



STATE OF NEW JERSEY

In the Matter of Jason Arvelo
 City of Perth Amboy, Fire Department

**FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2021-428
 OAL DKT. NO. CSR 10563-20

ISSUED: JUNE 4, 2021 BW

The appeal of Jason Arvelo, Fire Fighter, City of Perth Amboy, Fire Department, removal effective September 8, 2020, on charges, was heard by Administrative Law Judge Carl V. Buck, III, who rendered his initial decision on April 22, 2021. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of June 2, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Jason Arvelo

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF JUNE, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 10563-20

AGENCY DKT. NO. N/A

2021-428

**IN THE MATTER OF JASON ARVELO,
CITY OF PERTY AMBOY FIRE
DEPARTMENT.**

Patrick J. Caserta, Esq., for appellant (Patrick J. Caserta, Esq., LLC, attorney)

Peter J. King, Esq., for respondent (King, Moench, Hirniak & Mehta, LLP,
attorneys)

Record Closed: February 22, 2021

Decided: April 22, 2021

BEFORE CARL V. BUCK, III, ALJ:

STATEMENT OF THE CASE

Appellant Jason Arvelo is a Firefighter with the City of Perth Amboy (City or respondent). He appeals from the determination of respondent that he be terminated, pursuant to a Final Notice of Disciplinary Action (FNDA), dated October 8, 2020, for violations of: N.J.A.C. 4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming an employee; and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause (R-40.)

Appellant denies the allegations that he lied during an internal investigation; that he lied to his supervisor; that he violated any standard operating procedures or general order(s); or that he mailed documents or information to the City on July 29, 2020.

PROCEDURAL HISTORY

On September 8, 2020, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications against appellant. (R-5.) Following a departmental hearing on October 8, 2020, the respondent issued a Final Notice of Disciplinary Action on October 8, 2020, sustaining the charges brought in the preliminary notices and terminating appellant from employment effective September 8, 2020. (R-40.) Appellant filed a timely notice of appeal. The matter was transmitted to the Office of Administrative Law on November 5, 2020, for hearing as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The hearing in this matter was held on February 11, 2021. Appellant did not waive his right to restoration of pay in the event a disposition of this matter under N.J.S.A. 40A:14-201, otherwise known as the 180-day rule. Submissions were made and the record then closed on February 22, 2021.

On March 9, 2020, the Governor of the State of New Jersey issued Executive Order 103, declaring a public health emergency, due to the COVID-19 pandemic. The Governor's Executive Order 127 authorized the extension of time for the completion of administrative decisions, after the public health emergency. Subsequent Executive Orders have extended the public health emergency, which continues as of the date of this initial decision.

The filing of this decision was delayed partially due to illness of the tribunal and due to the COVID-19 public health emergency.

SUMMARY

Appellant is a Firefighter with the City of Perth Amboy. The allegations involve accusations of inappropriate behavior and actions by appellant related to a threatened release of a purportedly racist text message chain, which were part of an internal

discussion generated on June 6, 2020. The individuals are Fire Chief Edward Mullen (Mullen), Battalion Chief Michael Zylka (Zylka), Battalion Chief Scott Bromirski (Bromirski), and Battalion Chief Carlos Gonzalez (Gonzalez). Selected portions of that message chain were received by Chief Mullen as contained in a letter sent on July 27, 2020 and received on or about July 29, 2020.

The letter sent to Mullen, stated:

Chief Ed Mullen,

It has been brought to attention that certain member of the Perth Amboy fire Department has made some racial and very unethical comments towards the people of color in our community. It is very sad and disgusting to think someone who is employed by this city that serves a population that is 80% made up of Latin and African Americans would act in such a reckless manner. On June 6, 2020 a group text message was sent out between 4 higher ranking individuals of the Perth Amboy Fire Department concerning a peaceful protest that was taking place in the city that day. A very derogatory comment was made towards our African American community who were peacefully protesting that very day. This message was sent by Battalion Chief Michael Zylka at approximately 3:10 PM "I have watermelon along with an emoji of a watermelon". This action was done with total disregard for the African American community. This group text started on June 6, 2020 approximately 2:25 PM and ends approximately 3:10 PM. In these times we are currently living in, such actions are totally unacceptable. Racism has no place in our city and will not be tolerated. A few weeks ago a public safety dispatcher in Woodbridge Township was removed from his position for also making inappropriate comments. Currently the PAFD employees 3 African Americans. PAFD is a very diverse and multicultural department. They should not be under the command of an individual who looks upon them in a derogatory manner. We are sure that there are better qualified individuals who do not have racist views of the people of city of Perth Amboy. We are bringing this issue to you first, since you are Chief of the department. We really hope that your office does not condone this type of behavior and will take action right away. Anything less of termination or resignation will not be excepted. We will wait 48hrs to let your office take action before we bring this issue to the Mayor, B.A. office and City Council. We are prepared to give this to all local news outlets and affiliates if

no action is immediately taken. Copies (screen shots) of this group message have been obtained which will also be made public. Below is an outline of the group text message.

2:25 pm - Chief Mullen: "easily 1k city hall"
Chief Zylka: "fire truck emoji"
Chief Bromirski: "take pictures"
Chief Zylka: "peaceful"
Chief Zylka: "thinking emoji"
Chief Mullen: "block away watching facebook"
Chief Mullen: "protest over"
Chief Zylka: "no"
Chief Mullen: "It is here"
Chief Mullen: "they are disbursing"
Chief Zylka: "we want burgers" (along with emoji of hamburger) "and hotdogs"
Chief Mullen: "no"
Chief Zylka: "Break bread" (with emoji of loaf/ slice)
"with the town people"
"I have watermelon" (emoji of a watermelon)¹

FACTUAL DISCUSSION AND FINDINGS

A number of the facts of this case are not in dispute; therefore, I **FIND as FACT:**

1. The appellant was employed as a Firefighter by Perth Amboy during all relevant times herein.
2. The text message exchange (in portion) is as follows:
Chief Edward Mullen, texted: "Easily IK people at City Hall now",
B/C Zylka texted a picture of a fire truck.
B/C Bromirski: "take pictures".
B/C Zylka: posted a picture of a thinking Emoji and texted:
"Peaceful".
Chief Mullen: "A block away. Watch it on FB".
Chief Mullen: "Protest over".
B/C Zylka: "No".

¹ The tribunal notes that this is an exact copy of the letter sent and errors were not noted in the body of the document.

Chief Mullen: "It is. I'm here. They're all disbursing".

B/C Zylka: "We want burgers and hot dogs".

Chief Mullen: "No".

B/C Zylka: "break bread" (with an Emoji of bread) "with the town people".

B/C Zylka: "I have watermelon" (with an Emoji of a watermelon).

3. A Preliminary Notice of Disciplinary Action (PNDA) was issued on September 8, 2020. (R-5.) A Final Notice of Disciplinary Action (FNDA) was issued on October 8, 2020, (R-40), whereby the appellant was found to have violated the following:
 - a. N.J.A.C. 4A:2-2.3(a)(2) Insubordination.
 - b. N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee.
 - c. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause.
4. The PNDA and FNDA described the incident giving rise to the charges and the date(s) on which they occurred.

TESTIMONY

Respondent

Edward Mullen, (Mullen or Chief Mullen) was employed by Perth Amboy since 2004 and has been Chief since June 18, 2017. He testified to the preparations made by Perth Amboy in response to crowds anticipated for "Black Lives Matter" events in June and the increased staffing which led to four officers, "Battalion Chief" (B/C) officers (Zylka, Bromirski, Gonzalez) and himself being on duty to address, if needed, four simultaneous incidents.

The City, through the testimony of Chief Mullen (and later, B/ C Gonzalez) testified that the text messages discussed herein were exchanged between Chief Mullen and Battalion Chief Zylka, Battalion Chief Bromirski and Battalion Chief Gonzalez was copied

on the texts. These ranking fire officers were overseeing the department's plan of action during a "Black Lives Matter" march on June 6, 2020.

On July 29, 2020 Mullen received a letter dated July 27, 2020 (R-17) which detailed information and the text messages as detailed above. The letter gave direction to follow to avoid release of the text messages to the press. After receiving the letter, Mullen spoke with the Mayor and then began an investigation which entailed 4 or 5 days of interviews.

Prior to this investigation B/C Zylka had been suspended for 40 hours due to his comments in the text chain. Subsequent to Mullen's investigation, an arbitrator dealing with Zylka's matter determined that no just cause existed for the City's suspension of Zylka and the City was ordered to rescind this suspension. The arbitrator determined there was no racism in the text messages.

During Mullen's investigation, the appellant was interviewed. Attending that interview were Chief Mullen, United States Postal Service Inspector David Comer (Comer) and James Garrison (a union firefighter representative). The appellant stated that he did not mail a letter to Mullen. During the questioning Arvelo stepped out and spoke with his union representative. Arvelo was then provided with the results of Comer's investigation information showing photographs of him at the Keasbey Post Office. (R-20.)

A second interview of the appellant was conducted on September 3, 2020. In attendance were Chief Mullen, Comer, Peter King, Esq., the City's attorney and Michael Perez the union president. Appellant was presented with the envelope used for mailing the letter to Mullen and finally admitted to mailing the letter. His story changed a number of times during that interview.

Mullen stated that there was a list of candidates eligible for promotion to the position of "Captain" and that Arvelo was candidate number 1 on the Captain's list and if Zylka was terminated, appellant would have been promoted to a Captain's position. As a result of this interview the appellant was charged as referenced above.

On cross examination, Mullen stated that he had been trained in administrative hearings in 2014 or 2015. He further considered this action to be extortion and that he did contact the police. Mullen was also questioned on the issue of whether or not there was watermelon - in conjunction with the text message chain. He further testified as to the steps of the investigation which was to: First, speak with Law Director King; then to speak with the other parties (with the exception of Gonzalez who was not available as he was on vacation). Mullen was questioned on interviews conducted on August 12th and 13th for promotions as there were nine people on the promotion list.

Carlos Luis Gonzalez (Gonzalez), training officer for the city of Perth Amboy Fire Department testified that he received text messages on his telephone. The telephone had been unlocked, but he now locks the telephone. On cross examination Gonzalez testified that his telephone had been always unlocked in the past.

Gonzalez responded to a call on July 25 which was a fire alarm activation. Gonzalez went to the call, and appellant and the engine crew were left at the Firehouse. Gonzalez did not see the individuals, so he did not know exactly where they were.

James Garrison (Garrison), Captain of the Perth Amboy Fire Department testified as two answers posed to the appellant at the initial interview. Specifically: When questioned "Did you mail the letter" the appellant responded no; and "Did you mail the letter from the Keasbey Post Office" his answer was no. On cross examination Garrison stated he thought he had been invited to speak to the members regarding a promotional interview. He was ultimately notified that he was not there regarding a promotional interview but was there to discuss the appellant. He served as the Weingarten representative during the course of appellant's questioning.

Michael Perez (Perez), has been working for the Fire Department for 25 years and serves as a union representative, serving as president since September 2020. The appellant was shown photographs of himself (appellant) at the Keasbey Post Office and still stated that he did not mail the letter to Mullen. Perez did not represent any other individuals at that hearing and was not involved with the questioning at that investigation meeting.

David Comer (Comer), a United States Postal Inspector has been working for the Postal Service for approximately 23 years. He responded to a request by Mullen for an administrative investigation, not a criminal investigation, regarding the letter sent to Mullen. Two still shots from the video of activity at the post office later determined to be the appellant. The video was taken from Postal Service lobby cameras. (R-20.) At no point was the appellant provided Miranda warnings or advised of a criminal investigation.

On cross examination Comer testified that he is a law enforcement agent, but he did not open a file on this matter. He stated that Mullen contacted someone and the case was assigned to Comer by a supervisor at the Postal Service. He appeared at both interviews of the appellant because he was curious and wanted to know if a criminal investigation was necessary. He had conferred with the US Attorney's Office, but they declined to bring charges against appellant. He did not recall that the appellant had asked for an attorney.

Credibility

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he

interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep’t, 182 N.J. Super. 415, 421 (App. Div. 1981).

After reviewing the evidence, I make these additional **FINDINGS OF FACT**:

The testimony presented by respondent’s witnesses about their investigatory actions, appellant’s statements, and the facts as detailed were consistent. Collectively, their testimony of the events of the incident and the information they gathered during the investigation made sense and hung together to describe what occurred. It was undisputed that appellant was at the Keasbey post office – but when? The USPS Priority Mail Express label was dated “07/29/20” and accepted by “LP” at “3:20 PM” (R-17) but the photographs sent to Chief Mullen by David Comer on August 11, 2020 are stamped “07/29/2020 14:20:10” (R-20).

Appellant did not testify so the tribunal must rely on the rendition of the facts supplied by respondent’s witnesses. The argument put forth by appellant’s counsel that appropriate protocols when dealing with criminal investigations were not followed and that Perth Amboy is engaged in a “cover up” to “scapegoat” appellant is specious. The rendition of what occurred is that appellant, at this initial interview, denied mailing the letter to Chief Mullen but at his second interview, when confronted with the information provided by the USPS, admitted sending the letter. Issues concerning others in text messaging; prejudicial statements or actions of others in the department are to be considered but are beyond the purview of the tribunal in this case. The fact remains that appellant admitted to sending the letter to Mullen. The letter contained excerpts of a text chain. Appellant was not a member of the text chain, nor was there testimony that any member of the chain provided this information to appellant. Therefore, appellant obtained this information by some method to which he was not entitled.

In sum, the testimony of respondent's witnesses, although not necessarily woven together, can be reconciled to make them consistent and show the actions of appellant.

ANALYSIS AND CONCLUSIONS OF LAW

Applicable Standards

The Civil Service Act and the implementing regulations govern the rights and duties of public employees. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. An employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). In a civil service disciplinary case, the employer bears the burden of sufficient, competent, and credible evidence of facts essential to the charge. N.J.S.A. 11A:2-6(a)(2), -21; N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. That burden is to establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

An appointing authority may discipline an employee on various grounds, including conduct unbecoming a public employee, neglect of duty, and other sufficient cause. N.J.A.C. 4A:2-2.3(a). Such action is subject to review by the Civil Service Commission, which after a de novo hearing makes an independent determination as to both guilt and the "propriety of the penalty imposed below." W. New York v. Bock, 38 N.J. 500, 519 (1962). In an administrative proceeding concerning a major disciplinary action, the appointing authority must prove its case by a "fair preponderance of the believable evidence." Polk, supra, 90 N.J. at 560 (citation omitted); N.J.A.C. 4A:2-1.4(a); Atkinson, supra, 37 N.J. at 149.

The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The greater weight of credible evidence in the case—the preponderance—depends not only on the number of witnesses, but "the greater convincing power to our minds." State v. Lewis, 67 N.J. 47, 49 (1975). Similarly, credible testimony "must not only proceed from the mouth of a

credible witness, but it must be credible in itself." In re Estate of Perrone, 5 N.J. 514, 522 (1950).

In the instant case, the relevant facts reveal appellant has engaged in behavior disregarding the rules and regulations of the City of Perth Amboy Department of Fire. Respondent has presented evidence sufficient to lead a reasonably cautious minded person to the conclusion that appellant has violated the dictates of the Perth Amboy City Employee Handbook, the Fire Department Standard Operating Procedures and Fire Department General Orders as charged.

Regarding the charge of insubordination pursuant to N.J.A.C. 4A:2-2.3(a)(2), I **CONCLUDE** that respondent has proven, by a preponderance of the competent, credible evidence, that appellant lied and made untrue statements to Chief Mullen and Law Director King during interviews on August 18, 2020 and September 3, 2020 violating dictates of the Perth Amboy City Employee Handbook, the Fire Department Standard Operating Procedures and Fire Department General Orders as charged.

Appellant, as a municipal firefighter, is subject to discipline for conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). Conduct unbecoming a public employee has been defined as "any conduct which adversely affects the morale or efficiency of the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). Unbecoming conduct need not "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Ridgewood Police Dep't, 258 N.J. 32, 40 (App. Div. 1992); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). The Court found that conduct is sufficient to support disciplinary action if "its attending circumstances be such as to offend publicly accepted standards of decency." Karins, supra, 152 N.J. at 555. As a firefighter, appellant is a trusted public employee, expected to behave responsibly and is held to a higher standard of conduct than other public employees. In re Andrade, CSR 13260-13, Initial Decision (November 10, 2014), <http://njlaw.rutgers.edu/collections/oal/>.

Regarding the charge of conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(6), I **CONCLUDE** that respondent has proven, by a preponderance of the competent, credible evidence, that on July 28, 2020 appellant sent a letter to Chief Edward Mullen dated July 27, 2020 requiring that the City discharge Battalion Chief Zylka in exchange for not releasing purported racist messages to the press; and subsequently lying about this act during the internal investigation process.

Regarding the charge of other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), I **CONCLUDE** that respondent has proven, by a preponderance of the competent, credible evidence, that appellant provided misleading and conflicting answers and explanations to the inquiries made to him during the internal investigation process. Introduction of appellant's disciplinary history was objected to during the hearing and includes notations of seven (7) Oral Reprimands, one (1) Written Reprimand and three (3) Counselling sessions between 2012 and 2019. Although progressive discipline may be appropriate as a preliminary response to initial misbehavior, it is not required when dealing with egregious violations. New Jersey courts have long recognized that disciplinary history may be considered in determining the appropriate penalty. W. New York v. Bock, 38 N.J. 500, 523 (1962).

Appropriateness of Penalty

The next question is the appropriate level of that discipline. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See, In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker who snapped lighter in front of five-year-old), in which the Court stated:

" . . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest."

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

I CONCLUDE that appellant has engaged in behavior which could be considered to be underhanded, unscrupulous, extortionary or just plain sneaky. He has engaged in insubordination, evincing conduct unbecoming a public employee, and violation of the City of Perth Amboy's policy and its Fire Department regulations. **I CONCLUDE** that respondent has proved by a preponderance of the competent, credible evidence that appellant engaged in conduct unbecoming a public employee and provided other sufficient cause to justify his termination.

Accordingly, I **CONCLUDE** that removal is the appropriate discipline for the violations of N.J.A.C.4A:2-2.3(a)(2) Insubordination; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming an employee; and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), and that his removal effective September 8, 2020 is **AFFIRMED**.

ORDER

Accordingly, I **ORDER** that the action of the respondent, City of Perth Amboy, of removing the appellant, Jason Arvelo, as a firefighter is **AFFIRMED**, and that this appeal is **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 22, 2021

DATE

A handwritten signature in black ink, appearing to read 'Carl V. Buck III', written over a horizontal line.

CARL V. BUCK III, ALJ

Date Received at Agency:

April 22, 2021

Date Mailed to Parties:

April 22, 2021

CVB/cb

APPENDIX

WITNESSES

For appellant:

None

For respondent:

Edward Mullen, Chief
Carlos Gonzalez, Battalion Chief
John Fazio, Firefighter
James Garrison, Past Union President
Michael Perez, Union President
Michael Zylka, Battalion Chief
David Comer, U.S. Postal Agent

EXHIBITS

For appellant:

None

For respondent:

- R-1 Letter from Patrick J. Caserta, Esq., requesting a hearing, dated September 13, 2020
- R-2 Letter from City of Perth Amboy to Jason Arvelo advising of September 29, 2020 hearing, dated September 16, 2020
- R-3 Witness List for September 29, 2020 hearing
- R-4 Synopses of August 18, 2020 and September 3, 2020 interviews of Jason Arvelo
- R-5 Preliminary Notice of Disciplinary Action (31-A) to Jason Arvelo
- R-6 Acknowledge of Receipt of Form 31-A signed by Jason Arvelo, dated September 8, 2020
- R-7 Perth Amboy Fire Department Daily Schedule, Saturday, July 25, 2020

- R-8 Perth Amboy Fire Department's Employee Discipline Policy, adopted April 4, 2012
- R-9 Perth Amboy Fire Department's Reporting Dishonest Practices Policy, dated April 4, 2012
- R-10 Perth Amboy Fire Department's Rumors and Gossip Policy, adopted April 4, 2012
- R-11 Perth Amboy Fire Department's Employee Complaint Policy, adopted April 4, 2012
- R-12 Perth Amboy Fire Department's General Order No. 17-018, effective July 11, 2017 – Zero Tolerance
- R-13 NJ Civil Service Commission's Certification of Eligibles for Appointment as of September 14, 2020
- R-14 Perth Amboy Fire Department's Daily Schedule Saturday, June 6, 2020
- R-15 Incident No. 20-0001055, dated July 25, 2020
- R-16 Perth Amboy Fire Department View Activity Report, dated July 25, 2020 re: Carlos Gonzalez
- R-17 The anonymous letter to Chief Ed Mullen, dated July 27, 2020 regarding derogatory comment, with copies of the US Post Office Priority Express envelope it came in and tracking information
- R-18 Perth Amboy Fire Department Daily Schedule Saturday July 28, 2020
- R-19 Email from Fire Chief Mullen to USPS on August 7, 2020 requesting camera footage from Keasby Post Office on July 28, 2020 at 3:30 p.m. and providing copies of Express Priority Mail
- R-20 Email from David Comer, Postal Inspector to Chief Mullen, dated August 11, 2020 with two attached photos
- R-21 Perth Amboy Fire Department Oral Reprimand to Arvelo, dated November 7, 2012
- R-22 Perth Amboy Fire Department Written Reprimand to Arvelo, dated February 19, 2013
- R-23 Perth Amboy Fire Department Special Report by Arvelo, dated August 20, 2014
- R-24 Undated letter from Battalion 3 Captain Brian Lopazanski to Chief Pitre regarding an August 13, 2015 drill and J. Arvelo

- R-25 Perth Amboy Fire Department Interoffice Memorandum, dated August 26, 2015 to Chief Pitre from Battalion Chief Mullen re: Arvelo
- R-26 Perth Amboy Fire Department Council Session to Arvelo from Battalion Chief Mullen, dated August 26, 2015
- R-27 Perth Amboy Fire Department Special Report, dated March 16, 2016 made by Arvelo
- R-28 Unsigned September 28, 2016 formal conversation report with Firefighter Arvelo
- R-29 Undated memo from Administrative Battalion Chief Michael Zylka regarding a September 9, 2017 Incident re: Arvelo
- R-30 Email undated to Chief Mullen and Scott Bromirski re: November 2, 2017 incident involving Arvelo
- R-31 Undated email to E. Mullen from Administrative Battalion Chief Zylka re: September 10, 2017 regarding issues re: Arvelo
- R-32 Undated Memo from Captain R. Bunten to Battalion Chief Zylka re: a December 5, 2017 discussion with Arvelo concerning an November 3, 2017 incident
- R-33 Memo from Captain Kenneth Febles to Chief Mullen, dated December 18, 2017 re: Arvelo and Incidents on December 14, 2017 and December 15, 2017
- R-34 Email, dated December 15, 2018 from M. Zylka to E. Mullen re: Arvelo
- R-35 Perth Amboy Fire Department Oral Reprimand to Arvelo, dated January 16, 2019
- R-36 Perth Amboy Fire Department Personnel Order No. 18-010 to Arvelo reassigning him to Battalion 3 as of May 1, 2018
- R-37 Perth Amboy Fire Department Special Report, dated April 18, 2018 made by Arvelo
- R-38 Perth Amboy Fire Department Interoffice Memorandum, dated February 23, 2013 to Arvelo from Fire Chief David Volk reassigning him from Group #2 to Group #4 as of February 27, 2013
- R-39 Perth Amboy Fire Department Interoffice Memorandum, dated June 17, 2015 to Arvelo from Battalion Chief Mullen reassigning him to Battalion 3 as of July 8, 2015

R-40 Final Notice of Disciplinary Action (31-C) served on Jason Arvelo for removal as of September 8, 2020

R-41 Arbitrator Winters' December 7, 2020 Opinion & Award