require a probationary term of not less than a minimum of eight weeks up to a maximum of twenty-six weeks. If the conduct or performance of the probationer is not satisfactory, employment in such position may be terminated at any time after the completion of the minimum period of probation, and on or before, completion of the maximum period of probation. The Commission shall advise the prospective transferee in writing prior to approval of the transfer that an eight to twenty-six week probationary term is required and must be successfully completed to obtain permanent status in the position to which transfer is sought. The prospective transferee shall be advised it is his/her responsibility to request a leave of absence from the releasing agency. Unless the prospective transferee obtains a leave of absence, the releasing agency is not required to hold a position to return to should the probationary period not be successfully completed.

**2. C.** The appointing authority having jurisdiction over the position to which transfer is sought, may elect to waive the probationary term in (2a) or (2b) by written notification to the transferee and the Commission.

## **3. Restoration to Permanent Position**

When a permanent employee is promoted or transferred to a position in which he/she is required to serve a probationary term, the position thus vacated by him/her shall not be filled, except on a temporary or contingent permanent basis, during such probationary term. At any time during such probationary term the employee shall have the right to return to his/her previous position at his/her own election. If the conduct or performance of the probationer is not satisfactory, he/she shall be restored to his/her former permanent position at the end of his/her probationary term.

## **4. Absence During Probationary Term**

Any periods of authorized or unauthorized absence aggregating up to 10 work days during the probationary term, may, in the discretion of the appointing authority, be considered as time served in the probationary term. Any such periods of absence not so considered by the appointing authority as time served in the probationary term, and any periods of absence in excess of periods considered by the appointing authority as time served in the probationary term pursuant to this subdivision shall not be counted as

time served in the probationary term. The minimum and maximum periods of the probationary term of any employee shall be extended by the number of work days of his/her absence which, pursuant to this subdivision, are not counted as time served in the probationary term.

#### **5. Report on Probationer's Service**

The appointing authority and supervisor of a probationer will carefully evaluate the probationer's work performance of the duties and responsibilities of the position. A probationer whose services are to be terminated for unsatisfactory service shall be given written notice prior to such termination and, upon request, shall be granted an interview with the appointing authority or his/her representatives.

#### **6. Restoration to Eligible List**

A probationer whose employment is terminated or who resigns before the end of his/her probationary term may request that his/her name be restored to the eligible list from which he/she was appointed, provided such list is still in existence. His/her name may be restored to such list if the Commission in its discretion determines that the probationer should be given another opportunity for appointment.

#### **7. Temporary, Provisional or Contingent Permanent Service in Higher Level Position**

When an employee who has not completed his/her probationary term is appointed on a temporary, provisional or contingent permanent basis to a higher level position, the period of temporary or provisional service rendered by such employee in the higher level position may, in the discretion of the appointing authority, be considered as satisfactory probationary service in his/her lower position and may be counted as such in determining the satisfactory completion of the probationary term. At any time after the expiration of the minimum period of the probationary term, or the entire probationary term if it be one of fixed duration, the appointing authority shall, on request of such probationer, furnish his/her decision in writing as to whether or not service in such higher level position shall be considered as satisfactory probationary service. In the event of an adverse decision by the appointing authority, such probationer at his/her request, shall be returned to his/her lower position for sufficient time to permit him/her to complete his/her probationary term. The employment of such a probationer in his/her lower position shall not be terminated at the end of his/her probationary term on account of unsatisfactory service unless he/she

shall have actually served in such position, in the aggregate, at least the minimum period specified for such probationary term, or the entire probationary term if it be one of fixed duration.

## **8. Removal During Probationary Term**

Nothing contained in this rule shall be construed to limit or otherwise affect the authority of an appointing authority pursuant to Section 75 of the Civil Service Law, or applicable negotiated disciplinary procedures, at any time during the probationary term, to remove a probationer for incompetency or misconduct.

## **9. Probationary Term Upon Reinstatement**

A. An employee who is reinstated to a position after a separation of more than one year, either in his/her former jurisdiction or in another jurisdiction shall serve a new probationary period in the same manner and subject to the same requirements as apply upon the original appointment to such position.

B. An employee who is reinstated to a position after a separation of less than one year in an agency other than the one in which he/she formerly served, shall serve a new probationary term in the same manner and subject to the same requirements as applied upon an original appointment to such position.

## **10. Leave of Absence for Police Supervisors**

Notwithstanding any other provision of these rules, if a Police Officer is promoted to a higher rank for which he/she has met all requirements of eligibility for permanent promotion except training requirements applicable under Section Two Hundred Nine-Q of the General Municipal Law, he/she shall be deemed to be on leave of absence from the lower rank position from which he/she was promoted pending completion of such training. During such period, such lower rank position may not be filled except on a temporary or contingent permanent basis. In the event of his/her failure to successfully complete such training within the time allowed therefore, he/she shall be restored to such lower rank position.

## **RULE XV**

### **TRAINEE APPOINTMENTS**

1. . The Civil Service Commission may require that permanent appointment or promotion to designated positions shall be conditioned upon the satisfactory completion of a term of service as a trainee in such a position or in an appropriate, lower training title or the completion of specified training or academic courses, or both. The period of such term of training service shall be prescribed by the Commission. Upon the satisfactory completion of such training term, and of specified courses if required, an appointee shall be entitled to full permanent status in the position for which appointment was made. Any appointment as a trainee shall be subject to such probationary period as is prescribed in these rules. The employment of such person may be discontinued if his/her conduct, capacity or fitness is not satisfactory at any time between the minimum and maximum period of probationary term for traineeship. If the trainee fails, refuses to pursue, or does not continue such training or academic courses satisfactorily as may be required, his/her employment may be terminated at any time during the traineeship.

## **RULE XVI**

### **EFFECT OF NON-PERMANENT SERVICE ON STATUS OF EMPLOYEES**

#### **1. Effect of Temporary Appointment on Eligibility for Permanent Appointment**

The acceptance by an eligible of a temporary appointment shall not affect his/her standing on the eligible list for a permanent appointment, nor shall the period of temporary service be counted as part of the probationary service in the event of subsequent permanent appointment.

#### **2. Non-Permanent Appointment of Permanent Employee**

A. When a permanent employee is given a provisional, temporary or contingent permanent appointment to a competitive class position in the same department or agency, the position thus vacated by him/her shall only be filled on a temporary or contingent permanent basis until the position is unencumbered by the permanent incumbent.

B. A provisional, temporary or contingent permanent appointee may return to his/her permanent position at any time by providing written notice to the appointing authority requesting to be returned to such permanent position. The appointing authority shall return such appointee to his/her permanent position within fifteen days of receipt of such written notice.

#### **3. Successive Provisional Appointment**

A. No provisional employee who has refused to take an examination held for permanent appointment shall be given another provisional appointment in a position with the same title. No provisional employee who fails two examinations for permanent appointment shall be eligible for provisional appointment in the same title under the same appointing authority. For the purposes of this rule, a failure to appear for an appropriate examination shall constitute a refusal to take an appropriate examination unless adequate reason for a failure to appear is determined by the Commission.

B. The term of provisional appointment shall end within the time period prescribed in subdivision 3 of section sixty-five of the Civil Service Law

or upon the receipt of the results of an examination wherein no candidates passed the appropriate examination. A provisional appointee, who fails to qualify in an appropriate examination, may be authorized a second provisional appointment at the discretion of the appointing authority and the Civil Service Commission if the eligible list contains less than three eligibles from which to make a permanent appointment to the position..

#### **4. Contingent Permanent Appointments**

A. A competitive class position left temporarily vacant by the leave of absence of the permanent incumbent may be filled, at the discretion of the appointing authority, by a contingent permanent appointment through the use of an open-competitive, promotion eligible or preferred list. Any person appointed on a contingent permanent basis shall have all the rights and benefits of a permanent competitive class employee subject to the following limitations:

1. **Probationary Period:** All appointments under this rule shall be required to complete the probationary period for original appointment or promotion as prescribed in this rule.
2. **Return of Incumbents:** In the event of a layoff or if the permanent incumbent returns from leave of absence, persons holding positions on a contingent permanent basis shall be displaced before any persons holding permanent status in the same title regardless of total seniority. In the event more than one position in the same title is held by persons having contingent permanent appointments, displacement among those persons shall be based on the inverse order of their contingent permanent appointments
3. **Preferred List:** Upon displacement, if the contingent permanent appointee was appointed from a promotion eligible list, he/she shall be restored to his/her permanent position and have his/her name placed on a preferred eligible list for certification as a mandatory list only to the department or agency in which the contingent permanent appointment was made. If the contingent permanent appointee was appointed from an open-competitive eligible list, he/she shall have his/her name placed on a preferred eligible list for certification as a mandatory list in the civil division in which the contingent permanent appointment was made.

4. **Seniority:** When a contingent permanent appointment matures into a permanent appointment, the date of permanent service shall be the date of the original contingent permanent appointment.

B. All prospective appointees under this rule shall receive a copy of this rule and be canvassed as "permanent-contingent permanent."

C. Contingent permanent appointments from eligible lists shall be made by selection of one of the top three candidates on an appropriate eligible list willing to accept a contingent permanent appointment; there will be no reconvassing of the eligible list in the event the contingent permanent position becomes unencumbered.

Acceptance of a contingent permanent appointment will remove the person's name from the eligible list for any future contingent permanent or permanent vacancies within the department or agency in which the contingent permanent appointment was made.

D. If a permanent vacancy becomes available in the same title in the department or agency in which a contingent permanent appointment has been made, contingent permanent appointees may be offered reassignment, prior to canvassing for a permanent appointment from an appropriate eligible list, or prior to appointing a temporary or provisional to the position.

E. When a position filled by a contingent permanent appointee becomes unencumbered, the contingent permanent appointee in that position shall immediately gain permanent competitive class status in the class if the required probationary period as prescribed in this rule has been satisfactorily completed.

F. When a permanent competitive class employee accepts a contingent permanent appointment in the same civil division, the position vacated by such employee shall not be filled except on a temporary or contingent permanent basis until the contingent permanent appointment matures into a permanent appointment.

**RULE XVII**

**TRANSFERS**

**1. Transfer of Eligibility for Permanent Appointment**

Upon the written request of an individual and the prospective appointing authority, and subject to the approval of the Commission, any individual serving in a competitive class position as a permanent appointee may be permanently appointed to another competitive class position subject to these rules without further competitive examination, provided:

A. There is no preferred list appropriate for filling the position to which appointment is sought containing the name of an eligible willing to accept appointment; and

B. There is no departmental promotion list for the position to which appointment is sought containing the names of three or more eligibles willing to accept appointment; and

C.1) The Commission determines that the examinations' scopes and qualifications for the position to which appointment is sought are identical; or

2) When the examinations' scopes and qualifications are not identical, the New York State Department of Civil Service has determined that the examination for the position held involved or would involve essential tests and qualifications the same as or greater than those of the position to which appointment is sought; and

D. The Commission has determined that such appointment is for the good of the service.

## **RULE XIX**

### **REINSTATEMENT**

#### **1 Reinstatements**

A. A permanent competitive class employee who has resigned may be reinstated without further examination to the position from which he/she resigned, if then vacant, or in any vacant position to which the employee was eligible for transfer or reassignment. An employee who is laid off shall be eligible for reinstatement in the same manner as an employee who had resigned.

**All reinstatements are subject to the following terms and conditions:**

1. The prospective appointing authority must request approval from the Commission to reinstate an individual.
2. A reinstatement may not be approved to a position for which a preferred list exists containing the name of an eligible willing to accept appointment.
3. With the exception of an employee who is being reinstated to his/her former position within one year from resignation, a reinstatement may not be approved to a position for which a promotion eligible list exists containing the names of three or more eligibles willing to accept appointment.
4. The Commission shall determine if the reinstatement is for the good of the service.

**Reinstatement following a break in service of more than one year must also satisfy the following additional conditions:**

1. The appointing authority must provide documentation or explanation that demonstrates to the satisfaction of the Commission that the individual requested to be reinstated possesses current knowledge and skill in the occupational field to which reinstatement is sought.

**2.** a. If the position to which reinstatement is sought requires successful completion of medical and/or physical agility tests for original appointment, the individual being reinstated must satisfy these criteria immediately prior to reinstatement.

b. An employee that is laid off from the civil service of a municipality shall be eligible for reinstatement in the same manner as an employee who had resigned.

**3.** Refusal or Failure to Accept Reinstatement From a Preferred List

a. Preferred list eligibility shall continue for four years.

b. The failure or refusal of a person on a preferred list, after reasonable notice, to accept reinstatement to his/her former position, or any similar position in the same salary or salary grade for which such list is certified, shall be deemed to be a relinquishment of his/her eligibility for reinstatement, and his/her name shall be stricken from such preferred list. The name of such person may be restored to such preferred list and certified to fill appropriate vacancies as may occur only upon the request of such person and his/her submission of reasons satisfactory to the Commission for his/her previous failure or refusal to accept reinstatement.

c. A person on a preferred list shall not be deemed to relinquish his/her eligibility for reinstatement by reason of his/her refusal or acceptance of reinstatement to a position in a lower salary grade than the position from which he/she was suspended or demoted. The name of such person may be withheld from further certification for reinstatement to a position in a lower salary grade than the position to which he/she failed or refused to accept reinstatement.

d. The restoration of the name of a person to a preferred list, or his/her restoration to eligibility for certification to positions in a lower salary grade than his/her former position, shall not invalidate or in any manner adversely affect any appointment, promotion, reinstatement or demotion previously made to any position to which such person would otherwise have been eligible for reinstatement from such preferred list.

## **RULE XIX**

### **LEAVE OF ABSENCE**

#### **1. Leave of Absence Without Pay**

A leave of absence without pay may be granted by the appointing authority in conformance with the regulations or policies established by the appropriate legislative body or appointing authority, provided, however, that a permanent competitive class employee may not encumber a permanent position by a leave without pay while holding a permanent appointment to another position in the civil service of the same municipality.

#### **2. Leave for Supervisory Police Personnel**

Notwithstanding any other provisions of these rules, the promotion of a Police Officer to a higher rank for which that Officer has met all the requirements of eligibility for permanent promotion, except the training required under Section 209-q of the General Municipal Law, the Officer shall be deemed to be on a leave of absence from the lower rank position from which the Officer was promoted pending the completion of such training. During such period the lower rank position may not be filled except on a temporary basis. In the event the Officer fails to successfully complete the required training within the time allowed therefore, the Officer shall be restored to such lower rank position.

#### **3. Veterans' Educational Leave**

A leave of absence without pay, not to exceed four years, shall be granted by an appointing officer to an employee who is a veteran of the Armed Forces of the United States, providing such a leave of absence is for the purpose of taking courses under the educational benefits provided for in Title 38, United States Code, or under a New York State Board of Regents War Service Scholarship, Education Law, Section 614. An employee taking such a leave shall be reinstated to his/her position, provided he/she makes application for such reinstatement within sixty days after the termination of his/her courses of study.

## **RULE XX**

### **RESIGNATION**

#### **1. Resignation in Writing**

Every resignation shall be in writing.

#### **2. Effective Date of Resignation**

If no effective date is specified in a resignation, it shall take effect upon delivery to or filing with the appointing official. If an effective date is specified in a resignation, it shall take effect on such specified date. However, if a resignation is submitted while the employee is on leave of absence without pay, such resignation, for the purpose of determining eligibility for reinstatement, shall be deemed to be effective as of the date of the commencement of such absence.

#### **3. Pending Disciplinary Charges**

Notwithstanding the provisions of this section, when charges of incompetency or misconduct have been or are about to be filed against an employee, the appointing authority may elect to disregard a resignation filed by such employee and to prosecute such charges; and, in the event that such employee is found guilty of such charges and dismissed from the service, his/her termination shall be recorded as a dismissal rather than as a resignation.

#### **4. Withdrawal or Amendment of Resignation**

A resignation may not be withdrawn, canceled or amended after it is delivered to the appointing authority, without the written consent of the appointing authority.

**5. Voluntary Demotion of Permanent Competitive Employee**

An employee who voluntarily elects to relinquish his/her permanent competitive class status to a position and accept a demotion, must deliver a statement of relinquishment to the appointing authority. Upon receipt of the statement of relinquishment by the appointing authority, the employee may be reinstated to any vacant lower salary level position for which he/she is eligible for such reinstatement as provided in these rules. Such statement of relinquishment shall not take effect until the employee is reinstated to the lower level position. An employee may not be reinstated to a position for which a preferred eligible list is established.

## **RULE XXI**

### **REPORTS OF APPOINTING AUTHORITIES**

For the purpose of certification of payrolls and to enable the Commission to keep an official roster of the classified service as required by law and to properly administer the provisions of the Civil Service Law and these Rules, each appointing officer, from time to time, and upon the date of the official action in each case, shall report to the Commission as follows:

- A. Every appointment or employment whether permanent, probationary, provisional, temporary, contingent permanent or otherwise, in the classified service, with the date of commencement of service and the title, salary, and compensation of the position.
- B. Every declination of an appointment under him/her by a person on an eligible list or preferred list, with copies of the offer or notice of appointment and the reply, if any.
- C. Every discharge during or at the end of probationary term with the date of the discharge.
- D. Every vacancy in a position, for whatever reason including the date.
- E. Every position abolished, with the date of such abolition.
- F. Every change of salary in a position, with the date of change.
- G. Every promotion, giving positions from which and to which made, with the salaries and date.
- H. Every proposed transfer, giving the positions from which and to which transfer is to be made, including the effective date and salary.
- I. Every reinstatement in a position, with the date and salary.
- J. Every leave of absence, with the effective date and duration.
- K. Every new position, giving a complete description of the duties and responsibilities.

## **RULE XXII**

### **CERTIFICATION OF PAYROLLS**

#### **(Option B)**

##### **1. Certification required prior to payment**

- (a) No person shall receive salary or compensation until the Commission has certified his or her employment to be in compliance with the provisions of the Civil Service Law or these Rules.
- (b) The Commission shall not certify the names of any person employed in a manner that does not comply with the provisions of the Civil Service Law or these Rules.

##### **2. Extended Certification**

- (a) The Commission may certify the employment of a person for a limited or extended period. No further certification shall be necessary for the payment of salary or compensation to such person as long as his or her status, title, and salary grade remain unchanged during the period of the certification granted.
- (b) The Commission shall require certification of the first full payroll of the fiscal year for every civil division under its jurisdiction except school districts. The Commission shall certify the first full payroll of every school district under its jurisdiction in October every calendar year.
- (c) The Commission may, at any time, require any civil division under its jurisdiction to submit payrolls or accounts for certification in accordance with §100(1) of the Civil Service Law.
- (d) Annual certifications provided by the Commission shall be valid for a period of no more than 12 months following the scheduled date of certification established in these Rules. Certifications provided at any other time during the year shall be valid for a period not to exceed the next scheduled certification established in these Rules.

### **3. Refusal or termination of certification**

- (a) The Commission shall investigate any discrepancies between the payroll and the official roster and any other instances where the Commission finds the employment of a person may be in violation of the law or these Rules.
- (b) In any case where the Commission finds satisfactory evidence that the employment of a person is in violation of law or these Rules, or the Commission finds satisfactory evidence of intent to evade the provisions of law or these Rules in regard to the employment of any person, the Commission shall refuse certification or terminate a certification previously made and then in force.
- (c) Any refusal, termination, or revocation of a certification of any person shall be communicated in writing to the appropriate fiscal or disbursing officer.

## **RULE XXIII**

### **POSITION CLASSIFICATION**

#### **1. Definitions Used in Position Classification.**

For the purpose of this rule the following definitions shall apply:

a. "Class" means one or more positions sufficiently similar with respect to duties and responsibilities to be designated by a single descriptive title and treated as a unit for the purpose of recruiting, examinations, salary, and administering other personnel functions.

b. "Class Title" means the designation given under these rules to a class and to each position allocated to such class.

c. "Job Classification Specification" means a formal written statement of the class which defines the general character and scope of the duties and responsibilities of positions in the class, lists typical work activities, enumerates knowledge, skills, abilities, and personal characteristics required for successful full performance of the work, states required minimum qualifications, and indicates any special requirements of the class.

d. "Allocation" means the assignment of a position to an appropriate class as determined by the duties, responsibilities and minimum qualification requirements of the position.

e. "Reclassification" means the reallocation of a position from one class to another because of a permanent and material change of the duties of that position.

f. "Appointing Authority" means the person, body or authority authorized to make appointments within a department or municipality.

#### **2. The Commission's Duties and Responsibilities for Position Classification:**

a. The Commission shall classify and reclassify all positions in the civil service of all municipalities under its jurisdiction.

b. The Commission shall prepare and maintain job classification specifications for each class of positions in the competitive, non-competitive and labor jurisdictional classes and establish appropriate minimum qualifications for each class.

c. The Commission shall investigate all matters affecting the classification and reclassification of all positions and from time to time review the duties, responsibilities and qualification requirements of all positions under its jurisdiction and to make revisions in the classification of positions.

**3. Classification of Vacant Positions.** When a position has or is about to become vacant, the appointing authority shall file a detailed description of the duties and responsibilities of the position and a statement of suggested minimum entrance qualifications for the position with the Commission. After an analysis of the detailed description of duties and responsibilities, the Commission shall allocate the position to an appropriate class, or, if no appropriate class exists, shall create a new class and prepare a job classification specification for such position including a statement of appropriate minimum qualifications. The Commission may, with certain position vacancies it deems appropriate, accept written verification from the appointing authority that the duties and responsibilities of certain positions have remained unchanged from the last review by the Commission.

**4. Classification of New Positions.** When a new position is to be created, the appointing officer shall file a detailed description of the duties and responsibilities of the position and a statement of suggested minimum entrance qualifications for the position with the Commission, prior to creating the position. After an analysis of the detailed description of the duties and responsibilities, the Commission shall allocate the position to an appropriate class, or if no appropriate class exists, shall create a new class and prepare a job classification specification for such new class including a statement of appropriate minimum qualifications.

**5. Reclassification of Positions. Either:**

a. The Commission may, upon its own initiative, review the duties and responsibilities and qualification requirements of any position under its jurisdiction. Appointing authorities and employees in positions

under review shall be required to complete a detailed description of the duties and responsibilities of the positions and provide such other information as determined necessary by the Commission. After an analysis of the detailed description of the duties and responsibilities, the Commission shall allocate the position to an appropriate class, or, if no appropriate class exists, shall create a new class and prepare a job classification specification for such position including a statement of appropriate minimum qualifications; or

b. Whenever a permanent and material change is made in the duties and responsibilities of any position, the appointing authority shall file a detailed description of the duties and responsibilities of the position with the Commission. After an analysis of the duties and responsibilities of the position, the Commission shall allocate the position to an appropriate class, or, if no appropriate class exists, shall create a new class and prepare a job classification specification for such position including a statement of appropriate minimum qualifications; or

c. Any employee in the classified service may apply to the Commission for a position reclassification. Such application shall include a detailed description of the duties and responsibilities of the position since the last determination with respect to its classification. After an analysis of the duties and responsibilities of the position, the Commission shall allocate the position to an appropriate class, or, if no appropriate class exists, shall create a new class and prepare a job classification specification for such position including a statement of appropriate minimum qualifications.

## **6. Notice of Appeals.**

The Commission shall give reasonable notice of any proposal or application for a change in classification to the appointing authority and to the employee or employees affected thereby. Any person desiring to submit facts orally or in writing in connection with the reclassification of any position shall be afforded reasonable opportunity to do so. The Commission shall then determine the proper allocation of the position. No employee, either by classification or reclassification, change of title or otherwise shall be promoted, demoted, transferred, suspended or reinstated except in accordance with the provisions of the Civil Service Law and these rules.

**RULE XXIV**  
**PROHIBITION AGAINST QUESTIONS ELICITING INFORMATION  
CONCERNING POLITICAL AFFILIATION**

No question in any examination or application or other proceeding by the Commission or its examiners shall be so framed as to elicit information concerning, nor shall any other attempt be made to ascertain, the political opinions or affiliations of any applicant, competitor or eligible, and all disclosures shall be discountenanced by the Commission and its examiners. No discrimination shall be exercised, threatened or promised against or in favor of any applicant, competitor or eligible because of his/her political opinions or affiliation.

## **RULE XXV**

### **LAYOFF OF COMPETITIVE CLASS EMPLOYEES**

#### **1. For the purpose of this rule the following terms shall mean:**

a. Direct Line of Promotion shall be strictly construed in that in order to be considered as direct line all titles must have the same generic root.

b. Next Lower Occupied Title shall mean the title in direct line of promotion immediately below the title from which the incumbent is suspended or demoted, unless no one is serving in that title in that layoff unit, in which case it shall be the closest lower title in direct line of promotion in that layoff unit in which one or more persons do serve.

c. Layoff Unit. Each department of a county, city, town, or village; each school district; each community college; each special district; and, each authority shall be deemed to be a layoff unit.

d. Satisfactory Service shall mean service in the last fiscal year by an employee during which he/she did not receive an "Unsatisfactory" performance rating and was not found guilty of misconduct or incompetency pursuant to Section Seventy-five of the Civil Service Law or negotiated disciplinary procedure which resulted in the imposition of any of the following penalties upon such employee:

1. Dismissal from the service; or
2. Suspension without pay for a period exceeding one month; or
3. Demotion in grade and title.

e. Permanent Service

#### **2 Original Appointment**

Permanent service shall start on the date of the incumbent's original appointment on a permanent or contingent permanent basis in the classified service; however, in the case of disabled veterans, the date of original permanent appointment is considered to be sixty months earlier than the actual date, while non-disabled veterans are considered to have been appointed thirty months earlier than their actual date of appointment. For the purposes of this rule the definition of what constitutes a veteran or disabled veteran is contained in Section Eighty-five of the Civil Service Law.

### **3. Resignation Followed by a Reinstatement or Reappointment**

A resignation followed by a reinstatement or reappointment more than one year subsequent to the resignation constitutes a break in service. The original appointment date is to be determined from the date of reemployment; the prior service would not count.

### **4. Temporary or Provisional Service**

Temporary or provisional service preceding the original permanent appointment does not count. However, temporary, provisional or contingent permanent employment immediately preceded and followed by permanent classified service employment does not interrupt continuous service.

### **5. Seniority of Transferred Employees**

The permanent service of any employee who was transferred from another civil division shall start on the date of his/her original permanent appointment in the classified service in the other civil division.

### **6. Seniority Date When Covered-In**

If an employee was covered-in to a classified position upon acquisition by a civil division of a private institution or enterprise in which he/she was employed, his/her seniority begins on the effective date of the cover-in. As between that employee and others covered-in on the same date, they shall have the seniority held by them as among themselves in the agency before the cover-in.

### **7. Suspension**

A. When an occupied position in the competitive class is abolished, suspension is to be made from among those employees holding the same title in the same layoff unit as the abolished position.

B. Among permanent employees, the order of suspension is the inverse of the order of their original permanent appointments in the classified service. See above definition of permanent service for veterans and disabled veterans. An exception to this rule is that the blind have absolute retention rights but only in their job status.

C. A blind person may not backdate his/her permanent service if he/she also happens to be either a veteran or disabled veteran. A person is considered blind if he/she is so certified by the Commission for the Blind and Visually Handicapped of the New York State Office of Children and Family Services.

D. When two or more permanent incumbents of positions in a specific title are suspended, demoted or displaced at the same time, the order in which they shall be entitled to displace shall be determined by their respective retention standing, with those having the greater retention standing entitled to displace first.

E. When several employees were originally appointed on a permanent basis from the same eligible list on the same day, their retention rights shall be determined by their rank on that eligible list; that person having the highest rank having greater retention rights over those having lower ranks.

F. All temporary, provisional and contingent permanent employees occupying these positions must be let go before any permanent employee is suspended from such positions.

G. Probationary employees occupying such positions in the same title, must also be suspended before any permanent employee in the layoff unit in that title who has completed his/her probationary period. Probationary employees do, however, have greater retention rights to those of contingent permanent, temporary, and provisional employees.

H. The order of suspension among probationary employees shall follow the same principles as that among permanent employees.

I. Where the layoff involves more than one position in a title, the order of displacement will be the inverse of the order of suspension. That is, the most senior of the suspended employees will be the first to displace. This shall apply to both vertical bumping and retreat.

### **3. Vertical Bumping**

A. Vertical bumping occurs when an employee in a specific title to which there is a direct line of promotion, who is himself/herself suspended or displaced, displaces an employee in the next lower occupied title in direct line of promotion in the same layoff unit having the least seniority if the employee who seeks to displace has greater retention standing.

B. If an employee refuses to displace a junior incumbent, he/she must be laid off. This, however, does not protect the junior incumbent from being compared in retention standing with other incumbents if other positions at the higher level are being abolished.

C. When a next lower title has been occupied by means of displacement regardless of when the displacement into the title has occurred, it is considered to be occupied for further displacement purposes; however, a next lower title which has all of its positions abolished at the same time as positions are abolished at the higher level cannot be considered as occupied. A title which is occupied by an incumbent, temporary, provisional, contingent permanent, probationary or permanent, is considered occupied for the purposes of this section.

#### **4. Retreat**

A. Retreat occurs when and only when there is no lower occupied position in direct line of promotion at any level.

B. An employee may retreat by displacing the incumbent with the least retention right who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in the title from which he/she is currently suspended or displaced. Retreat may only occur where the position in the title formerly held by the displacing incumbent is occupied in the competitive class, in the same layoff unit, and at a lower salary grade; the service of the displacing incumbent while in the former title must have been satisfactory, and the junior incumbent must have less retention standing than the displacing incumbent.

C. The service of the displacing incumbent in the title to which he/she is retreating need not have been in the same layoff unit as the one from which he/she is displaced.

D. An employee may also displace by retreat to a position in a title he/she last served on a permanent basis although he/she had intervening service in other title as long as his/her service in each of the intervening titles was on other than a permanent basis. He/she may also displace by retreat to a position, which does not count in the computation of his/her continuous service.

E. Where a title change has been effected to better describe the duties of a position but the duties have not substantially changed since the suspended employee last served in that title the new title will for retreat purposes be deemed to be the former title.

**5.**

An employee who refuses to accept an appointment afforded by displacement for whatever reason waives all rights regarding the displacement; however, this employee's name will be entered on an appropriate preferred list.

**6.**

An appointing authority may take such steps as it may deem necessary in order to secure binding written commitments in advance of suspension, demotion or displacement from employees potentially affected by such suspension, demotion or displacement as to their willingness to accept reassignment or displacement.