



- [the appellant] put a napkin on [his] head, pretended it was a KKK hood and uttered the word 'nigger'.
2. In the Spring 2006 trip to Louisiana, while in the presence of a Hoboken employee and Louisiana Public Official [the appellant] uttered derogatory references and ridiculed an employee of Dunkin' Donuts because of her Indian descent.
  3. In September 2007, [the appellant] made references to the KKK and uttered derogatory statements concerning African-Americans in emails [he] sent.
  4. [The appellant] improperly handled [his] firearm and police equipment in Tuscaloosa, Alabama at a Hooters restaurant in March 1, 2006 by giving [his] weapon to civilian employees at a Hooters restaurant.
  5. [The appellant] improperly directed police officers under [his] command to surrender their weapons to civilian employees on March 1, 2006.
  6. [The appellant] improperly handled [his] firearm at a dinner in Kenner, Louisiana in the fall, 2005 when [the appellant] gave [his] weapon to a civilian at a dinner with other Hoboken Police Officers under [his] command.
  7. [The appellant] falsified employment records on August 12 and 13, 2006 by falsely stating that [he] and members under [his] command worked for the City of Hoboken on those days.
  8. [The appellant] performed private work and/or did not perform any work on various occasions between December 9, 2004 and January 13, 2007 while [he was] on duty and being paid by the City of Hoboken.
  9. [The appellant] directed employees under [his] command to perform private work while being employed and paid by the City of Hoboken on various occasions, including August 12 and 13, 2006.
  10. [The appellant] regularly uttered derogatory racial terms while in the presence of Hoboken Police Officers at various times between December 9, 2004 and January 13, 2007 as more particularly set forth in memos written by employees under [his] command and previously provided to [him].
  11. [The appellant] lied to David F. Corrigan, in his interview with [the appellant] concerning (1), (2), and (3) above.
  12. [The appellant] embarrassed and held [him]self and the Department to disrespect by permitting [him]self to be pictured in unflattering and unprofessional poses while in Louisiana in the Fall, 2005 and Spring, 2006.

13. [The appellant] misdirected and improperly handled and disposed of monies pertaining to SWAT funds under [his] control.
14. [The appellant] threatened George Fonseca on or about January 13, 2007 by stating that [the appellant was] going to shoot him.
15. [The appellant] failed to discipline or take other appropriate action to respond to George Fonseca's threatening behavior when he threatened [the appellant] 'with friendly fire'.
16. [The appellant], without legal authorization, directed Rudox Engine and Equipment Company to perform repairs to a City vehicle.
17. [The appellant] acted improperly in stopping Philip Stertz and in [his] rude and unprofessional treatment of him on February 2, 2007.
18. [The appellant has] been on sick leave since on or about November 1, 2007, but [he is] not sick.
19. [The appellant] left home without permission while on sick leave in violation of Departmental Orders to attend a promotional examination and a press conference.
20. [The appellant was] drinking alcoholic beverages while in [his] SWAT uniform while on police sanctioned trips to Louisiana.
21. [The appellant] improperly 'punished' and publicly humiliated Cesar Olavarria on September 11, 2007.<sup>2</sup>

Upon the appellant's timely appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

Initially, the ALJ found the testimony from Carmen LaBruno, former Police Chief of the City of Hoboken, and Joel Mestre, Deputy Municipal Emergency Management Coordinator of the City of Hoboken, to be credible and consistent. However, the ALJ found the testimony of Mario Novo, George Fonseca, Bernardo Munoz, James Perez and Cesar Olavarria, Police Officers with the City of Hoboken, to be inconsistent, vague and self-serving on occasion. The ALJ determined that the allegation regarding the appellant's use of the word "nigger" lacked specificity and consistency in order to make a finding. With respect to specification 10, the ALJ found that the testimony in this regard was inconsistent and non-specific and no memoranda were presented. In addition, a recording of a 3.5 hour meeting on January 12, 2007 did not contain any racial remarks by the appellant. Regarding the specification involving the Dunkin' Donuts employee and the specification involving the performance of private work by the appellant while he was on duty,

---

<sup>2</sup> It is noted that the specifications 1, 4, 5, 6, 8, 9, 11, 12, 14, 19, 20 and 21 underlie the charge of incompetency, inefficiency or failure to perform duties; specifications 1 through 6, 8 through 12, 14, 15, and 19 through 21 underlie the charge of conduct unbecoming a public employee; and specifications 4, 5, 6, 8, 9, 11, and 20 underlie the charge of neglect of duty.

the ALJ determined that the appointing authority failed to prove the charges related to these specifications by a preponderance of the evidence. With respect to the specifications regarding the improper handling of the appellant's weapon and the improper direction to the police officers to surrender their weapons to Hooters employees, the ALJ determined that the testimony and evidence failed to support the charges of failure to perform duties, conduct unbecoming a public employee and neglect of duty. In this regard, the ALJ noted that neither the appellant nor any of the individual police officers voiced objections to the Hooters civilian employees handling or posing with the weapons. The ALJ also noted that LaBruno testified that he was unsure whether the handing of weapons to the Hooters employees was a violation of any departmental regulation. Regarding the specifications involving the performance of private work at the appellant's residence, punishing and humiliating Olavarria, drinking alcoholic beverages, lying to investigator David F. Corrigan, and leaving the house while on sick leave, the ALJ determined that the testimony and evidence failed to support the charges of failure to perform duties, conduct unbecoming a public employee and neglect of duty. With regard to specification 12, the ALJ upheld the charge of failure to perform duties and conduct unbecoming a public employee. In this regard, the ALJ noted that numerous photographs depicted the appellant and other Hoboken police officers prominently posing in front of the City of Hoboken SWAT bus with handguns and semi-automatic assault rifles in the hands of civilian Hooters employees. In addition, other photographs depict female Hooters employees handcuffed to each other in the presence of the appellant. The ALJ also noted that the appellant's actions in placing a white napkin with two eyeholes in front of his face in a public location in Louisiana would certainly call attention to his behavior and those around him. The ALJ determined that the appellant, as the highest ranking police officer, had a responsibility to maintain an image of personal integrity and respect to the public. However, the appellant, a law enforcement officer, demonstrated a complete lack of self-restraint, as evidenced in the photographs. With respect to the penalty, the ALJ determined the appellant's behavior, as memorialized in numerous photographs, was so egregious as to warrant removal.

In the appellant's exceptions, he argues that there was no testimony that he gave his firearm to any Hooters employee. He adds that none of the firearms in the photographs belonged to the City of Hoboken but rather, to individual officers. The appellant contends that shortly after the photographs were taken, they were shown to the Police Chief and the Mayor who determined that no disciplinary action was necessary. However, he claims that charges were not brought until two years later under a new administration. Thus, he maintains that the appointing authority violated the 45-day rule, pursuant to *N.J.S.A. 40A:14-147*, since the 45 day time period began when the Police Chief and Mayor were aware of the conduct and not when the City was advised that the grand jury was not taking action. He emphasizes that the City has dismissed the charges against the officers who turned over their weapons to the Hooters employees. The appellant asserts that the

photographs were not taken for salacious reasons but rather to create a calendar and raise money for the SWAT team. In addition, neither he nor the other officers were on duty or wearing police uniforms at the time of the photographs. Further, the officers "were with the women at all times. It was not disputed that the weapons were unloaded and completely safe." He argues that there was "nothing racial" about the incident involving the napkin in Kenner, Louisiana as he "was referring to a Robin William's skit concerning a 'holdupman' [sic]." Finally, the appellant contends that termination is not warranted in this matter.

In its exceptions, the appointing authority presents that there was sufficient credible evidence to sustain specification 1. In this regard, the appointing authority indicates that Mestre and the other officers observed the appellant place a white napkin with holes cut out over his face. Olavarria "clearly heard [the appellant] state 'nigger' at the time of the display." The appointing authority maintains that the ALJ erred in finding that there was not sufficient testimony to establish that the appellant used the term "nigger." The appointing authority argues that although the ALJ "lumped all the Hoboken officer witnesses together in disregarding their testimony," Bernardo Munoz, who was "wholly independent from any of the other complaining officers," testified that the appellant used the word "nigger." The appointing authority also presents that Mestre, who the ALJ found credible, testified that the appellant mocked the accent of a Dunkin Donuts worker. The appointing authority asserts that both Fonseca and Perez testified that they performed work at the appellant's private residence while on duty. The appointing authority further argues that the ALJ erred in finding that there was insufficient proof that the appellant's actions, in directing the officers to hand over their weapons to Hooters employees, constituted failure to perform duties, conduct unbecoming and neglect of duties. The appointing authority presents that departmental regulations indicate that under no circumstances should a police weapon be turned over to a civilian. In addition, the ownership of the weapons was immaterial "to whether or not [the appellant] sanctioned the wholesale misuse of the weapons" as the weapons were on the SWAT bus for a relief mission. The appointing authority contends that credible evidence was presented showing that the appellant violated the City's sick leave policy and that he consumed alcoholic beverages while in uniform. With respect to specifications 14 and 15, the appointing authority also contends that there was sufficient evidence presented that the appellant threatened Fonseca. Regarding specification 21, the appointing authority maintains that the appellant testified that the incident with Olavarria occurred but he "put the responsibility on the chief." Lastly, the appointing authority claims that since "the affirmative testimony and preponderance of the evidence supports the conclusion that [the appellant] used the term 'nigger' and demeaned the Dunkin' Donuts employee," he clearly lied to David Corrigan, Esq. when he denied these allegations.

Upon its *de novo* review of the record, the Commission agrees with the ALJ's assessment of the majority of the charges, but not with his dismissal of the allegation and corresponding charges regarding the improper handling of the appellant's firearm at a dinner in Kenner, Louisiana in 2005 where the appellant gave his weapon to a civilian (specification 6), underlying the charge of conduct unbecoming a public employee. In this regard, it is not disputed that the appellant gave his weapon to the dinner party host's wife, as evidenced in photographs (see e.g., Exhibit J-2). It is immaterial that the weapon was unloaded or that the appellant was not on duty or that he was in a private residence. There is no defensible reason why the appellant, as a law enforcement officer, allowed a civilian to possess his weapon. This further demonstrates the appellant's poor judgment.

In addition, the Commission finds the appellant's and the remainder of the appointing authority's arguments unpersuasive. The ALJ determined, as noted previously, that the testimony and evidence failed to support the charges of failure to perform duties, conduct unbecoming a public employee and neglect of duty with respect to the specifications regarding the improper handling of the appellant's weapon and the improper direction to the police officers to surrender their weapons to Hooters employees. Regarding the 45-day rule, the 45 day time period for filing disciplinary charges found in *N.J.S.A. 40A:14-147* commences on the date on which the person filing the complaint has sufficient notice of the conduct underlying the disciplinary charges. In cases where the administrative disciplinary charges are based on an underlying criminal complaint or indictment, the 45 day time limit commences on the date on which the charging party has notice of the disposition of the criminal complaint or indictment. See *In the Matter of Robert Collins and Thomas Cahill* (MSB, decided May 23, 2000). As noted by the ALJ, the Preliminary Notice of Disciplinary Action (PNDA) and Final Notice of Disciplinary Action (FNDA) contained both statutory and administrative charges. The PNDA, which was dated February 28, 2008, was served within 45 days of the City being made aware of the violations that were referred back to the City by the Hudson County Prosecutor's Office on January 14, 2008.

The Commission notes that many of the remaining issues raised by the appellant and those raised by the appointing authority touch on credibility. The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. See *Matter of J.W.D.*, 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." See *In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999) ). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission

has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this case, after its review, the Commission finds nothing in the record to indicate that the ALJ's assessment of the credibility of the witnesses or his findings and conclusions based on those assessments were in error. In this regard, it is noted that the ALJ found the testimony from Fonseca, Munoz, Olavarria and Perez to be incredible, vague and self-serving.

In determining the proper penalty, the Commission's review is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. See *West New York v. Bock*, 38 *N.J.* 500 (1962). However, it is well established that when the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007); *In re Herrmann*, 192 *N.J.* 19 (2007). In *In the Matter of Anthony Stallworth*, 208 *N.J.* 182, 198-199 (2011), the Supreme Court stated that:

. . . the contextual nature of the prior offenses is a relevant consideration when analyzing an employee's disciplinary record . . . As already noted, progressive discipline is a flexible concept, and its application depends on the totality and remoteness of the individual instances of misconduct that comprise the disciplinary record. The number and remoteness or timing of the offenses and their comparative seriousness, together with an analysis of the present conduct, must inform the evaluation of the appropriate penalty. Even where the present conduct alone would not warrant termination, a history of discipline in the reasonably recent past may justify a greater penalty; the number, timing, or seriousness of the previous offenses may make termination the appropriate penalty.

The Commission agrees with the ALJ that removal is warranted in this case. The Commission notes that a municipal police officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal police officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. It must be recognized that a municipal police officer is a special kind of public employee:

His primary duty is to enforce and uphold the law. He carries a service revolver on his or her person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . . See *Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990).

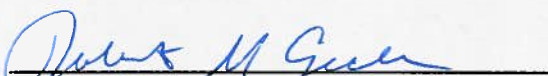
In the instant matter, the record reflects that the appellant was a superior officer and the leader of a highly elite and visible unit. As such, his conduct is indicative of the appellant's exercise of extremely poor judgment. Accordingly, given the serious nature of the underlying charges that were upheld, the Commission finds that the penalty of removal is appropriate.

### ORDER

The Civil Service Commission finds that the appointing authority's action in removing the appellant was justified. Therefore, the Commission affirms that action and dismisses the appeal of Angelo Andriani.

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 17TH DAY OF DECEMBER, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Merit System Practices  
and Labor Relations  
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. CSV 10214-10

AGENCY DKT. NO. 2011-1054

**IN THE MATTER OF ANGELO ANDRIANI,  
CITY OF HOBOKEN, DEPARTMENT  
OF PUBLIC SAFETY.**

---

**Gerald Miller, Esq., for petitioner/appellant, Angelo Andriani (Miller, Meyerson & Corbo, attorneys)**

**Paul Condon, Esq., for respondent City of Hoboken, Department of Public Safety**

Record closed: March 10, 2014

Decided: October 3, 2014

**BEFORE IMRE KARASZEGI, JR., ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

The respondent, City of Hoboken Department of Public Safety (Hoboken), brings a major disciplinary action against appellant, Angelo Andriani (Andriani), a police officer, removing him effective February 28, 2008. Hoboken alleges through numerous specifications that he violated N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public

employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

On February 28, 2008, Hoboken prepared a Preliminary Notice of Disciplinary Action (PNDA) against appellant. After eleven days of departmental hearings over a period commencing November 5, 2008, and ending May 6, 2010, Hoboken prepared a Final Notice of Disciplinary Action (FNDA) on August 20, 2010, removing appellant effective February 28, 2008. On August 30, 2010, Andriani requested a hearing. The Civil Service Commission transmitted the contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on September 23, 2010. I heard the matter on the following dates: August 12, 2011, August 16, 2011, December 8, 2011, January 20, 2012, February 9, 2012, February 13, 2012, April 2, 2012, April 3, 2012, April 30, 2012, July 9, 2012, July 10, 2012, November 26, 2012, January 25, 2013, January 31, 2013, March 22, 2013, March 25, 2013, May 7, 2013, May 8, 2013, and May 9, 2013. The parties submitted written summations, and following their receipt, the record closed. Orders were entered extending the time for filing this decision.

### **FACTUAL DISCUSSION**

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following undisputed **FACTS**:

Andriani was hired as a police officer on August 2, 1984. He was promoted to the rank of sergeant on June 8, 2000, and he later attained the rank of lieutenant on May 25, 2006.

In 1991, a Special Weapons And Tactics (SWAT) unit was created within the Hoboken police department. The SWAT unit consisted primarily of members of the department's Auto Theft Task Force (ATTF). The SWAT unit, as organized, operated outside the police department's table of organization and its members' duty hours and assignments were flexible. Since their inception, both the SWAT and ATTF units had

been commanded by Andriani. In addition, Andriani also served as the firearms recertification instructor for the Hoboken police department.

On or about September 2005, in the aftermath of Hurricane Katrina, a relief effort was organized in the City of Hoboken to bring food and other donations to Hoboken's "adopted" sister city, Kenner, Louisiana. Donated items would be transported by truck and the City of Hoboken, with the approval of its mayor, municipal council, and chief of police authorized the SWAT unit to provide a formal escort for the relief vehicles traveling from Hoboken to Louisiana. This escort was also paid for by the City of Hoboken. In addition to the members of the SWAT unit, Andriani, Hoboken Police Chief Carmen LaBruno, Hoboken Mayor Roberts, and Hoboken Councilman Russo also traveled to Kenner, Louisiana.

During the first trip to Louisiana, a dinner party was held at a private residence attended by the Hoboken contingent. Numerous photographs were taken of this event and others memorializing the Hoboken group's activities on the trip. Several photos in evidence include the dinner party host's wife holding Andriani's unloaded weapon. Other photos taken during this first trip include Andriani, members of the SWAT unit and a councilwoman from Kenner, Louisiana, dining at a local restaurant. At the table, Andriani cut two holes in a white napkin and held it in front of his face. The councilwoman from Kenner is also pictured with the same napkin held in front of her face. No formal complaints or objections regarding the actions or behavior of any member of the Hoboken police/SWAT unit were expressed during or after the first trip to Louisiana.

On or about February 2006, the Hoboken police/SWAT unit from the first Louisiana trip (2005) was invited back to Louisiana to attend Mardi Gras festivities in Kenner. With the consent and approval of Police Chief LaBruno, members of the SWAT drove to Louisiana, taking the police department's SWAT bus and a marked Hoboken police vehicle. The City of Hoboken funded the trip to Louisiana in addition to rental expenses for two additional vehicles.

During this second trip to Louisiana, SWAT members went to a local bar. Andriani, the ranking police officer present, and members of the SWAT unit wore clothes that had the words, "Hoboken," "SWAT," and "Police," clearly visible on them. Andriani's shirt also had the word, "Commander," stitched on the collar. Again, numerous photographs, taken by various SWAT unit members, memorialize the scene. One such photo also depicts Andriani administering and receiving "jello-shots" at that bar.

On the return from the second Louisiana trip, members of the SWAT unit stopped at a Hooters Restaurant in Tuscaloosa, Alabama. The clothes worn by the Hoboken group bore the words, "Hoboken," "SWAT," and "Police." Andriani's clothes also identified him by the word "Commander" stitched on his collar. Numerous photographs of Andriani, SWAT members, and others in the Hoboken group depict various poses with the Hooters employees. Among the photos identified were Hooters waitresses, alongside Andriani and the SWAT unit, wearing caps with the word "Police" handcuffed to each other or holding and aiming various types of firearms and semi-automatic assault rifles, both inside the Hooters establishment and alongside the City of Hoboken SWAT bus. No officers complained or reported these actions to any superior officers.

Several months after their return from the second Louisiana trip, a police awards ceremony was planned to take place at the private residence of Andriani. Police Chief LaBruno verbally authorized Andriani to utilize members of the SWAT/ATTF unit to "prep the area" of Andriani's private residence for the ceremony. On another occasion in 2007, LaBruno authorized Andriani to leave his home to attend a promotional exam while Andriani was reportedly on sick leave.

On or about January 12, 2007, a meeting between Andriani and members of the ATTF unit took place. Hoboken Police Officer Mario Novo recorded the meeting without the knowledge of Andriani. During the course of the meeting, police officer George Fonseca issued a threat to Andriani and Andriani responded by stating that he would "put a bullet in his head." Neither Fonseca nor Andriani were charged criminally. In addition, none of the three compact discs which contained the recording of the 3½ hour

meeting contained any utterance by Andriani of either a racist remark or the word "nigger."

On October 24, 2007, five Hoboken police officers, Edwin Pantoja, Mario Novo, George Fonseca, James Perez, and Cesar Olavarria, filed a complaint in the United States District Court for the District of New Jersey, alleging that Andriani engaged in discriminatory and racist conduct between 2005-2007. The charges contained in the FNDA dated August 20, 2010, arise solely from the October 24, 2007, complaint.

George Fonseca, a retired police officer with the City of Hoboken, testified on behalf of respondent. Fonseca stated that Andriani regularly used the word "nigger" in his conversations. Fonseca noted that he had asked Andriani to stop. Fonseca differentiated between the word "nigga," referring to this word as a "term of endearment" and "nigger" that Fonseca opined was offensive. He conceded that he never made a complaint as to Andriani's use of the word "nigger" in 2004, 2005, or 2006, and that the first time he made a complaint was the day "we filed the lawsuit against the City of Hoboken."

Bernardo Munoz, a police officer for the City of Hoboken, also testified on behalf of respondent. Munoz elaborated as to Andriani's frequent use of the word "nigger" while they were on the Louisiana trip. Munoz, a member of SWAT since 2004, added however, that there was no "discrimination" or "racial epithets" uttered by Andriani prior to the trip to Louisiana. Munoz noted that when he heard the word, he felt disgusted and found the term offensive, in part because he was half African-American. Munoz added that he only brought Andriani's use of the word to Chief LaBruno's attention in October 2007.

James Perez, a police officer for the City of Hoboken, testified on behalf of respondent. Perez recalled an incident during the first trip to Louisiana in which Andriani took a napkin, cut holes in it and went around the table and placed the napkin on a councilperson's face. Perez could not recall if Andriani said anything at the time. Perez stated that he heard Andriani use the word "nigger" on several occasions; once, as a comment at a restaurant in December 2006, stating, "I will never sit down next to

niggers,” and a second time involving one of Andriani’s neighbors, when Andriani allegedly commented to the neighbor, “why are you working like a nigger.” A third occasion, Perez recalled, took place in a store in Louisiana in “2005 or 2006.” Perez indicated that Andriani was trying on a confederate style hat when he allegedly stated, “Let’s kill some niggers.” Perez never made any formal complaints regarding Andriani’s alleged use of the word “nigger.”

Cesar Olavarria, a police officer with the City of Hoboken, testified on behalf of respondent. Olavarria, whose detective badge was taken away by Andriani, stated that he repeatedly heard Andriani use the word “nigger” and that it was “part of his vocabulary.” Olavarria, recalling the napkin incident in the restaurant, stated that he saw Andriani put the napkin over his head and use the word “nigger.” Olavarria described this incident as the “most shocking experience in my life.” He noted however that he did not make a formal complaint nor did he say anything at the time of the incident.

Joel Mestre, deputy coordinator of the Office of Emergency Management for the City of Hoboken, testified on behalf of respondent. Mestre stated that “everyone in the unit used the word “nigger.” When asked specifically, if members of SWAT used the word, Mestre responded, “Yes.” Mestre recalled sitting at the table in the restaurant at the time of the napkin incident. He stated that Andriani was “clowning around.” Mestre added that he did not hear the words “nigger” or “Ku Klux Klan.” He indicated that the councilwoman from Kenner, Louisiana, who sat with the Hoboken contingent of 10-12 persons at the restaurant, initially said “knock it off” at the sight of the napkin. Mestre noted that he then took the napkin and put it in front of the councilwoman. No one at the table stood up or complained that they were offended.

Carmen LaBruno, retired chief of police, testified on behalf of respondent. LaBruno recalled police officers Pantoja, Perez, and Fonseca complaining about the use of derogatory racist remarks by another police officer in the detective bureau. However, LaBruno stated, that prior to December 2006, no member of the ATTF/SWAT units complained of any problems with Andriani. On the contrary, LaBruno described Andriani’s relationship with the members of ATTF/SWAT at the time as a “love fest.”

Several witnesses, testifying on behalf of respondent, spoke of performing work at Andriani's private residence while on duty. Fonseca indicated that in 2006, he had been to Andriani's residence "numerous times" to empty the garage, perform electrical work on the SWAT bus, or clean the backyard. Fonseca acknowledged that the SWAT unit's boat and other SWAT equipment were stored in Andriani's garage. He added that Andriani "wanted the garage reorganized to separate SWAT team material." Fonseca conceded that Andriani's yard was cleaned up in anticipation of the awards ceremony in August 2006. He also indicated that each time he went to Andriani's residence, it was recorded with the police dispatcher.

Perez added that he too performed various jobs at Andriani's residence, including the installation of a chimney-cap mesh. Perez stated that he cleaned the garage, worked on the deck, and moved furniture from the garage to the first floor of the house. Perez noted that the deck was used for the "SWAT party." Perez claimed that he was "ordered" to perform the work by Andriani. He stated that he would go to Andriani's house with Fonseca and would tell the police dispatcher "once or twice." Perez added, "we did not tell the dispatcher each time" they went to Andriani's residence.

Olavarria also testified that he worked at Andriani's residence "more than five, less than ten times." However, Olavarria could not recall any specific dates he went to Andriani's home. He did indicate that on each occasion he went to Andriani's residence, he worked on the SWAT bus. Olavarria added that Andriani's garage may have included SWAT items such as cameras, camouflage, video and electrical equipment.

Mario Novo, a police officer for the City of Hoboken, testified on behalf of respondent. Novo stated that he would drive the SWAT bus to Andriani's residence where he would work on the bus. Novo added, "Everyone worked on the bus – we all worked on the bus."

Several witnesses, testifying on behalf of respondent, also addressed the issue of how civilian employees at a Hooters restaurant came into possession of police firearms and other police equipment as evidenced in numerous photographs. Perez stated that the AR-15 "submachine guns" in the hands of the Hooters employees were not department issued but the personal property of the individual police officer. These weapons, however, were transported and stored on the SWAT bus during the second Louisiana trip. Perez initially testified that he did not hear Andriani direct officers to turn over their weapons and he "never saw" any officer give their firearms to any of the "Hooters women." Perez later stated that Andriani said, "give them the weapons."

Novo stated that he refused to enter the Hooters restaurant and remained on the SWAT bus. However, Novo was able to testify that Andriani instructed the police officers at the Hooters restaurant to do a weapons check in order to clear the weapons of any ammunition and that Andriani ordered the officers to hand their weapons to the Hooters employees for the photographs.

Munoz indicated that "we were asked to clear the weapons" by Andriani. Munoz noted that he turned over the weapon to the Hooters employee because Andriani ordered him to. Munoz stated, "I complied due to fear of retaliation, fear of retribution."

Mestre testified that he did not recall Andriani directing officers to hand over their weapons to the Hooters employees.

Angelo Andriani, testifying on his own behalf, stated that he did not tell anyone to "hand over" their weapons as depicted in the Hooters photographs. He also noted that he did not remove his personal weapon. He added however, that it was "not my place" to tell the other officers that they could not use their weapons. He opined that they were in a different state, on private property, and the weapons were the personal property of the individual police officer. He acknowledged that he was the highest ranking officer at the Hooters restaurant. Andriani also noted that it was the "girls' idea" to be photographed. He indicated that the weapons were unloaded and completely safe. While admitting that it was a combination of several persons whose idea it was to put the photographs together for a calendar, Andriani opined that he saw nothing wrong



with handing weapons to the Hooters "girls." He added that it was "similar to an educational experience of a fifteen-year-old."

Former Police Chief LaBruno stated that he was not sure whether the act of handing the weapons to the Hooters employees was a violation of the rules and regulations of the Hoboken Police Department. LaBruno indicated that he never asked Andriani how the Hooters employees obtained possession of the firearms, as shown in the photographs. He also added that he did not discipline Andriani at the time.

Testimony was also elicited from Mestre regarding Andriani's behavior at a Dunkin Donuts during the Hoboken contingent's second trip to Louisiana. Mestre stated that he, the councilwoman from Kenner, Louisiana, and Andriani were at a Dunkin Donuts when Andriani allegedly "mimicked" an employee of Asian-Indian descent as he spoke to Branigan. The employee allegedly overheard Andriani's conversation with the councilperson and started crying. Andriani denied the characterization that he "mimicked" a Dunkin Donuts employee.

Lastly, respondent argued that the irregularities in Andriani's roll calls for December 2006 support the inference that he manipulated his time sheets for his benefit. Chief's Office Administrative Secretary Margaret Castellano, testifying on behalf of respondent, stated that the daily roll call sheets submitted to her office would include the hours that the individual officer worked. Vacation, furlough, and sick time would also be noted. Castellano, however, conceded that multiple roll call sheets could be submitted that would indicate something different from a previously submitted roll call sheet. She admitted that she is not "100 percent" sure as to who submits the roll calls or whose signature appears on the roll call sheet. Castellano also affirmed that she does not keep track of time owed. She also does not question the information submitted on each roll call sheet.

A daily absentee calendar is also maintained by Castellano based on the information contained in each daily roll call sheet submitted to her. An absentee calendar is often prepared several days after a roll call/personnel report is received. "Sometimes, a personnel report comes in and another report comes in its place."

However, Castellano noted that the 2006-2007 personnel reports/roll calls could not be found in the office. She added that she had no personal knowledge as to where the personnel reports that she testified to at this hearing came from.

When the testimony of witnesses is in disagreement, it is the obligation and responsibility of the trier of fact to weigh the credibility of the witnesses in order to make factual findings. Credibility is the value that a fact-finder gives to the testimony of a witness. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963). 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).

After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I credit the testimony of LaBruno and Mestre more than the testimony of Mario Novo, George Fonseca, Bernardo Munoz, James Perez, Cesar Olavarria, and Angelo Andriani. LaBruno and Mestre testified in a consistent manner. I **FIND** the testimony provided by Novo, Fonseca, Munoz, Perez, and Olavarria as inconsistent, vague, and at times, self-serving. All these police officers testified as to how shocked or disgusted they were, at the time, as to Andriani's alleged use of the word "nigger." However, none would take any formal action or file a formal complaint with a superior. Instead, all decided to voluntarily remain in ATTF/SWAT, continuing to work with Andriani as their supervisor. The testimony of the police witnesses in this regard also lacked internal consistency and corroboration by other individuals involved in a specific event where the offensive word was allegedly uttered. LaBruno would note that no member of ATTF/SWAT had complained of any problems with Andriani prior to December 2006, describing the relationship between Andriani and members of ATTF/SWAT as a "love fest."

Lastly, Fonseca's assertion that no complaints were made by the other officers prior to the filing of the federal complaint because "we were building a case" most certainly injects bias in the testimony offered against Andriani and impugns their credibility in this regard.

### LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Such misconduct need not necessarily "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. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

Andriani initially contends that the City of Hoboken violated the forty-five-day rule set forth in N.J.S.A. 40A:14-147. N.J.S.A. 40A:14-147 applies only to charges arising out of an alleged violation of departmental rules and regulations and is not applicable if the charges involve a statutory and regulatory charge of misconduct not based on police department rule and regulation violations. Hendricks v. Venettone, 1992 WL 12010059 (App. Div. 1992). In this case, I **CONCLUDE**, both the PNDA and the FNDA incorporate both statutory and administrative charges. The PNDA specifically, dated February 28, 2008, was served within the forty-five days of the City of Hoboken becoming apprised of the violations that were referred back to the City by the Hudson County Prosecutor's Office on January 14, 2008.

I also **CONCLUDE** that the allegations as to Andriani's use of the word "nigger" lacked specificity and consistency in order to make an ultimate finding of fact in that regard. Specification No. 10, underlying the charge of conduct unbecoming a public employee, notes the following; "You regularly uttered derogatory racial terms while in the presence of Hoboken police officers at various times between December 9, 2004, and January 13, 2007, as more particularly set forth in memos written by employees under your command and previously provided to you." The testimony and evidence presented in this regard, however, strains to support this specification. First, no memos were presented in evidence. Second, the testimony that was provided in support of this charge was inconsistent and non-specific. The range of disparate testimony consisted of the following; Olavarria stating that the word "nigger" was part of Andriani's daily vocabulary; Fonseca differentiating between the words "nigger" and "nigga," the latter used as a "term of endearment"; Mestre noting that the use of the word "nigger" was used by members of SWAT and was common with police as "street slang for 'what's up'"; and Munoz testifying that there were no racial epithets uttered by Andriani prior to the trip to Louisiana. Interestingly, the only live recording of Andriani and ATTF/SWAT,

evidenced in a secret recording of a contentious 3½ hour meeting on January 12, 2007, and copied onto three compact discs (CDs), contains no racial utterance by Andriani.

I **CONCLUDE** that respondent has failed to prove by a preponderance of the evidence the charges related to the specification involving an employee of Dunkin Donuts, as well as the charge and related specification regarding the performance of private work by Andriani while he was on duty. In fact, respondent produced no evidence that Andriani altered any records or changed any records that had been prepared by Castellano.

I **CONCLUDE** that the testimony and evidence that were provided by respondent's witnesses as to the improper handling of Andriani's weapon or the improper direction given to police officers to surrender their weapons to Hooters employees failed to prove by a preponderance of the credible evidence the charges of failure to perform duties, conduct unbecoming a public employee, and neglect of duty. Neither Andriani as a supervisor, nor the individual police officers who allegedly owned the weapons that were photographed, voiced any objection to the Hooters civilian employees handling or posing with the weapons. Even former Police Chief LaBruno testified that he was not sure whether the act of handing the weapons to the Hooters employees was a violation of any departmental regulation as to the "surrender" of a weapon, and therefore, he did not discipline Andriani at the time. As to the other witnesses, Andriani denied using his weapon or directing others to hand over their weapons. Perez testified that he did not hear Andriani direct the officers to turn over their weapons. He later contradicted himself and stated that Andriani said, "give them the weapons." Novo stated he remained on the SWAT bus but he also affirmed that Andriani ordered the officers to hand over the weapons. Mestre did not recall Andriani giving such direction to the police officers. Munoz testified that he complied with Andriani's order "due to fear of retaliation and retribution."

I also **CONCLUDE** that the testimony and evidence that were provided by respondent's witnesses as to the alleged performance of private work at Andriani's residence, punishment/humiliation of Olavarria, drinking alcoholic beverages, "lying" to investigator David F. Corrigan, Esq., and leaving the house while on sick leave, did not

prove by a preponderance of the credible evidence the respective charges of failure to perform duties, conduct unbecoming a public employee, and neglect of duty, as noted in specifications 1, 2, 4, 5, 6, 8, 9, 10, 11, 14, 15, 19, 20, and 21.

I **CONCLUDE** however, that respondent has proven the charge of failure to perform duties and conduct unbecoming a public employee, as to specification 12. Without dispute, Andriani was the highest ranking police officer at the Hooters establishment on March 1, 2006, as members of the Hoboken group were returning from Louisiana. It is also undisputed that Andriani, and indeed the other police officers present, wore clothes that had identifying words, "Hoboken," "SWAT," and "Police." Andriani's clothes also bore the word, "Commander," stitched on the collar. Numerous photographs depict Andriani and several members of the Hoboken contingent, prominently posing in front of the City of Hoboken SWAT bus, with various types of handguns and semi-automatic assault rifles in the hands of civilian Hooters employees. Other photos depict female Hooters employees handcuffed to each other in the presence of Andriani. Andriani and the police officers agreed to participate in the Hoboken sanctioned trips to Louisiana. They were easily identified as police officers by the clothes they wore and the equipment they possessed. Though it was suggested that the clothes were not regulation uniforms, the Hoboken contingent was identifiable to the general public by clothes that prominently bore the words, "Hoboken," "SWAT," and "Police." To argue that the officers should be absolved because they were not on duty or perhaps not in regulation police uniform is disingenuous. Andriani, as the highest ranking police officer present, by virtue of his rank, had a responsibility nonetheless to maintain an image of personal integrity and respect to members of the public. He could have advised his subordinates to keep the weapons secure, out of the hands of civilians. Instead, the photographs depict the opposite. As another example, Andriani's actions regarding placing a white napkin, with two eyeholes, in front of his face, at a public location, notably in Louisiana, could certainly call attention to Andriani's behavior and the behavior of those around him. In this case, as evidenced particularly by the photographs, Andriani allowed a complete lack of self-restraint as a law enforcement professional to dictate his unfortunate behavior.

**PENALTY**

Progressive discipline is an indelible part of the disciplinary process. It is well settled that an employee's past disciplinary record may be used as guidance in determining what the appropriate penalty should be. See West New York v. Bock, 38 N.J. 500, 523 (1962). However, the theory of progressive discipline is not a fixed and immutable rule to be followed without question. Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). While it is noted that Andriani had no prior discipline before the charges in this matter were filed, a subsequent 180-day suspension for misconduct was disposed of during the pendency of this matter. In this case however, Andriani's behavior, memorialized in numerous photographs, is so egregious, that it warrants removal. His unprofessional and at times irresponsible behavior stands in stark contrast to the potential that Andriani had once exhibited as a City of Hoboken police officer.

**ORDER**

It is **ORDERED** that Angelo Andriani be **REMOVED** effective February 28, 2008.

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. 52:14B-10.

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, P.O. 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.

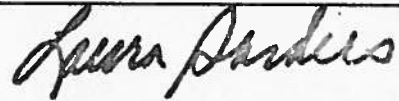
*October 3, 2014*

DATE



IMRE KARASZEGI, JR., ALJ

Date Received at Agency:



DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties: **OCT - 6 2014**

id



**APPENDIX**

**LIST OF WITNESSES**

**For Petitioner/Appellant:**

Angelo Andriani

Josue Velez

**For Respondent:**

George Fonseca

James Perez

Cesar Olavarria

Bernardo Munoz

Mario Novo

Timothy McCourt

Margaret Castellano

Joel Mestre

Carmen LaBruno

David Corrigan

**LIST OF EXHIBITS IN EVIDENCE**

**Joint:**

J-2 Two enlarged photos of dinner party at private residence in Louisiana

**Petitioner/Appellant:**

P-2 Various photos

P-3 Photos of Andriani and others

P-4 Photos of handcuffed individuals next to Hoboken SWAT bus

P-7 PNDAs marked "Rescinded"

For Respondent:

- R-1 Photo of Andriani and napkin
- R-2 Photo of Mestre and Andriani
- R-3 Photo of Andriani and two Hooters employees
- R-4 Photo of Andriani and two handcuffed Hooters employees
- R-5 Photo of Andriani and two Hooters employees with AR-15 weapon
- R-6 Photo of Andriani and Hooters employees with AR-15 weapon
- R-7 Three photos (a, b, c)
- R-8 Photo of Hooters employee with AR-15 weapon
- R-9 Group photo next to Hoboken SWAT bus
- R-12 Group photo next to Hoboken SWAT bus
- R-13 Photo of Hooters employees with weapons
- R-14 Photo of Munoz and Hooters employee with weapon
- R-15 Semi-annual firearms re-qualification form
- R-16 Two photos of Andriani with restaurant employees (a, b)
- R-17 Photo of Andriani and a female at restaurant
- R-18 Photo of Andriani giving "jello-shot" to a female
- R-19 Photo of Andriani giving "jello-shot" to a female
- R-20 Photo of a female giving "jello-shot" to Andriani
- R-21 Photo of Andriani and Velez with "jello-shots"
- R-22 Novo personal calendar book (2006)
- R-24 Novo absentee calendar (2006)
- R-25 Andriani absentee calendar (2006)
- R-26 Three compact discs of January 12, 2007, meeting (a, b, c)
- R-27 Personnel report (12-16-06)
- R-28 Personnel report (12-17-06)
- R-29 Personnel report (12-18-06)
- R-30 Personnel report (12-19-06)
- R-31 Personnel report (12-20-06)
- R-32 Personnel report (12-24-06)
- R-33 Personnel report (12-25-06)
- R-34 Personnel report (12-26-06)
- R-35 Personnel report (12-27-06)

- R-36 Personnel report (12-28-06)
- R-37 Internal Affairs Police and Procedure (revised November 2000)
- R-38 Hoboken Police Department Rules and Regulations (March 6, 1991)
- R-39 Hoboken Police Department personnel order, issued January 9, 2007
- R-43 Letter dated December 27, 2007
- R-44 Hoboken Anti-Discrimination policy
- R-45 General order #04-01 (2-7-01) Sick Leave Policy
- R-46 Perez absentee calendar (2006)
- R-47 Andriani absentee calendar (2006)
- R-48 Morales absentee calendar (2006)
- R-49 Olavarria absentee calendar (2006)
- R-52 Photo of Andriani and female on Bourbon Street
- R-52b Special Order #34-91 (10-30-91) Special Weapons/Negotiations Team
- R-53 Memorandum dated December 28, 2004
- R-55 Hudson County Prosecutor letter dated January 14, 2008
- R-58 Copy of Complaint and Jury demand (filed November 14, 2011)
- R-59 Copy of Civil Service Commission Final Decision (February 2, 2011)
- R-60 Andriani absentee calendar (2006) with notations on back
- R-61 Andriani absentee calendar (2007) with notations on back