The Township of Clark (Clark), on behalf of Patrick Grady, Antonio Manata, George Marmarou, Thomas Sarnecki, and Brian Soos, requests transfer of their accumulated seniority from other jurisdictions to Clark.

By way of background, the above named individuals intergovernmentally transferred to Clark from various jurisdictions from either the Police Officer or Sheriff's Officer title to the title of Police Officer. The following list provides the pertinent information regarding these intergovernmental transfers:

<table>
<thead>
<tr>
<th>NAME</th>
<th>PRIOR HELD TITLE</th>
<th>TRANSFER DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grady</td>
<td>Sheriff's Officer</td>
<td>September 2, 2006</td>
</tr>
<tr>
<td>Marmarou</td>
<td>Sheriff's Officer</td>
<td>September 13, 2007</td>
</tr>
<tr>
<td>Soos</td>
<td>Sheriff's Officer</td>
<td>September 13, 2007</td>
</tr>
<tr>
<td>Manata</td>
<td>Police Officer</td>
<td>July 1, 2007</td>
</tr>
<tr>
<td>Sarnecki</td>
<td>Police Officer</td>
<td>November 1, 2007</td>
</tr>
</tbody>
</table>

In accordance with legislative changes to the intergovernmental transfer program that became effective on August 2, 2006, these law enforcement officers, including the Sheriff's Officers, were provided the option to waive all of their accumulated seniority and sick leave. See N.J.S.A. 11A:2-28. A review of the intergovernmental transfer agreements for the above named individuals indicates that they all opted to waive their accumulated seniority upon transfer to Clark. Additionally, the appointing authority acknowledged that seniority would not be retained after effectuation of the transfer. However, in order to effect the transfers of Grady, Marmarou, and Soos, it was necessary for Clark to petition the Merit System Board for rule relaxations on the basis that these transfers involved a change from Sheriff's Officer to Police Officer, functionally dissimilar job titles. The Board granted these requests and noted in each of its determinations that the parties agreed

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1 In accordance with N.J.A.C. 4A:4-7.1A(d), Marmarou voluntarily demoted from Sheriff's Officer Sergeant to Sheriff's Officer in order to effect the intergovernmental transfer.
2 Sarnecki intergovernmentally transferred as a Sheriff's Officer, Union County, to Police Officer, Scotch Plains, effective April 1, 2005. He served as a Police Officer in Scotch Plains until he intergovernmentally transferred to Clark on November 1, 2007.
3 On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008.
that accumulated seniority would not be retained.\textsuperscript{4} See \textit{In the Matter of Patrick Grady} (MSB, decided August 9, 2006); \textit{In the Matter of George I. Marmarou} (MSB, decided August 15, 2007) and \textit{In the Matter of Brian Soos} (MSB, decided August 15, 2007).

It is noted that prior to the enactment of \textit{N.J.S.A.} 11A:2-28, the rules governing intergovernmental transfers that were in effect from November 19, 2001 to August 1, 2006 specifically prohibited the retention of accumulated seniority for Police Officers and did not provide an option for Police Officers to waive their accumulated seniority. However, during the intergovernmental transfer pilot program, which ran from September 1, 1999 to August 31, 2000, and up until the rule amendments permitting such transfers took effect on November 19, 2001, the parties to an intergovernmental transfer of a Police Officer could either waive or retain accumulated seniority.

In its request to the Civil Service Commission (Commission), Clark requests that seniority for these individuals, \textit{only as it applies to promotional examination eligibility} be reinstated, retroactive to the date of their intergovernmental transfers. Clark makes this request so these individuals will have the required three years in grade to participate in the promotional examination for Police Sergeant in 2009.\textsuperscript{5} Moreover, Clark explains that due to an administrative oversight at the time of the transfers, it was unaware that these individuals had the option of waiving or not waiving their seniority rights. Thus, Clark requests relaxation of the provisions of \textit{N.J.A.C.} 4A:4-7.4(c) so these individuals will be eligible for an upcoming promotional examination for Police Sergeant.

\textbf{CONCLUSION}

\textit{N.J.A.C.} 4A:4-7.1A(a) provides, in pertinent part, that an intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes. The Intergovernmental Transfer Program and the rules allow movement only between identical titles or titles that are functionally equivalent. The job specifications delineate substantial differences in duties between the titles of Sheriff’s Officer and Police Officer. Nevertheless, based on the particular circumstances, such as in the case of Grady, Marmarou,}

\textsuperscript{4} The Board also granted Scotch Plains’ request to transfer Sarnecki from the functionally dissimilar title of Sheriff’s Officer to Police Officer, Scotch Plains, without the retention of seniority. See \textit{In the Matter of Thomas Sarnecki} (MSB, decided April 6, 2005).

\textsuperscript{5} Promotional exams for Police Sergeant are tentatively scheduled to be announced with a filing deadline of July 21, 2009 with eligibility to be determined using September 30, 2009 as a closing date.
Soos, and Sarnecki, the Board found that good cause existed to permit their permanent transfers to Clark’s Police Department under the particular circumstances of these cases, including the staffing needs of Clark and Scotch Plains, and the fact that the duties performed by these officers were substantially similar to the duties and functions of a Police Officer.

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

Conversely, where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, the receiving jurisdiction is required to request that the Department of Personnel (DOP) approve the title, based on the following criteria: 1) the titles(s) shall have substantially similar duties and responsibilities; 2) the education and experience requirement for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title; 3) there shall be no special skills, licenses, certification or registration requirements for the new title which are not also mandatory for the former title; and 4) any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title. _See N.J.A.C._ 4A:4-7.1A(c)2. Thus, it is clear that intergovernmental movements contemplate the movement of employees between titles that have been determined to be substantially similar. In those cases where the titles involved have been determined not to be substantially similar, such as from Sheriff’s Officer to Police Officer, it has been the practice of the Board and the Commission to review those cases on an individual basis to determine if the specific employee involved is performing substantially similar work. If this is the case, the provisions of _N.J.A.C._ 4A:4-7.1A(c)2 have generally been relaxed in order to effect the transfer. However, the Commission does not intend this exception to mean that the movement between dissimilar law enforcement titles warrants
Permitting the retention of seniority accrued in dissimilar law enforcement titles would result in a direct conflict with rules regarding seniority calculations in the event of a layoff. Seniority for police titles\textsuperscript{6} is the amount of continuous permanent service in an employee’s current permanent title and other titles that have (or would have) lateral or demotional rights to the current permanent title. See N.J.A.C. 4A:8-2.4(b). This is significantly different from how seniority is determined for non-police titles, where seniority is based on continuous permanent service in the jurisdiction, regardless of title. See N.J.A.C. 4A:8-2.4(a). The Police Officer and Sheriff’s Officer titles are both entry level titles for their respective series. Thus, movement from one to the other is considered a lateral, rather than promotional or demotional action. However, the two title series are \textit{not} substantially similar. In this regard, according to the job specification for Police Officer, incumbents are primarily assigned a tour of duty, on foot, or in an automobile, to patrol a designated area and to provide assistance and protection for persons, to safeguard property, to assure observance of the law, and to apprehend lawbreakers. Conversely, the job specification for Sheriff’s Officer indicates that incumbents primarily maintain order and security in the courtroom, serve court processes, perform criminal identification, ballistics and investigations, and apprehend violators of the law. In other words, since the Police Officer and Sheriff’s Officer title series are dissimilar, in accordance with N.J.A.C. 4A:8-2.1(a) and (b), an incumbent in the Police Officer title would not have lateral or demotional rights to a Sheriff’s Officer title. As such, the controlling regulatory provision concerning seniority for layoff purposes does not permit utilization of service in dissimilar law enforcement titles in the calculation of seniority.

The Commission also notes that but for a brief interlude between May 15, 1995 and June 2, 1996, title or “class” seniority had always been the basis in the rules for seniority calculations in the administration of police layoffs. For example, prior to May 15, 1995, N.J.A.C. 4A:8-2.4(a) defined seniority for layoff purposes as “the amount of continuous permanent service in an employee’s current permanent title and other titles that have (or would have had) lateral demotional rights to the current permanent title.” However, the rule was amended and from May 15, 1995 to June 2, 1996, it provided that an employee’s continuous amount of permanent service in a jurisdiction, regardless of title, was the basis for seniority determinations in the layoff process. This rule change resulted in multiple petitions to the Board not to

\textsuperscript{6} This includes Sheriff’s Officers and County Correction Officers since N.J.S.A. 52:17B-66 \textit{et seq.} requires entry level employees to complete a police training course. See N.J.A.C. 4A:8-2.4(b)1.
apply the provision to the public safety community. See In the Matter of East Orange Fire Department Demotions (MSB, decided November 1, 1995), aff’d on reconsideration (MSB, decided June 25, 1996) and In the Matter of East Orange Police Department Promotions (MSB, decided November 1, 1995).

After the Board’s determinations in these matters, numerous petitions were received by the Board from the public safety community to amend the rule to limit the seniority of incumbents in police and fire titles to the amount of continuous permanent service in an employee’s current permanent title and to other titles that would have lateral or demotional rights to the current permanent title. After three public hearings were held on the matter in April 1996, the Board found “overwhelming support” for the proposed amendments, and amended the rule effective June 3, 1996. See 28 N.J.R. 2841. Thus, seniority, for layoff purposes involving police titles, is only based on an employee’s permanent service, or “time in grade,” in a specific title series, either Police Officer or Sheriff’s Officer.

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

As such, the Commission finds that it would be inappropriate to permit the retention of title seniority between dissimilar titles after an exception is made to effect an intergovernmental transfer. Therefore, it declines to grant Clark’s request with respect to Grady, Marmarou, and Soos.

With respect to Manata and Sarnecki, who had prior service as Police Officers, since the amendment to N.J.S.A. 11A:2-28 would have permitted the parties the option not to waive their seniority as a condition of the transfer, the Commission will permit them to retain their accumulated seniority as Police Officers. See In the Matter of Todd Mosby (Commissioner of Personnel, decided October 3, 2002) (Commissioner permitted the retention of title seniority of a Police Officer who intergovernmentally transferred under the pilot program due to an asserted typographical error). However, for the reasons stated above, Sarnecki’s service in the title of Sheriff’s Officer from

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7 It would not be necessary for the Commission to permit Grady to retain his seniority as a Sheriff’s Officer for eligibility for the upcoming Police Sergeant promotional examination because it appears that he will have the three years of required time-in-grade as a Police Officer by the contemplated eligibility determination date of September 30, 2009.
January 1, 2003 to March 31, 2005 should not be retained as accumulated seniority.

ORDER

Therefore, it is ordered that the request to retain the accumulated seniority of Patrick Grady, George Marmarou, and Brian Soos as Sheriff’s Officers be denied. It is also ordered that the request to retain the accumulated seniority of Antonio Manata and Thomas Sarnecki as Police Officers be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.