



STATE OF NEW JERSEY

In the Matter of Dominick McNew, *et al.*, County Correction Lieutenant, various jurisdictions

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket Nos. 2016-4494, *et al.*

Examination Appeal

ISSUED: DEC 07 2016 (JH)

Dominick McNew (PC2540T), Atlantic County; Paul Allegretta, Michael Cumiskey, Alessandro Dato and James Lapp (PC2542T), Bergen County; Deniz Majagah (PC2569T), Passaic County; and Stephen Nagy (PC2570T), Union County; appeal the promotional examination for County Correction Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 12, 2016 and consisted of 65 multiple choice questions. It is noted that during the test administration, candidates were provided with two booklets, Booklet A and Booklet B. Booklet A contained stimulus material and Booklet B contained the exam questions.

Messrs. McNew and Nagy maintain that they were only provided with 30 minutes for review and they were not permitted to review their test booklets, answer sheets and the correct answer key. In addition, they contend that their ability to take notes on exam items was severely curtailed. As such, they request that any appealed item in which they selected the correct response be disregarded and that if they misidentified an item number in their appeals, their arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. The review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory reading. Second,

the review procedure is not designed to facilitate perfection of a candidate's test score, but rather to facilitate perfection of the scoring key. To that end, knowledge of what choice a particular appellant made is not required to properly evaluate the correctness of the official scoring key. Appeals of questions for which the appellant selected the correct answer are not improvident if the question or keyed answer is flawed.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

In addressing challenges to the scoring key, only arguments and contentions as they relate to disputed issues will be reviewed herein. An independent review of the issues presented under appeal has resulted in the following findings:

Question 21 asks, according to *N.J.A.C. 10A:31-8.19*, which is considered a less lethal means of deadly force. The keyed response is option c, The use of a "chemical agent." Messrs. Allegretta, Dato, Lapp and McNew argue that option b, "firearm with rubber bullets," is correct. Specifically, they note that pursuant to *N.J.A.C. 10A:31-8.18(b)2* (Use of non-deadly force; when justified) indicates that a chemical agent is considered "mechanical force." *N.J.A.C. 10A:31-8.19* provides that the discharge of any projectile from a firearm is considered to be deadly force, including **less lethal means** such as, but not limited to, bean bag (BB) ammunition or **rubber bullets**. Upon review of this item during the appeal process, the Division of Test Development and Analytics determined that this item had been miskeyed and the key was corrected to option b, "firearm with rubber bullets," prior to the lists being issued.

Question 23 indicates that Sergeant Smith is assigned to a post that requires the issuance of a firearm for his use while on duty. The question asks, according to *N.J.A.C. 10A:31-8.25*, for the information which is not necessary for the Administrator or designee to maintain. The keyed response is option b, "A copy of Sergeant Smith's NJ Weapons Card." Mr. Lapp argues that option c, "The issued firearm," is correct. He explains that "the word maintain is misleading and clouds the water of the right answer . . . It is not the department's responsibility to maintain the firearm." In this regard, he refers to *N.J.A.C. 10A:31-8.26* (On-duty firearm) which provides:

- (a) The authorized on-duty firearm shall be the responsibility of the custody staff member at all times.
- (b) The custody staff member shall not draw or exhibit his or her firearm except in one of the following circumstances:
 1. For maintenance of the firearm . . .

It is noted that the question specifically refers to *N.J.A.C. 10A:31-8.25* (On-duty firearms training, qualification and requalification) which provides, in pertinent part:

In the event that a custody staff member is assigned to a post that requires the issuance of a firearm for that custody staff member's exclusive use while on-duty, the Administrator or designee shall maintain a list that indicates the custody staff member's issued firearm, model name and number, and serial number of the firearm. See *N.J.A.C. 10A:31-8.25(e)2*.

Thus, the question is correct as keyed.

Question 28 presents candidates with three privileges and asks, while in Protective Custody, for the privileges, according to *N.J.A.C. 10A:31-18.6*, that should not be suspended. The keyed response, option d, includes, "writing privileges," "visits" and "telephone calls" while the other options only include two of the three. Mr. Majagah presents that "the intent of *N[.]J[.]A[.]C[.] 10A:31-18.6* is to instruct County Custody Staff that the privileges of individuals housed in Protective Custody will be the same as those individuals housed in General Population. However, *10A:31-18.6* is not properly written causing it to be misleading and ambiguous." In this regard, he asserts that while "correspondence is referred to throughout *10A:31 . . .* it has an entire section devoted to it, namely 'Subchapter 19. Mail.' Nowhere in Subchapter 19 Mail is correspondence defined or limited solely to mean 'writing' or 'writing privileges' or any other term that limits the commonly held meaning of correspondence . . ." He further argues that "the term 'writing' is not referred to as a privilege or right anywhere in *N[.]J[.]A[.]C[.] 10A* other than in *10A:31-18.6*." The question specifically refers to *N.J.A.C. 10A:31-18.6* (Correspondence, visits and telephone calls) which states, "The writing, visiting and telephone privileges of inmates shall not be suspended while the inmate(s) is confined in Protective Custody." Thus, the question is correct as keyed.

Question 30 indicates that Inmate Ruiz, an illiterate Spanish speaker with no knowledge of English, was admitted to a facility where the majority of the inmates speak English. The question requires candidates to complete the following sentence, "According to *N.J.A.C. 10A:31-21.4*,¹ facility rules and regulations should be . . ." The

¹ *N.J.A.C. 10A:31-21.4* (Adult county correctional facility rules and regulations) provides:

- (a) all inmates shall be provided with a copy of the facility's rules and regulations which shall be verbally explained by a staff member to inmates who are illiterate, not sufficiently conversant with the English language, or otherwise unable to read or understand due to a physical/medical inability . . .
- (c) The rules and regulations shall be available in English and Spanish, where appropriate.

keyed response is option d, "available in English and Spanish and an interpreter may be provided at the discretion of the Administrator." Since Mr. Majagah selected the keyed response, his appeal of this item is moot. Mr. Lapp, who selected option a, "available in English only, but an interpreter may be provided at the discretion of the shift supervisor," refers to *N.J.A.C. 10A:31-21.4(c)* and argues that "the []where appropriate[] portion . . . makes this question's answer uncertain . . . If the questio[n] stated that many inmates speak Spanish in the facility then this would be an appropriate time for them to be printed in that language." *N.J.A.C. 10A:31-21.4(d)* provides that an interpreter may be provided at the discretion of the Administrator. Thus, option a is not the best response. However, it is further noted that while the question indicates that the majority of the inmates speak English, it is not clear what language(s) the remaining inmates speak. Moreover, *N.J.A.C. 10A:31-21.4(c)* does not clearly define the circumstances under which "where appropriate" would apply. Given this, the Division of Test Development and Analytics determined to double key this item to option b and option d, prior to the lists being issued.

For questions 31 through 60, candidates were instructed to refer to the stimulus material in Booklet A.

For question 31, since Mr. Nagy selected the keyed response, his appeal of this item is moot.

Question 33 indicates that Sergeant Bloom has been in a long conversation with a young female inmate who has just been assigned to the Female Housing Unit. You ask CO Webster if he knows what the lengthy conversation is about, and he informs you that the inmate is despondent and fears she'll lose her kids while she's in jail. He tells you that Sergeant Bloom has been able to reassure her. The question asks what you should do. The keyed response is option c, you should "allow Sergeant Bloom to handle the situation since the inmate is listening to him." Messrs. Cumiskey and Majagah argue that option a, "direct Sergeant Bloom to send the inmate for a psychiatric evaluation." is correct. In this regard, they contend that despondency may be a sign of depression or suicidal tendencies. They argue that while an officer may be trained to recognize the signs of such, they are not trained mental health specialists. The SMEs indicated that option b is correct since it is typical for a Sergeant to talk to inmates about their concerns and in this situation, the Sergeant has developed a rapport with the female inmate and is de-escalating the situation. However, the SMEs also noted that despondent inmates are usually referred for psychological evaluation or to social services. As such, the Division of Test Development and Analytics determined to double key this item to option a and option c.

(d) An interpreter may be provided at the discretion of the adult county correctional facility Administrator.

Question 34 indicates that you're reading the log about the incident that occurred in the Rec Yard this afternoon. COs Perez and Rose reported an argument that began between two teams of inmates playing basketball. One team accused members on the other team of cheating, but CO Perez recorded in the log that he was able to calm the situation down by injecting some humor and got both teams laughing. CO Rose recorded claims of racial tension and threats being made between the African American and Latino inmates. You ask Sergeant Thomas if he investigated this further and he says, "Perez said it was no big deal, just guys getting uptight during a game. You know Rose exaggerates everything—I don't take him too seriously." The question requires candidates to complete the following sentence, "You should . . ." The keyed response is option d, "direct Sergeant Thomas to determine which inmates were involved in the incident and have all COs who come in contact with these inmates to monitor them closely." Mr. McNew argues that option a, "inform Captain Phelps that there was another racial incident between the Latino and African American inmates," is the best response. He presents that the stimulus material, under the heading, "Current Events at Exeter County," states, "There has been growing tension between the African American and Latino inmate population. Several fights have broken out between the groups, and the warden has asked staff to take necessary precautions in preventing flare-ups." He maintains that "it would be detrimental to the facilit[y's] safety and security to not report this to Captain Phelps, so she in turn can report it to the Warden." He notes that "this incident may need to be investigated further . . . The current incident in the yard is over, the officers on scene handled it and quelled the problem, so sending Sergeant Thomas to gather names at that moment will not help solve an issue which has already been resolved . . . Are we to believe that the reports written by Officers Rose and Perez who were stationed in the yard, would not have the names of the inmates listed in them? Additionally, wouldn't the housing unit logs have the names of the inmates who left their areas to go to the yard . . . I understand that nowhere in the question does it previously state that anyone has names of the inmates involved but this procedure such as these [*sic*] are basic corrections procedures . . ." The question indicates that you read a log in which two COs saw the same situation differently. Given what is in the log, you have insufficient information at this point and it would be premature to go to the Captain. Although Mr. McNew argues that the names of the inmates should have been recorded in reports from CO Perez and CO Rose or in other logs, assuming *arguendo* that those names are recorded elsewhere, the question stem does not indicate that you are aware of those names. Accordingly, it would be the responsibility of Sergeant Thomas to provide the names of the inmates, whether he gathers that information from reports, logs or other sources. Moreover, when you ask Sergeant Thomas if he has investigated this matter further, it does not appear that he has done so since he merely tells you he believes CO Perez' description and discounts the other officer's account by saying, "Rose exaggerates everything." Furthermore, given the differing characterizations of the situation by the two officers, it is not clear what exactly occurred between "two teams of inmates." Again, at this point, you do not have enough information to determine whether the incident in the

yard is part of the "growing tension between the African American and Latino inmate population" or not. As such, option a is not the best response.

For question 35, since Mr. Nagy selected the keyed response, his appeal of this item is moot.

For question 36, since Mr. Nagy selected the keyed response, his appeal of this item is moot.

For question 37, since Mr. Nagy selected the keyed response, his appeal of this item is moot.

For question 39, since Mr. Nagy selected the keyed response, his appeal of this item is moot.

Question 43 indicates that you are walking to the officer's cafeteria for lunch when you overhear Sergeant Welsh reprimanding one of his officers. You overhear Sergeant Welsh say, "I'll overlook this infraction if you overlook what I did to Inmate Fletch this morning." The question asks how you should initially handle this situation. The keyed response is option d, "Immediately contact Lieutenant Rodriguez and explain what you overheard." Messrs. Allegretta and Lapp contend that option b, "Approach Sergeant Welsh immediately and ask what is going on," is correct. Specifically, Mr. Allegretta argues that "as a Supervisor, it is important to recognize when it is acceptable to delegate or defer, however this particular scenario does not corroborate that type of response. When witnessing an incident of unprofessionalism in a volatile location such as a correctional facility, particularly one where subordinates are displaying a direct disregard for attentiveness to duty, it is required that the supervisor take immediate action." Mr. Lapp asserts that "once you have quickly investigated the situation you should notify their supervisor so you have the full details to report." The stimulus material indicates that Sergeant Welsh and his supervisor, Lieutenant Rodriguez, are on the night shift. As such, Lieutenant Rodriguez would not be at the facility until the start of his shift at 7:00 p.m. The SMEs indicated that the situation should be addressed before Lieutenant Rodriguez arrives since it is important to know what Sergeant Welsh is referring to and what happened to the inmate. The SMEs noted that the lieutenant on shift would need to be aware of what is happening within the facility as well. The SMEs, however, further noted that option d is not incorrect. Given this, the Division of Test Development and Analytics determined to double key this item to option b and option d.

Question 44 indicates that you are having lunch with Sergeant Rainey when she confides in you that she feels sexually harassed by Lieutenant Rodriguez. She tells you that she doesn't want to get him in trouble and that she's only speaking to you as her friend and does not want you to tell anyone. The question asks how you

should handle this situation. The keyed response is option c, "Advise Sergeant Rainey to report the situation to Human Resources." Messrs. Allegretta, Lapp and McNew maintain that option b, "Report the situation to Captain Phelps," is the best response. Specifically, Mr. Allegretta argues that "simply advising her to contact Human Resources is as much an inaction as doing nothing . . . By notifying the Captain, the candidate has taken steps to ensure that the incident becomes documented as necessary . . ." Mr. Lapp contends that "as a supervisor you are obligated to take action and just suggesting that she contact human resources is not completing that duty." Mr. McNew presents that "if I were to not advise my immediate supervisor . . . of this allegation . . . then I would in turn become part of the problem myself." The SMEs indicated that a situation involving harassment must be reported to Captain Phelps. The SMEs also indicated that option c is an appropriate action. As such, the Division of Test Development and Analytics determined to double key this item to option b and option c.

Question 50 indicates that while you are in the kitchen area, Inmate Gaskill speaks to you about his experience in the facility. He doesn't have any complaints about his treatment but he is seeking some legal advice. He tells you that he doesn't think his lawyer is looking out for his best interests and gives you some details about his ongoing court case. He asks you for some advice on how to deal with the situation. The question asks how you should respond to Inmate Gaskill. The keyed response is option a, "Tell Inmate Gaskill that you cannot give legal advice to inmates." Mr. Dato, who misidentified this item as question 49, argues that option d, "Suggest that Inmate Gaskill get a new lawyer if he doesn't think his current lawyer is looking out for his best interests," is the best response. The SMEs indicated that it is inappropriate for an officer to give legal advice to inmates. The SMEs noted that the best course of action is to stay out of the situation and let the legal channels resolve the issue. Thus, the question is correct as keyed.

Question 55 indicates that you and Sergeant Thomas are dealing with a maximum security inmate, Inmate Riddle, who has just assaulted two officers. Inmate Riddle is now secure in his cell, and the injured officers are on their way to receive medical treatment. Captain Phelps has just arrived at the block; she confirms that everything is under control, and then proceeds to Inmate Riddle's cell. You and Sergeant Thomas had been discussing the incident and have just finished documenting it when you see Captain Phelps leave the block. About an hour later, Sergeant Thomas tells you privately that when she just now checked on the inmate in his block, Inmate Riddle had a red mark on his face. "His face was fine after the incident with my COs. And since he was in a cell by himself, the only explanation I can come up with is that he must've been hit by Captain Phelps, but now it's going to look like I did it! What should I do?" The question requires candidates to complete the following sentence, "You should advise Sergeant Thomas to **FIRST** . . ." The keyed response is option c, "report exactly what she saw with regard to Inmate Riddle's face and when she saw it, and to not speculate about what might have

happened.” Mr. McNew argues that option d, “ask Inmate Riddle if he injured himself,” is the best response. In this regard, he notes that while the stimulus material indicates that Sergeant Thomas is a man, the question provides, “Sergeant Thomas tells you privately that when *she* just now checked on the inmates in *his* block, the inmate had a red mark on his face but he did not have a mark when *he* first put him in the cell Sergeant Thomas says that the only thing that *she* could think of is that Captain Phelps went to the inmate’s cell and may have assaulted the inmate,” which caused him to be confused. He asserts that “the initial, common sense response to the situation would be simply ask the inmate how the mark got on his face, in this instance by specifically asking if he harmed himself.” It is noted that Mr. McNew misremembered, with the exception of “when *she* just now checked. . .,” the use of pronouns in the question stem. Regardless of the gender of Sergeant Thomas, the focus of the question is what *you* should advise Sergeant Thomas to do first. The SMEs indicated that the *first* action the officer should take is to document the injury and then speak to Captain Phelps about the injury. The SMEs also indicated that they would not advise doing option d, if at all, until after option c and option b had been performed. As such, the question is correct as keyed.

Question 59 indicates that while on your shift you observe CO Perez and Inmate Boyega talking and laughing. You ask CO Metz if she knows what the two are talking about. She responds, “Oh, Perez and Boyega grew up on the same street. Boyega still lives in the house next to Perez’s mom’s place. You didn’t know that?” The question asks how you should respond to this situation. The keyed response is option b, “Inform CO Perez he should have disclosed his previous relationship with Boyega.” Messrs. Dato and Majajah maintain that option a, “Inform CO Perez that he should be careful about looking so friendly with Boyega in front of other inmates,” is the best response. In this regard, they refer to “General Personnel Information” provided in the stimulus materials which provides, “All facility staff should let their immediate supervisor know if a member of their family or extended family has been incarcerated at Exeter Correctional Facility.” Mr. Dato argues that “[neither] neighbors nor friends are considered family or extended family.” Mr. Majajah asserts that the stimulus material “does not make mention that any other type of relationship must be disclosed. As the inmate was only someone that the CO grew up with and not a family or extended family member, the relationship need not be disclosed.” The “Introduction” section of Booklet A informed candidates that “the material is not intended to be comprehensive or exhaustive, nor is it the sole source of answers to the situational judgment questions. The purpose of the situational judgment questions found in the examination is to measure abilities such as supervision, decision making, problem solving, etc.” In this regard, the SMEs were aware that this particular situation was not addressed in the stimulus materials. The SMEs determined that candidates should recognize the need for officers to disclose any familiarity with inmates. As such, the question is correct as keyed.

For questions 61 through 65, candidates were provided with a "Narrative," "Exeter County Correctional Facility Inmate Transportation Report" (Transportation Report) and "Arrest Summary" in their test booklets. Candidates were instructed that each of these documents contain inconsistencies with the other documents. Candidates were required to determine which statement (a, b, c, or d)² best described the inconsistencies in the reports.

Question 63 refers to the defendant's nickname. The keyed response is option d, "The Arrest Summary, Narrative, and Transportation Report **all differ** from one another."³ Mr. McNew argues that option b, "The **Narrative** differs from the Arrest Summary and the Transportation Report," is correct. It is noted that the Narrative indicates that the arrestee, Michael Eric DiBlasio, "sometimes goes by the nickname 'Micky-D'." The Transportation Report, next to the line labeled, "Alias," indicates, "Mikey-Dee." The Arrest Summary indicates, under the section, "Also Known As (Alias Names)," "Mickey-Dee." Thus, the question is correct as keyed.

CONCLUSION

A thorough review of the appellants' submissions and the test materials reveals that, other than the scoring changes noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burdens of proof in this matter.

ORDER

Therefore, it is ordered that these appeals be denied.

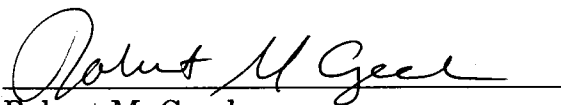
This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² Candidates were provided with the following statements:

(a)	The Arrest Summary differs from the Narrative and the Transportation Report
(b)	The Narrative differs from the Arrest Summary and the Transportation Report
(c)	The Transportation Report differs from the Arrest Summary and the Narrative
(d)	The Arrest Summary, Narrative, and Transportation Report all differ from one another

³ It is noted that Mr. McNew misremembered option d as, "The **Transportation Report** differs from the Arrest Summary and the Narrative."

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 7TH DAY OF DECEMBER, 2016



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