

## **Title 11A Civil Service**

Because the Township of Wantage adopted the civil service system to govern its personnel policies, procedures and administration, N.J.S.A. 40A:65-26 a.3 requires the Consolidation Study Commission to address the

“... applicability of the provisions of Title 11A, Civil Service, of the New Jersey Statutes, if Title 11A has been adopted by one or more consolidating municipalities.”

No matter what the recommendation of the Commission will be, as per 40A: 65-26c, “... the question of whether the new municipality shall be subject to the provision of [Title 11A] shall be the subject of a public referendum before all of the voters of the consolidating municipalities.”

Should the Consolidation Commission recommend consolidation of the municipalities: The Commission needs to understand the issue, provide a recommendation to the electorate and add the following language to the ballot upon which the question of consolidation appears:

“Shall the consolidated municipality be subject to the provisions of Title 11A Civil Service?”

The Commission should issue a report on the subject as part of the overall consolidation report and provide a recommendation on the matter. If the question proceeds, it will be necessary to provide an explanatory statement for inclusion with the question on the ballot.

### ***Civil Service and NJDOP***

#### **Introduction**

Currently, the Township is under the jurisdiction of Title 11A and the Borough is not. Because the Township of Wantage is presently under the jurisdiction of the Title 11A, the statute requires that the referendum on consolidation include a question on applicability of the provisions of Title 11A, Civil Service to the newly consolidated municipality. Which of the two alternatives should the Commission recommend? Why? The following is an attempt to present advantages and disadvantages of each choice.

#### **What is Civil Service or the New Jersey Department of Personnel?**

First it is important to understand how Title 11A affects municipal personnel administration. Civil Service as it has been traditionally known was originally a reform movement to “remove politics from personnel administration.” When a municipality is without a well developed personnel system, Civil Service and NJDOP provide a basic system.

In New Jersey the program went through a reform process of its own in the mid-1980 when the Civil Service Commission became known as the Merit System Board and the administrative offices became known as the Department of Personnel (NJDOP). It was hoped at that time that the bureaucratic characteristics of the Commission could be resolved with the reforms. While some of these characteristics were removed, many governmental administrators continue to complain of management problems created by the law, regulations and staff. Typically these

complaints center around employee oriented protections and bureaucratic rigidity. Others find the system to be satisfactory.

In the last budget, the Governor and the Legislature abolished the Department of Personnel as a cost savings act. Personnel were to have been transferred to the Department of Treasury. However, recently Commissioner of Personnel, Hope Copper, still was the person in charge of the staff in the former Department of Personnel.

### **Impact of Civil Service**

When a municipality is under Title 11A, nearly all personnel actions of significance must be consistent with NJDOP rules and regulations and be approved by the appropriate departmental personnel. These actions include:

- record keeping practices and procedures,
- hiring through open competitive examinations or to non-competitive positions,
  - “Rule of 3” – The municipality must appoint a candidate who scored among the top three on the NJDOP test or qualifying process.
  - If disabled veteran and veteran pass the test, they are automatically elevated to the top position, respectively.
  - If the municipality has not utilized the certified list of eligible candidates from a NJDOP conducted test, the municipality is liable to make payment to NJDOP for the cost of the test.
  - Municipalities are required to conform to NJDOP timetables
- disciplinary actions including preliminary notices of discipline, final notices of discipline, hearings, appeal processes and attendant record keeping,
- termination as the ultimate progressive disciplinary action,
- promotional procedures,
- mandatory sick leave allocations,
- layoff plans and the actual layoff process,
- administrative procedures,
- etc.

The Department of Personnel’s jurisdiction provides certain benefits. Compliance with NJDOP rules and regulations often renders municipalities to be presumptively compliant with higher laws. For example, NJDOP provides guidelines for compliance with the Federal Family and Medical Leave Act (FMLA), the New Jersey Family Leave Act (FLA), among other regulations. In addition, its policies provide a certain presumption of compliance so long as the administration of the policies is consistent with NJDOP.

### **Removing Civil Service**

Once a municipality is under the jurisdiction of NJDOP, it is not possible to withdraw. Many municipal administrators, municipal managers and personnel directors have sought ways to get around the requirements of the Civil Service System. Several municipalities have actively sought to remove themselves from the jurisdiction of NJDOP. In the 1990’s during the Whitman Administration there were serious attempts by the Governor’s office to eliminate the department and its jurisdiction over municipalities in order to remove bureaucratic entanglements and to permit municipalities to operate more efficiently. With the numerous state laws and regulations, unionization and other protections of employees, it was believed that Civil Service had outlived its usefulness.

However, those attempts failed as unions around the state mobilized and effectively thwarted these most recent reform attempts. These attempts at reforming Civil Service eventually ended in a few pilot tests of changes to certain rules. For example, with special permission granted to several pilot municipalities, the “Rule of 10” replaced the “Rule of 3” for hiring from certified lists of eligible candidates. This meant that a municipal appointing authority could appoint one of the first 10 candidates on a list rather than the ubiquitous rule requiring appointment from the first three on the list.

**Why do municipalities lobby to remove Civil Service?**

All municipalities that passed referenda on the question early in the last century must still attempt to operate under what many elected and appointed officials consider onerous and irrelevant regulations. Some examples of why these elected and appointed officials object to being under Civil Service include:

- Competitive tests offered by NJDOP often have little or nothing to do with the skills needed to perform the job.
- An employee, performing well in a position for many years, remains classified as a provisional employee pending examination. When an examination was eventually called, the employee did well in the examination. However, someone with bona fide veteran’s or disabled veteran’s status was place first in the exam because they passed the test. The long-standing, well-performing employee was released from the position. An inexperienced disabled veteran or veteran must be offered the position, so long as the person can perform the core functions of the position. Not only did the municipality loose a qualified and well-performing employee, the municipality also incurred the cost of unemployment insurance payments.
- The Civil Service Statute requires all municipal employees receive 15 sick days per year and that the days accumulate without limit. They are prevented from reducing the number of days to 6, 10 or 12 as many other non-Civil Service municipalities have done to control sick leave abuse and/or to reduce personnel costs. Municipalities under the jurisdiction of NJDOP cannot do this.

**Selective comparison of how personnel systems differ**

In this table, we have selected a few typical personnel issues and have attempted to outline briefly how they would be handled in a Title 11 jurisdiction, a jurisdiction with its own well-developed personnel policies and procedures, and in a jurisdiction that runs by the seat of its pants — sometimes with political influence in its personnel actions.

Function	Title 11A	Good practice	Poor practice
Establish job & title	Choose among a list of available titles from a list provided by NJDOP	Determine what is needed, set title for job, write job description	Create new job title
Set salary	In any manner that the municipality chooses	Analyze job duties and set a salary comparable with others in the municipality.	As low as possible. Or, depending on who is being appointed, as high as possible.

<b>Function</b>	<b>Title 11A</b>	<b>Good practice</b>	<b>Poor practice</b>
Recruit	Either chose from the certified list or openly recruit. However, appointee may not satisfy NJDOP and loose job to one from the certified list of eligibles	Follow established process for advertising, including anti-discrimination practices	Call someone's out-of-work brother-in-law
Select & appoint	See above. Subject to Rule of 3 and disabled veterans and veterans preferences. Also subject to appeal to Merit System Board and OAL Judge review	Based on job description, determine most important knowledge, skills, and abilities; to extent feasible, use standard tests; if no tests, develop consistent, job-specific interview process; determine best candidate; do background check; offer job pending medical or other checks	Hire someone's out-of-work brother-in-law
Probation	3 months for non-competitive and permanent appointments; 12 months for police officers	Frequent performance reviews during six-month initial employment period.	Few employees fail to get "permanent" status.
Performance review	Permitted	Annual for ALL employees.	Probably occur only when it's time to get rid of someone.
Promotion	Competitive under NJDOP regulations and procedures	Competitive; similar to initial selection	Based on seniority or favoritism.
Transfer	Based on employee certifications and demotional rights	Based on employer's needs	Varies
Disciplinary action	Minor discipline of a suspension of less than 5 days, no external appeal; Major discipline has right of appeal to OAL and Merit System Board	Progressive discipline according to adopted personnel policies	Seldom occurs until situation has become intolerable; easily challenged in court
Dismissal for cause	Subject to appeal to Merit System Board and OAL	Final step, after ample and progressive notice to employee	Frequently, the first action taken; easily challenged in court
Layoff	About 120 days. Develop and submit a compliant lay off plan to NJDOP and grant demotional rights and reemployment rights	Based on locally developed plan fitting the needs of the employer	Chaotic, perhaps without a plan; easily challenged in court
Recall	Former holder of position has absolute right to position within 24 months of lay off	Preference within two years to those who are qualified	Varies

<b>Function</b>	<b>Title 11A</b>	<b>Good practice</b>	<b>Poor practice</b>
Grievance procedure	As per municipal ordinance or collective bargaining agreement	<b>Non-union:</b> multi-step with timetable; final decision by administrator or elected officials <b>Union:</b> according to labor contract; probably includes arbitration	<b>Non-union:</b> may not even exist <b>Union:</b> according to labor contract; probably includes arbitration
Paid benefits	Locally determined	Locally determined	Locally determined
Leaves	Locally determined except for sick leave which is mandatory 15 days/year	Locally determined	Locally determined

**Summary**

We hope this review will help the commission determine its recommendation with respect to Title 11A status if you recommend consolidation.

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