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STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jonathan Cummins,
City of Hoboken

CSC Docket No. 2015-1356

Request for Stay

ISSUED: FEB 09 2015 (DASV)

The City of Hoboken, represented by Arnold R. Gerst, Esq., requests that the Civil Service Commission (Commission) stay the adoption of the attached initial decision of Administrative Law Judge Evelyn J. Marose (ALJ), rendered on May 20, 2013, with respect to the award of back pay to Jonathan Cummins.

By way of background, Cummins, a Clerk 1,¹ was served with a Final Notice of Disciplinary Action (FNDA), dated October 24, 2011, removing him from employment, effective May 17, 2011, on charges of conduct unbecoming a public employee, misuse of public property, and other sufficient cause. He was also served with a second FNDA, dated July 5, 2012, removing him "immediately" on charges of conduct unbecoming a public employee, insubordination, and neglect of duty. Specifically, the appointing authority asserted that Cummins possessed passwords/passcodes that he was not supposed to have, accessed unauthorized confidential e-mails of employees and elected officials, and transmitted such e-mails to unauthorized third parties. It was also claimed in the second FNDA that Cummins falsely confessed and attempted to deceive the appointing authority in order to thwart its investigation of the matter. Upon his appeals, the matters were transmitted to the Office of Administrative Law and were consolidated. On May 20, 2013, the ALJ rendered her initial decision, recommending that the removals be reversed. The ALJ concluded that the appointing authority had failed to meet its burden of proving that Cummins was guilty of any wrongdoing in connection with an alleged email breach or that he confessed, whether falsely or not, to any

¹ Cummins' title had been Agency Aide, but it was renamed Clerk 1 effective April 9, 2011.

wrongdoing. Accordingly, the ALJ ordered that he be reinstated and “that back pay and other benefits be issued to Cummins as dictated by *N.J.A.C. 4A:2-2.10*.” The initial decision was presented to the Commission on June 26, 2013, but it was held pending the Commission’s review of the testimony. The matter was again before the Commission at its September 4, 2013 meeting. A motion was made to adopt the recommendation of the ALJ to reinstate Cummins. However, there was a tie vote. Consequently, the motion was defeated and no decision was rendered by the Commission. Therefore, pursuant to *N.J.S.A. 52:14B-10(c)*, the ALJ’s recommended decision was deemed adopted as the final decision in the matter. The parties were advised of the outcome by letter, dated September 6, 2013, and were informed that any further review should be pursued in a judicial forum. A copy of the letter is attached.

The City of Hoboken subsequently filed an appeal to the Superior Court of New Jersey, Appellate Division, on October 21, 2013. The matter is still pending. In the meantime, the Commission had received a letter, dated July 16, 2014, on behalf of the appointing authority, requesting a stay of the Commission’s decision. However, the request was received over 10 months after notice was sent to the parties of the Commission’s tie vote. Therefore, by letter dated July 18, 2014, the appointing authority was advised that the request for a stay was untimely pursuant to *N.J.A.C. 4A:2-1.1(b)* and *N.J.A.C. 4A:2-1.2(f)*, and could not be considered. Thereafter, the appointing authority filed an application to file an emergent motion for a stay of the Commission’s September 6, 2013 notice with the Appellate Division. The application was denied on July 24, 2014, as the appointing authority “never sought a stay from the Commission until July 2014. Any emergency is self-created, which does not warrant extraordinary emergent adjudication on short notice.” The appointing authority then filed a motion for a stay (through ordinary course), which was also denied by the Appellate Division on August 19, 2014. Subsequently, the appointing authority filed a motion for a stay with the Supreme Court of New Jersey. As indicated in the attached order issued on October 14, 2014, the Supreme Court denied the motion for a stay without prejudice to the appointing authority reapplying to the Commission “for more limited relief” including relief from reinstatement but not from the appointing authority’s “obligation to pay [Cummins] the salary associated with such position pending the Appellate Division’s disposition” of the appointing authority’s appeal. It is noted that the appointing authority reinstated Cummins on November 3, 2014.² On November 6, 2014, Cummins filed a motion to enforce litigant’s rights in Superior Court seeking the back pay. The Commission has been advised that the motion was stayed on January 9, 2014, pending the Commission’s determination in the present matter.

In the instant matter, the appointing authority maintains that its request for a stay of Cummins’ back pay award “is supported by a balancing of the equities.” It first presents that it has a “meritorious” claim considering that two members of the

² Cummins’ personnel records with this agency have not been amended and still reflect his removal.

four-member Commission³ voted to uphold Cummins' removal. In support, it outlines the history of the case. Moreover, the appointing authority argues that it is at risk for irreparable harm should it be ordered to pay Cummins' back pay prior to the Appellate Division's determination. It initially states that it "has no way to ascertain" the amount of back pay because Cummins "has refused" to complete an affidavit of mitigation. Cummins could also be "unjustly enriched," as the appointing authority might not be able to recover the back pay should the Appellate Division reverse the Commission's decision. The appointing authority notes that once the back pay is actually ascertained, the funds may be kept in escrow until the Appellate Division renders a decision. Therefore, it contends that Cummins would suffer no harm if this stay were granted. The appointing authority adds that "awarding Cummins back-pay prior to the final disposition of this matter will have a chilling effect amongst the employees and residents of the City, as this matter was highly publicized and widely known throughout the community." It also asserts that the public interest is of "great concern" in its request for a stay since "employees will feel empowered to violate laws and policies . . . without fear of financial repercussions." As for the calculation of Cummins' back pay, the appointing authority indicates that it has received only two W-2 statements from him. It claims that it has made numerous attempts to obtain information as to Cummins' mitigation efforts, but Cummins has replied that he need not complete the Affidavit of Mitigation for Back-Pay Award form given to him by the appointing authority in order to prove mitigation. Therefore, the appointing authority maintains that it is left to conclude that no such mitigation efforts have been made and back pay cannot be given until this evidence is provided. It is noted that the appointing authority submits a blank copy of the Affidavit of Mitigation for Back-Pay Award. A review of this form reveals that the appointing authority requests information concerning dates of separation, receipt of unemployment benefits, receipt of other government assistance or benefits, employment during the period of separation, secondary jobs during employment with the appointing authority, the appellant's job search efforts during his period of separation and documentation in support, copies of applications, and other income.

In response, Cummins, represented by Marcia J. Tapia-Mitolo, Esq., contends that while the Supreme Court allowed the appointing authority to seek a stay from reinstating Cummins, it specifically ordered that the appointing authority could not "also seek to stay the [appointing authority's] obligation to pay [Cummins] the salary associated with such position." Thus, Cummins argues that the Court's order "simply could not be any clearer" that the appointing authority could not seek a stay of his back pay award. He notes that due to the appointing authority's failure to comply with the Supreme Court's order, he filed the motion to enforce litigant's rights in Superior Court. Moreover, Cummins maintains that the instant

³ The Commission is comprised of five members, with the Chair/Chief Executive Officer of this agency serving as Chairperson. However, at the time of its consideration of Cummins' appeals, there was a vacant position.

motion is *res judicata* and should therefore be denied. In that regard, Cummins states that the appointing authority's various motions for a stay have already been denied by the Commission, the Appellate Division, and the Supreme Court. Only limited relief was granted by the Supreme Court, namely that of Cummins' reinstatement to his former position. However, although he has returned to employment, Cummins asserts that he has not been reinstated to his former position and has been assigned to a clerical position in a different department. In addition, Cummins contends that the appointing authority has failed to demonstrate a clear likelihood of success in its Appellate Division appeal based on the facts of the case. Further, he emphasizes that it has been over a year since the ALJ's decision and he has not been able to obtain "comparable employment." He has accrued significant debt and has borrowed money from his elderly mother. Cummins notes that he has been employed by FSO Outsourcing since March 2013 and alleges that his employment was jeopardized. In that regard, in November 2013, he was to be promoted to a head concierge position in the building where the Assistant Corporation Counsel who litigated his removal case resides. However, his promotion was rescinded due to an "anonymous" resident advising that she felt "uncomfortable" by his presence. Regarding information as to his mitigation efforts, Cummins stresses that he provided the appointing authority with his W-2 statements from 2011 through 2013. He submits that although the appointing authority wants him to complete a pre-prepared affidavit, there is no rule, regulation, or order of the Commission directing him to do so. He maintains that the appointing authority "has been provided all of the information it need[s] to compute back pay."

CONCLUSION

This matter has come before the Commission pursuant to the Supreme Court's October 14, 2014 order allowing the appointing authority to reapply to the Commission "for more limited relief, including relief in the form of a stay of [the appointing authority's] obligation to reinstate [Cummins] to his prior position" On November 3, 2014, the appointing authority reinstated Cummins. Therefore, as an initial matter, that part of the Supreme Court's order has been rendered moot. It is noted that although Cummins contends that he has not been returned to his prior position, he states that he has been returned to employment in a clerical position. Cummins' title is Clerk 1. The appointing authority is under no obligation to place Cummins in the exact same position. However, it must assign him duties commensurate with his title. Further, if the appointing authority has not already done so, it must amend Cummins' personnel records to reflect continuous service from May 17, 2011, the date of his removal, to the present since his removals have been reversed.

The Supreme Court's order also indicated that although the appointing authority could request a stay of the reinstatement, it could "not also seek to stay [its] obligation to pay [Cummins] the salary associated with such position pending

the Appellate Division's disposition" of the appointing authority's appeal. The appointing authority has filed the within matter, requesting a stay of Cummins' back pay award. Cummins argues that the order is clear that any stay request could not include an issue of his pay. However, the Supreme Court's order does not prohibit the appointing authority's petition regarding back pay. Rather, the appointing authority is only precluded from requesting a stay of Cummins' current salary, namely "the salary associated with such position." Therefore, based on the Supreme Court's order, the Commission will review the appointing authority's request under the following standards set forth in *N.J.A.C. 4A:2-1.2(c)*:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Initially, it must be emphasized that the Commission did not render a formal determination on Cummins' removal from employment, as the ALJ's recommended decision, including the order of back pay, was deemed adopted due to the Commission's tie vote. Thus, it would be inappropriate to review the merits of the appointing authority's case given that the Commission did not reach a majority vote in the first instance. As such, a determination as to whether there is a clear likelihood of success on the merits of the appointing authority's Appellate Division appeal cannot be rendered. Accordingly, the appointing authority has not met the first criteria of *N.J.A.C. 4A:2-1.2(c)*. The Commission notes, however, that an appellate court will reverse the final decision of an administrative agency only if it is arbitrary, capricious or unreasonable or if it is not supported by substantial credible evidence in the record as a whole, or if it violates legislative policy expressed or fairly to be implied in the statutory scheme administered by the agency. See *Karins v. City of Atlantic City*, 152 N.J. 532, 540 (1998); *Henry v. Rahway State Prison*, 81 N.J. 571, 579-80 (1980); *Mayflower Securities Co. v. Bureau of Securities*, 64 N.J. 85, 93 (1973); *Campbell v. Civil Service Department*, 39 N.J. 556, 562 (1963). In the instant matter, half of the members of the Commission did in fact vote to adopt the ALJ's decision, which sets forth her reasoning for the reversals.

Moreover, the appointing authority has not shown that it will suffer immediate or irreparable harm in paying Cummins what he is entitled to by rule. In this regard, *N.J.A.C. 4A:2-2.10(a)* provides that "where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine." [Emphasis added]. See also, *N.J.S.A. 11A:2-22*. The ALJ reversed the removals, and back pay was appropriately ordered. The appointing authority's argument that it may not recover the back pay should the Appellate Division sustain Cummins' removal is speculative at best. The appointing authority's other arguments are also unpersuasive. It contends that "a chilling effect" would occur if Cummins is paid his back pay. However, the appointing

authority has not fully described this asserted "chilling effect" and how payment of back pay would negatively affect other employees or the community given that Cummins' case was adjudicated by an ALJ and he has been reinstated. Additionally, the appointing authority contends that Cummins would suffer no harm if this request for a stay is granted. The Commission acknowledges that the harm Cummins would suffer is monetary and financial harm can be remedied. However, the public interest is not served when an administrative order is not implemented, and contrary to what the appointing authority has suggested, there are means to recoup Cummins's back pay should he be ultimately removed. Further, the appointing authority's broad generalization that "employees will feel empowered to violate laws and policies . . . without fear of financial repercussions" is not supported by any evidence whatsoever nor is it convincing. The mere fact that one employee receives his back pay award does not demonstrate that employees would thereafter believe it was permissible to run amok. Further, the appointing authority has the ability to impose discipline on such employees who violate laws and policies. Therefore, the appointing authority's request for a stay of Cummins' back pay award is denied.

As for Cummins' mitigation efforts, the Commission will not decide that issue at this juncture since the Commission has only now denied the request for a stay of the back pay award, and pursuant to *N.J.A.C. 4A:2-2.10(f)*, the determination of the actual amount shall be settled by the parties whenever possible. The parties also have not yet had a meaningful discussion regarding the amount of back pay since Cummins has not provided additional information. The appointing authority requests that Cummins complete its Affidavit of Mitigation for Back-Pay Award form. In response, Cummins asserts that no rule, regulation, or order of the Commission directs him to do so. He maintains that his W-2 statements from 2011 through 2013 are sufficient to calculate his back pay. However, it is the practice of many appointing authorities to request information by pre-prepared affidavit in order to thoroughly assess how much is to be paid or deducted. A review of the appointing authority's form reveals basic information that needs to be revealed by rule. For instance, there are questions on the form with regard to unemployment benefits and a secondary job. *N.J.A.C. 4A:2-2.10(d)3* provides in relevant part that where a removal has been reversed, the award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received. *N.J.A.C. 4A:2-2.10(d)7* states that "if an employee also held other employment at the time of the adverse action, the back pay award shall not be reduced by earnings from such other employment. However, if the employee increased his or her work hours at the other employment during the back pay period, the back pay award shall be reduced by the earnings from such additional hours." Moreover, the form asks questions regarding Cummins' mitigation efforts. In that regard, *N.J.A.C. 4A:2-2.10(d)4* provides in part that if "the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable

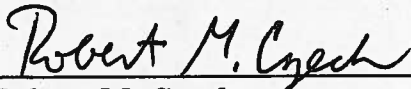
efforts." Therefore, Cummins is not being asked to fulfill an unreasonable request. In fact, the rules dictate the disclosure of certain information. Accordingly, the Commission orders that Cummins complete the Affidavit of Mitigation for Back-Pay Award or provide a self-prepared affidavit with similar information and applicable supporting documentation to the appointing authority within 30 days of the issuance of this decision. It is noted that Cummins does not dispute any specific item in the affidavit. If a question is not applicable to him, he may indicate it as such. Thus, if Cummins fails to submit an affidavit with supporting documentation, he will be found in violation of a Commission order and may be denied his back pay award.

Finally, *N.J.A.C. 4A:2-2.10(g)* provides in part that "[i]f settlement on an amount cannot be reached, either party may request, in writing, Commission review of the outstanding issue." Therefore, if after receipt of the information provided to the appointing authority by Cummins, the parties cannot agree on the amount of the back pay award, either may request that the Commission determine the amount.

ORDER

Therefore, it is ordered that the request for a stay be denied. It is further ordered that Jonathan Cummins submit an affidavit of mitigation to the appointing authority with supporting documentation, in accordance with this decision.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF FEBRUARY, 2015



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Attachments

c: **Arnold R. Gerst, Esq.**
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Jonathan Cummins
Todd A. Wigder, DAG
Clerk, Appellate Division
Kenneth Connolly
Joseph Gambino



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF JONATHAN CUMMINS,
CITY OF HOBOKEN, DEPARTMENT OF
ADMINISTRATION.**

OAL DKT. NO. CSV 14319-11
AGENCY DKT. NO. 2012-1458

**IN THE MATTER OF JONATHAN CUMMINS,
CITY OF HOBOKEN, DEPARTMENT OF
ADMINISTRATION.**

OAL DKT. NO. CSV 10784-12
AGENCY DKT. NO. 2013-122

**Marcia J. Tapia, Esq. for appellant (Loccke, Correia, Linsky & Bukosky,
attorneys)**

**Melissa L. Longo, Esq., Corporation Counsel for respondent (City of Hoboken,
Office of Corporate Counsel)**

Record Closed: January 4, 2013

Decided: May 20, 2013

BEFORE EVELYN J. MAROSE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

City of Hoboken (Hoboken) terminated petitioner Jonathan Cummins (Cummins) effective May 17, 2011, pursuant a Final Notice of Disciplinary Action (FNDA), dated October 24, 2011. On November 6, 2011, Cummins filed an appeal. Pursuant to

N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, the matter was transmitted to the Office of Administrative Law (OAL) on November 29, 2011. Hoboken charged Cummins with violating N.J.A.C. 4A:2-2.3(a), conduct unbecoming a public employee, misuse of public property, and with other sufficient cause. (R-1.)

Cummins served as an agency aide for Hoboken. He worked in the City's Information Technology (IT) department under the supervision of another City employee, Patrick Ricciardi (Ricciardi). On May 16, 2011, confidential e-mails were discovered on a computer in Cummins and Ricciardi's shared office. Hoboken asserts that Cummins admitted during a meeting with Hoboken's business administrator, Arthur Liston, and corporation counsel, Mark Tabakin, Esq., to (1) having passwords/pass codes that [he] was not supposed to have; (2) impermissibly accessing a voluminous number of emails from password-protected email accounts of [Hoboken] employees and elected officials; (3) archiving those emails to a local computer for invalid purposes; and (4) transmitting such emails to an unauthorized third parties. (R-1, R-3.) Cummins denies admitting any wrongdoing. He contends that he only acknowledged having certain passwords in accordance with his assigned job responsibilities and to forwarding innocuous emails such as jokes and party invitations to third parties. (R-2.)

After the first OAL matter was pending, Hoboken obtained a copy of a criminal complaint filed against Ricciardi regarding the same allegations to which Hoboken asserts Cummins confessed. In a footnote, the criminal complaint notes that another Hoboken employee, Cummins, had initially, falsely confessed to the charges, later admitted by Ricciardi, because of his friendship with Ricciardi. (R-3.) After reviewing the criminal complaint filed against Ricciardi, on May 20, 2012, Hoboken filed a second disciplinary action against Cummins. Hoboken asserts that Cummins's confession was an attempt to deceive the City and to thwart its investigation that constituted (1) conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(1); (2) insubordination; and (3) neglect of duty. Hoboken removed Cummins effective immediately, though as a result of the prior charges, Cummins had not worked for Hoboken since May 17, 2011. (R-5.) The subsequent Final Notice of Disciplinary Action (FNDA) sustained those

charges and noted that he had been removed immediately. (R-6.)¹ The second disciplinary action was also appealed to the Civil Service Commission. Pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, the second matter was transmitted to the OAL on August 12, 2012.

~~A Motion to Disqualify Merrick Limsky, Esq. and the firm of Loccke, Correia, Limsky & Burosky was filed by Hoboken on July 2, 2012. Opposition to the Motion was filed by Cummins on July 17, 2012. Subsequent to oral argument, which was heard on July 20, 2012, the Motion was resolved by consent of the parties. A consent Order was entered on August 27, 2012. It was stipulated and agreed by the parties that Merrick Limsky, Esq. would not represent Cummins in the matters but that any other attorney from the firm of Loccke, Correia, Limsky & Bukosky could represent Cummins in the matters.~~

A Motion to Consolidate was filed by Hoboken on September 13, 2012. A Notice of Cross Motion to Dismiss and opposition to the second disciplinary charges was filed by Cummins on September 26, 2012. On October 10, 2012, Cummins withdrew his Motion to Dismiss and his opposition to the Motion to Consolidate. An Order of Consolidation was entered on October 10, 2012.

Hearings were held on October 12, 15, and 17, 2012. The record closed upon the receipt of written summations on January 4, 2013. Due to a voluminous caseload, a request to extend the time for the issuance of this Initial Decision until May 20, 2013 was made.

¹ The second PNDA, R-6, erroneously lists the sustained charges as violations of N.J.A.C. 4A:2-2.3(a), conduct unbecoming a public employee, misuse of public property, and other sufficient cause. However, the specification includes an attachment which correctly identifies the charges as (1) conduct unbecoming a public employee, (2) insubordination; and (3) neglect of duty.

FACTUAL DISCUSSION

Edward Reiss

Dan Brian of Hoboken contacted Tag Solutions (Tag) to investigate a suspected data breach. Hoboken was very concerned that confidential information was being leaked to the public. On May 16, 2011, Edward Reiss (Reiss), an information security engineer and another Tag information security engineer, Matthew Richardson, conducted the investigation. The Hoboken IT Department was composed of two employees. Reiss was told that Ricciardi was suspected of being involved in the breach. Hoboken did not identify Cummins, the other IT employee, as a suspect.

Reiss discovered that an archive of a "bunch of emails from people in Mayor Zimmer's office" on one of the IT office's computers. A Microsoft Outlook profile contained a copy of every email sent or received by the mayor and/or other Hoboken officials without providing notice to the sender or the recipient that the copies were being stored. Reiss determined that this computer was likely the conduit by which confidential information from the mayor's office was being leaked to the public. Reiss had no knowledge as to who used or had access to the computer where the Microsoft Outlook profile was stored and could not determine from the Microsoft Outlook profile who might have transmitted any of the stored emails. However, certain findings did link Ricciardi to wrongdoing, including the fact that Ricciardi was the only person who had administrative rights to the third-party email service "fat cow" found on the computer. Reiss notified the mayor's office of his findings. At the instruction of the mayor's office, Ricciardi's access to the network was limited or removed. Reiss could not recall if Cummins' access was similarly limited.

Following the forensic investigation, a report was drafted and forwarded to the mayor's office. (R-7.) Tag also recommended that the mayor's office contact law enforcement authorities. Reiss was present during the initial phone call to the Federal Bureau of Investigation (FBI) from the mayor's office. Reiss never made a determination that Cummins was involved in any wrongdoing.

Arthur Liston

Arthur Liston (Liston) served as the business administrator for Hoboken during the period at issue. Liston became concerned when Open Public Records Act requests were being received in a pattern that suggested that individuals were accessing information contained in confidential emails. For example, when conducting interviews for hiring a new public safety director, the name of a candidate that only a limited number of individuals knew about became public knowledge. Liston felt ninety percent certain that something was being leaked from his or the mayor's emails. Liston suspected that Ricciardi had the requisite knowledge base to leak the information. He thought that Cummins functioned as an assistant to Ricciardi. Liston did not know if Cummins was directly involved, but Cummins and Ricciardi worked out of the same office and appeared to use the same computers. Tag, a forensic computer firm, was retained to investigate the Hoboken computer system. At the time the investigation began, Liston was uncertain as to whether the matter would be criminal in nature.

When the team from Tag arrived on May 16, 2011, Liston did not tell either Ricciardi or Cummins that Tag was conducting a forensic investigation and/or that Tag was investigating a possible computer breach. Liston told Ricciardi that Tag was doing a risk analysis of the computer system as part of the joint insurance fund. While Tag was conducting its investigation of the computers in the IT office, Ricciardi was kept busy elsewhere throughout the day. Tag reported that emails from Liston, the Mayor, and other Hoboken officials—of which neither Ricciardi nor Cummins were a party—had been accessed and stored on a computer in the IT office shared by Ricciardi and Cummins. Tag did not conclude that either Cummins or Ricciardi was guilty of any wrongdoing. Tag stated that anybody who had access and passwords in the IT Office could have been involved in the leak.

After reviewing the emails Tag found in the Microsoft Outlook Profile, Liston observed that they had been forwarded to two specific email addresses, one of which belonged to Angel Alicia (Alicia), a former Hoboken public safety director, and one of which Richard Blohm (Blohm) Hoboken's fire chief. Neither Alicia nor Blohm was a

party to the emails, should have had access to those emails, or had those emails forwarded to them.

Liston and Mark Tabakin (Tabakin), Esq., corporation counsel for Hoboken during the period at issue, first spoke with Ricciardi on May 17, 2011, the day after Tag's forensic investigation. Ricciardi denied responsibility for the emails contained on the computer and advised them that Cummins also had access to the computer. Then, Liston and Tabakin called Cummins into the business administrator's office. They told Cummins that there had been some problems with the email system and asked him who had access to the IT computers. Liston testified that Cummins was told during the initial questioning that there had been a purge in the system and that they had found certain emails had been sent out and were seeking clarification on who sent them and why they were sent out. Liston said that Cummins confessed almost immediately when asked whether he was familiar with Alicia's email address. Cummins stated that Alicia had been upset about being terminated and that he assisted Alicea by forwarding him emails from the mayor's office. Cummins denied sending any emails to Blohm.

In his initial testimony, Liston stated that he was shocked when Cummins confessed because Cummins had not been the target of any investigation. He estimated that Cummins confessed about ten to fifteen minutes after they began questioning him and that their entire questioning of him lasted approximately fifteen to thirty minutes. Liston said that Cummins only requested a representative at the end of his questioning. However, when Liston was called as a rebuttal witness, he testified that the entire conversation actually took about fifteen to twenty minutes and that Cummins's confessions occurred about seven to ten minutes after it started. Liston said that Cummins only appeared frightened after Liston started talking about emails being transmitted.

Liston did not believe that it was necessary for Cummins to have union representation when they began questioning him. At that time, Liston and Tabakin still believed that Ricciardi has caused the breach and that Cummins was being set up as the "fall guy" for what Ricciardi had done. He stated that Cummins requested his union

representative, Diana Nieves (Nieves), to be present, only after he had confessed. Then, either Liston went to get Nieves or he had the secretary call her.

Liston testified that there were times during the interview that either he or Tabakin were alone with Cummins. He is not certain whether questioning continued or stopped when he was not in the room. Liston conceded that it was possible that Cummins asked for representation when only Tabakin was in the room. Liston also could not recall whether Tabakin stayed in the room when he left to get Nieves.

Liston stated that, when Nieves arrived, he provided her with background information. He basically explained that there were "some serious issues here with purging of information out of the computer system." After hearing the issues, Nieves was surprised and concerned and asked that the union attorney be contacted. Liston acknowledged that Tabakin, in response to the request for representation by an attorney, hit the table and insisted, "Let's get him here right away." At that point, discussions ceased and Cummins left the room with Nieves until the union attorney, Merick Limsky, Esq., arrived. Liston could not recall Cummins and Nieves returning.

When Limsky arrived, Liston and Tabakin informed him about the forensic investigation and the emails transmittals. They also told Limsky that the FBI was taking over the investigation. Limsky indicated that he would not be representing Cummins in this kind of matter because his background was not in criminal law. Cummins was not questioned further with Limsky present, but at some point Liston told Cummins that he was relieved of his position and would be receiving documentation in the mail.

Liston denied that either he or Tabakin ever ignored a request by Cummins for his union representative or union attorney or denied Nieves's request to call an attorney. He also disputed Cummins's assertion that Cummins only admitted to possessing passwords as part of his job duties. (R-2.) Instead, Liston emphasized that Cummins confessed that he was the one "capturing the information in a concerted effort with Alicia, the former public safety director."

Liston acknowledged that no recordings of the conversation with Cummins were made and they did not obtain any kind of written confession from him. Liston never questioned Alicia about the breach. When asked how Tabakin behaved during the questioning, Liston described him as inquisitive and direct. He did not find Tabakin to be forceful in his questioning or upset.

Finally, he testified that there was no possibility that Cummins believed he was admitting to forwarding joke emails or party invitations during the interview. However, Liston has no evidence other than Cummins's confessions that proves that Cummins sent emails to Alicea. He testified that if Cummins had not confessed, he would not have been charged.

Liston stated that he contacted several law enforcement agencies including the FBI regarding the breach. Liston, in contrast to Tabakin and Reiss, stated that the FBI was only contacted on May 17, 2011, and after Cummins had already been questioned that day. Only the FBI came to Hoboken, spoke with the Tag security engineers and gathered information about what had been discovered.

Mark Tabakin

Tabakin, a partner at the law firm of Weiner Lesniak, served as corporation counsel for Hoboken between September 2010 and May 2012. On May 16, 2011, he was called to Hoboken City Hall due to a breach of the City's email and network security. He was told that emails of the mayor, business administrator, corporation counsel, and two confidential assistants were compromised. Liston showed him thousands of emails that Tag located saved on a computer tower removed from the IT office. Several of those emails had been sent to third parties outside City Hall, including Blohm and Alicia, who Tabakin said was terminated for lying to the mayor.

Tabakin and Liston wanted to determine the scope and nature of the breach. They were concerned that either there was a back door into the computer system or that someone planted software allowing people outside the City to gain confidential information. Tabakin and Liston decided to speak with Ricciardi and Cummins, of the IT

Department, the next day to attempt to discern what was going on. Tabakin testified that they had no idea who was sending the emails out or how it was being accomplished, so there was no target of an investigation at that point.

The next morning, Tabakin and Liston informed Riccardi and Cummins that they had some questions for them. They put Riccardi in a conference room outside of corporation counsel's office and Cummins in the business administrator's office. They intended to ask Cummins and Ricciardi "who could have done this." Tabakin testified that he "had no reason to believe in [his] mind that [Cummins] was even remotely involved" in anything that could lead to criminal charges or discipline against him prior to the meeting. Tabakin and Liston did not even know who had administrative privileges into the system or if there was a master list of passwords at that point.

Contrary to Liston's testimony, Tabakin stated that he and Liston questioned Cummins prior to questioning Ricciardi. Tabakin stated that the meeting that they had with Cummins lasted at most ten minutes. He and Liston were present during the questioning. Tabakin did not recall being alone with Cummins at any point until after the questioning ended. Cummins did not immediately call for his union representative because he was not the target of anything. Tabakin and Liston began the meeting by indicating to Cummins that they knew that there was a compromise of the email system and that confidential emails had been leaked to third parties outside of the City that were not the intended recipients. They asked if Cummins had any idea how this could have happened. They asked who had administrative privileges, because they wanted to know who could get into the system without logging in as a user. Tabakin testified that Cummins "almost out of nowhere" said "I did it. I sent the emails. They are my friends, meaning Blohm and Alicia. They asked me to do it and I did it." Tabakin was "dumbfounded" by this admission. After either he or Liston indicated to Cummins that this was a serious charge, Cummins indicated that he wanted representation. Tabakin emphasized that only after Cummins admitted to having transmitted emails to Blohm and Alicea did Cummins ask for representation. Tabakin stated that after Cummins asked for union representation, the conversation ended and they went to get his union representative. Tabakin described his demeanor during the conversation with Cummins as civil.

Tabakin states that after Nieves, the union representative, arrived, he debriefed her in the hallway outside the room. Tabakin told her that they had a compromise of the email system and that confidential emails were leaked to members of the public and other parties. Tabakin told Nieves that they were trying to figure out how this happened by talking to Cummins when he admitted to doing it and indicated a desire to have representation. Tabakin described himself as "a little animated" while speaking to Nieves due to this being "a really serious matter" and because he did not know whether people were reading his emails every day or "who was gaining access to those communications." Tabakin testified that then Nieves entered the room where Cummins was, and she spoke with him briefly before Tabakin re-entered the room. Tabakin denied that Cummins told Nieves that he had asked for his representative to be present when Nieves first entered the room. Tabakin agreed that it was a good idea when Nieves indicated that she wanted a lawyer. He testified that he told Nieves that she should get an attorney immediately, because at that point he was convinced that this was a criminal matter.

No further dialogue occurred until Limsky showed up about an hour or two later. Tabakin spoke with Limsky and explained Cummins admitted to breaching the Hoboken email security. Limsky indicated that Cummins needed a criminal attorney and that he was not one. Limsky never said that Cummins could be interviewed again, and Cummins was not questioned again in Limsky's presence. However, there was a dialogue in the presence of Limsky and Cummins, wherein Tabakin says that they explained that Hoboken would be moving forward with some type of disciplinary action. According to Tabakin, Limsky never accused him of denying Cummins's right to representation or indicated that they should not have questioned Cummins without union representation present. Tabakin described his conversation with Limsky as very matter-of-fact and describes their relationship as cordial and professional.

Tabakin asserts that the Hoboken issued a PNDA against Cummins based on his admission that he had been "impermissibly and illegally intercepting emails meant for other parties, saving them and disseminating, possibly disseminating them to parties known and possibly unknown for approximately six months to a year." Without

Cummins's confession, Hoboken would not have taken disciplinary action against him. Only later did Hoboken learn that Cummins was appealing his removal and denying ever confessing.

Tabakin denied ignoring any request by Cummins for union representation. He denied ignoring any request by Nieves to call an attorney. Tabakin disputes that Cummins only admitted to having passwords as part of his job duties, when he spoke with Tabakin and Liston. Tabakin testified that no written confession was obtained, because after Cummins admitted to the conduct, he said he wanted representation, and that was the end of their conversation. There was no further communication, so Tabakin could not ask him for a written statement.

After obtaining Cummins's confession, Tabakin and Liston went into the conference room where Ricciardi was and told him that Cummins had confessed. Ricciardi was crying and visibly shaken, but said nothing remarkable. They told Ricciardi to go home and that the matter may or may not be over.

Tabakin testified that he called the Hudson County prosecutor's Office, the Attorney General and the FBI on May 16, 2011, after being told the initial findings of Tag. The FBI responded to Tabakin's call at least a day or two from Tag's forensic investigation, after they had seized evidence from the IT office and after he and Liston had spoken to Ricciardi and Cummins. Tabakin was questioned by the FBI and assisted when they seized the material from the IT office.

Tabakin is unaware if Cummins was ever investigated by the FBI or if he was a cooperating witness. Tabakin did learn that Ricciardi was indicted in a criminal complaint by the FBI and that in footnote two in the affidavit attached to that criminal complaint there is the notation that Cummins falsely confessed due to his friendship with Ricciardi. (R-4.) As a result of learning about Cummins's subsequent denial or recantation of his confession, Hoboken issued another PNDA based on the possibility that he lied during his confession to Liston and Tabakin in an attempt to deceive Hoboken and thwart its investigation. (R-5.)

Diana Nieves

Nieves served as president of the Hoboken Municipal Employees Association (HMEA) for approximately five years. On the date of Cummins's interview with Liston and Tabakin, she received a phone call to go downstairs and see Liston. Upon entering the room, she observed Liston, Tabakin, and Cummins sitting down, and Cummins yelled out to her that he had requested her "numerous times" but had been denied that request. Tabakin then told her that Cummins had "admitted to stuff" after they had questioned him, but the only details provided to her were that his admissions had to do with a computer and emails, before Tabakin indicated that the matter may be criminal in nature. Nieves told Tabakin that she was not a lawyer and that Cummins should not say another word. Tabakin continued to insist that Cummins had already admitted to the questions that they asked him. Tabakin ignored Nieves's statements that she is not a lawyer and kept informing her that Cummins had confessed. When Nieves expressly asked that Limsky be present, Tabakin became irate and raised his voice to a yelling pitch. Tabakin demanded that if she calls the union attorney, he had to "get here right now, not two hours from now." Tabakin's tone and volume was inappropriate, making Nieves question why she was being yelled at and made to feel like she was being interrogated. Nieves called to Liston to, "Do something!" Liston directed Nieves to "just go upstairs, call Limsky, and have him come here as soon as possible." Nieves instructed Cummins to accompany her, because she wanted to ensure that he remained silent.

Limsky arrived in approximately one hour and she instructed Cummins to speak with him and recount what happened while she waited outside. She also told Limsky that Cummins had told her that he asked for a representative a number of times. After Cummins and Limsky spoke, Limsky went into the corporation counsel's office to speak with Tabakin. Afterwards, Limsky spoke to Cummins, who left, before Limsky again briefly spoke with her. She admitted that she had no personal knowledge that Cummins was denied any request for representation prior to her arrival. However, as she first entered the room, after she was called, he had immediately yelled out to her that he had requested her "numerous times" but had been denied that request.

Merick Limsky

Limsky is a partner in the law firm of Loccke, Correia, Limsky, and Bukosky, the firm that represents Cummins in this disciplinary matter. Limsky was originally counsel of record in this matter. On numerous occasions in the past, Limsky had worked with Liston and Tabakin to resolve union matters on behalf of the HMEA. The firm had a good, professional relationship with Liston, and a professional, albeit more confrontational, relationship with Tabakin.

On or about May 17, 2011, Limsky was called to City Hall by the union's president because a union member was being questioned about some sort of allegation. Once he arrived at City Hall, Limsky went to the second-floor waiting area where Cummins and Nieves were. He had a private conversation with Cummins, because Nieves had indicated that the matter may be criminal in nature. Either Cummins or Nieves told him that Cummins had been questioned already and that he had asked for, but was not immediately provided with, a union representative and/or an attorney. Limsky described this as an ongoing problem with Hoboken officials, because on several matters, members of the union had been questioned without a union representative present and issued discipline without hearings. However, the problem predated both Liston and Tabakin's employment by Hoboken.

Limsky went and spoke with Tabakin. Liston may have also been present. Limsky asked them how they came to question one of the union's members without allowing the employee his union representative. Limsky was particularly concerned at that point because, even based on the limited information about the allegations that he was given, Limsky believed that the issue upon which they were questioning Cummins "could have been clearly viewed as a criminal matter" that should have just gone to the prosecutor's office. Although Liston and Tabakin told him that Cummins was thought of as just a witness, Limsky rejected that explanation because they were accusing him of wrongdoing.

After their discussion as to failure to provide timely union representation, Limsky offered Tabakin and Liston the opportunity to question Cummins again in his presence,

because he told them that if Cummins was asking for a union representative during the questioning, they could not use that conversation. Tabakin and Liston questioned Cummins in Limsky's presence for twenty to twenty-five minutes. Limsky was not sure whether they asked Cummins the same questions or new questions. Cummins acknowledged doing IT work for Hoboken and explained that he was directed by Ricciardi to create backup files for various documents in the City on either the computer or some sort of server. Cummins explained to them that as part of his job duties, he created and moved files including emails, and also other documents. Cummins told them that he also had access to passwords as part of his job in the IT department, because that department creates the passwords when setting up the accounts and maintains access so that the department can resolve any problems that arise. Cummins did not admit to archiving emails for any invalid purposes. He only stated that he backed up files as directed by his supervisor, Ricciardi. Cummins also did not admit to transmitting emails to any third parties; although Tabakin asked him directly whether he sent certain emails to other people. He described Tabakin as excited and agitated while questioning Cummins in an "accusatory" manner.

On cross-examination, Limsky stated that he allowed Cummins to answer questions, despite his initial impression that this matter was criminal in nature, because after he spoke with Cummins, he was comfortable that there was no criminal conduct on Cummins's part. Accordingly, Limsky saw no harm in Cummins answering questions and being cooperative.

The statements made by Cummins in Limsky's presence were different from Tabakin's assertions that Cummins admitted that had illegally obtained passwords, created ghost files, and improperly forwarded emails. Limsky testified that if Tabakin believed that all of those things occurred, Tabakin and Liston should not have questioned Cummins themselves. The matter should have been referred to the prosecutor's office. Limsky explained that if evidence had been presented during the discussion that was contrary to his understanding of Cummins's conduct, he could have ended the interview, but that was not the case.

Jonathan Cummins

Cummins worked for Hoboken for five years, first as a library assistant and later as an agency aide. His duties as an agency aide were setting up new computers, conducting daily maintenance, and installing software. He had no computer training prior to working as an agency aide and was trained, "on the job," by Ricciardi. Cummins began most days meeting in the office with Ricciardi to receive assignments. However, he spent only two or three hours during each eight-hour workday in the office. He and Ricciardi were in and out all day, responding to calls for assistance with any of the more than three hundred computers owned by Hoboken. Cummins stated that the process of setting up new computers was "extremely basic" and included setting up emails, user names, and passwords.

Cummins did not personally maintain a list of usernames and passwords. However, such a list was automatically maintained through the outside email server called "fat cow." Ricciardi maintained the server. Cummins usually asked Ricciardi to access the server when a password needed to be changed, but Cummins also had access to it using Ricciardi's username and password. The IT office contained three computers. At various times, Cummins had used each of the three computers. Every email that went through Hoboken was also automatically stored on a server located in the mail room on the second floor of City Hall.

On May 16, 2011, Cummins reported to work at 9:00 a.m. and went to the IT office as usual. Between 10:00 a.m. and 11:00 a.m., Cummins was directed to go to a different location for the day. He did not see Ricciardi for the rest of that day. At the end of the day, Liston told him to retrieve any personal items from the office and thereafter padlocked the door. No one told him what was going on, and when he asked Ricciardi, Ricciardi said that he did not know. When Cummins returned to work the next day, assuming that the door was still padlocked, he waited with Ricciardi in the area outside the Mayor and business administrator's offices. At some point Ricciardi was called into Liston's office for about five to ten minutes. When he exited, he did not speak to Cummins. Then Cummins was called into Liston's office to meet with Liston and Tabakin. Liston asked Cummins if he recognized a computer and laptop that were

in the room. Cummins identified the computer as one of the three computers from the IT Office and the laptop as one belonging to Hoboken. They asked him general questions including whether he had administrative passwords, whether he could access emails, and whether he could look at the Mayor's emails if he needed to. He responded affirmatively to all three questions.

Cummins was also asked whether he forwarded any emails to anyone, and he responded that he did all the time. Cummins believed that they were referring to emails of a personal nature, and he responded affirmatively. He testified that Tabakin and Liston did not explain that hundreds of emails were intercepted from the Mayor's office and from other City officials during the approximately thirty minutes of questioning. Cummins believed that they were referring to emails of a nature similar to inappropriate jokes. He acknowledged that he often forwarded jokes and "stupid emails" that he received like invitations to parties to others, including Hoboken officials. Cummins was also asked whether he set up folders for back-up emails, and he responded affirmatively. They asked him about the process for setting up those folders and he explained that when he was preparing a new computer he would create a folder on a zip drive with the person's name and export all the emails into that folder along with any information and files from their old computer, which he could then import into the new computer.

During the interview with Liston and Tabakin, he was also asked if he ever looked at the Mayor's emails. At that point, he indicated that he was very uncomfortable with the questioning and asked whether he needed his union representative to be present. Liston and Tabakin indicated that they were just asking questions and continued to do so. Tabakin's demeanor became agitated and more confrontational. Cummins asked again and again, at least three more times, for his union representative. Liston and Tabakin ignored his requests. They again asked whether he had ever looked at the Mayor's emails. Cummins said that he had never looked at the Mayor's emails.

Cummins said that he did not understand what Liston and Tabakin were asking him about half of the time, but as the questioning continued, he knew that something

was going on. The interview lasted at least half an hour before Cummins "just shut down on them." Only then did Liston call Cummins's union representative, Nieves. When Nieves arrived, Cummins told her that he asked for her to be present several times, but that Liston and Tabakin would not let him talk to her. Cummins also told Nieves that he did not know what was going on, and Nieves responded that she also did not know. Tabakin told Nieves that Cummins had just admitted to looking at and forwarding the Mayor and other City officials' emails. Nieves said that she did not know what to do in this situation and asked whether they should call the union's attorney. Tabakin ignored her request and did not stop speaking to let Nieves contact Limsky. Eventually Nieves asked Liston to let her go contact the union attorney, and Liston allowed her to do so.

Nieves instructed Cummins not to say another word until Limsky arrived. Limsky did not arrive for approximately an hour. When Limsky did arrive, Cummins explained that he asked for Nieves multiple times because he did not know what was going on. Limsky then went into the office and spoke with Liston and Tabakin privately before Cummins joined them. Liston then re-questioned him including questioning him regarding whether he ever forwarded email to Alicia or Blohm. Cummins told them that he would forward both Alicia and Blohm personal matters including anything he thought was funny and also work-related material. He also forwarded anti-virus topics to Alicia. The interview with Limsky present lasted only five to seven minutes. Afterwards, Limsky indicated to him that there would be a hearing involving this matter and suggested that there may be a criminal investigation. Cummins was confused why there would be a criminal investigation, but Limsky told him to just wait for the hearing. Cummins was not told that he was suspended or terminated, but was told to go home.

Cummins denied ever admitting that he had any passwords that he was not supposed to have or transmitting emails to unauthorized parties. He also denied telling Tabakin and Liston that he copied confidential emails or forwarded any confidential emails to Alicia or Blohm.

Cummins was questioned by federal law enforcement authorities regarding the leaked emails after the meeting with Liston and Tabakin, the Saturday following May 17,

2011. Cummins was never charged with any criminal conduct, but Ricciardi was charged with criminal conduct. Cummins denied indicating to the FBI that he had made a confession, that he had made a false confession, and/or that he made a false confession because of his friendship with Ricciardi. Cummins testified that, months later, he had the opportunity to ask Ricciardi if he had ever said that Cummins had falsely confessed because of their friendship. Ricciardi allegedly told Cummins that he was told by Liston and Tabakin that Cummins had confessed. Based upon Liston and Tabakin's representation, Ricciardi concluded that Cummins falsely confessed because of their friendship.

As detailed above, the witnesses in this matter offer very different, in fact, completely conflicting recitations of the numerous alleged facts relating to the charges filed against Cummins. Accordingly, an assessment of their credibility is essential.

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination 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). Also, "[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. 1952), certif. denied, 10 N.J. 316 (1952) (citation omitted).

Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor and assess the credibility of the witnesses, and I FIND the following pertinent FACTS:

Cummins worked as an agency aide with computer support responsibilities for Hoboken under the supervision of Ricciardi. Cummins and Ricciardi shared the IT

office and both used the three computers contained therein. Two computer forensic investigators from Tag were sent to Hoboken to investigate a suspected data breach on May 16, 2011. The Tag team conducted a forensic evaluation of the computers in the IT office because it was presumed that the IT office was where the breach was occurring. Hoboken suspected Ricciardi, but not Cummins, of wrongdoing.

The Tag team discovered a copy of emails from individuals within the Mayor's office, including the Mayor, were being saved in a Microsoft Outlook profile on one of the computers in the IT office. The emails were being saved without notice to the senders or recipients of those emails that their emails were being stored in a computer other than their own or one of the recipients of the email. The Tag team identified that computer as the likely conduit by which confidential information from the mayor's office was being "leaked" via email transmittal to non-parties. The Tag team could not determine whether Ricciardi or Cummins leaked the data, because they could not determine who used the computer where the emails were archived. The Tag team limited Ricciardi's access to the network after discovering that he was identified as the administrator of the third-party email service "fat cow" that was being used. In accordance with the recommendation of the Tag team, the Mayor's office contacted various law enforcement agencies, including the FBI regarding the results of the Tag investigation.

On May 16, 2011, Liston viewed the emails discovered on the IT office's computer by Tag. He saw numerous emails had been forwarded from that computer to emails belonging to Alicia, a former Hoboken public safety director, and Blohm, Hoboken's fire chief. Accordingly, Liston and Tabakin were aware, before May 17, 2011, when they questioned Ricciardi and Cummins of the following:

- 1.) The Tag team had located an unauthorized Microsoft Profile account on a computer contained in the IT Department that contained copies of emails being sent from the Mayor and other Hoboken officials;
- 2.) The Tag team concluded that this computer where the Microsoft account was located was likely the source of a "leak" of information to the public;

- 3.) Numerous emails had been forwarded from that computer to emails belonging to Alicia, a former Hoboken public safety director, and Blohm, Hoboken's fire chief, who were not parties to those email; and
- 4.) The Tag team had recommended that Hoboken contact law enforcement authorities.

Rather than wait for any law enforcement authority to conduct an investigation of the foregoing wrongful actions, Liston and Tabakin questioned Ricciardi and Cummins without union and/or legal representation. Ricciardi denied responsibility for any unlawful email action, but indicated that Cummins had access to the computer responsible for the leak.

Liston and Tabakin questioned Cummins in a separate room. Only Liston, Tabakin, and Cummins were present during the questioning of Cummins, though at times Liston left the room and questioning continued. Liston and Tabakin began the questioning by telling Cummins that there had been some problems with the email system and asking him general questions such as who had access to the IT computers. Cummins told them that he had access to passwords and could access other Hoboken officials' emails if needed. Thereafter, the facts and circumstances testified to by the parties relating to the questioning differs.

Liston and Tabakin assert that Cummins confessed to wrongdoing when they questioned him. Cummins denies confessing to any wrongdoing. In determining whose testimony is more credible, I FIND that Liston, Tabakin, and Cummins were all biased and motivated to testify in their own favor. At the time Cummins's alleged confession, Liston was the business administrator for Hoboken and Tabakin and his firm was serving as corporation counsel for Hoboken. Based upon their representation that Cummins confessed to leaking emails outside of City Hall to unauthorized recipients, Hoboken filed disciplinary charges against Cummins that resulted in his termination. Thus, Liston and Tabakin are motivated and biased in favor of affirmation of the charges filed against Cummins. In contrast, Cummins was terminated as a result of the charges filed against. His motivation, to get reinstated, makes him a biased witness.

I **FIND** that the fact that the testimony of Liston and Tabakin is at times consistent does not require that it be given greater weight. Both Liston and Tabakin share the same bias and motivation in favor of Hoboken. Based upon the conclusions of both employees of Hoboken, charges were filed against Cummins and he was terminated. Further, I **FIND** that Hoboken totally controlled the number of persons present during the questioning. Liston and Tabakin called Cummins in the business administrator's Office and began to question him. They did not provide Cummins with the option of having union or legal representation present.

I **FIND** that Liston and Tabakin, but not Cummins, had the ability to memorialize the questioning of Cummins, including any admission that he made. Yet Liston and Tabakin did not tape the session and/or memorialize the statements by Cummins in a written document, signed by him. I am further not convinced that it became impossible for Hoboken to obtain a signed statement from Cummins once he verbally confessed. No legal or factual basis was presented as to why Cummins, if he voluntarily verbally confessed, would not be willing to sign a written statement of his confession. No legal or factual basis was presented as to why Tabakin and/or Liston could not request that Cummins sign such a written statement.

I do not **FIND** Liston's and Tabakin's assertions of the manner and substance of Cummins's confession credible. Liston and Tabakin stated that Cummins just "almost out of nowhere" said, "I did it. I sent the emails. They are my friends (meaning Blohm and Alicia). They asked me to do it and I did it." I further note several inconsistencies within the description of the testimony of Liston and Tabakin. Particularly, Liston claimed that Cummins specifically admitted to accessing emails and forwarding them to Alicia, but not to Blohm, while Tabakin claims that Cummins admitted to accessing emails and forwarding them to both Alicia and Blohm. Moreover, Liston states that Cummins's confession occurred during the middle of the initial discussion between himself, Tabakin, and Cummins. Tabakin states that the confession occurred at the end of that session.

I FIND that Cummins's contrary testimony regarding his involvement in accessing emails and passwords is plausible. Both Liston and Tabakin indicated a lack of expertise regarding computers and how access to the relevant emails could be obtained. Cummins testified that he admitted to them that he had administrative passwords and could have accessed emails if he needed to as part of his job. He also acknowledged forwarding personal and work-related emails to Alicia and Blohm, upon occasion. The fact that Liston construed whatever actual discussion occurred as Cummins's admission that he improperly accessed and forwarded City officials' emails to Alicia, while Tabakin construed the discussion as Cummins's admission that he improperly accessed and forwarded City officials' emails to both Alicia and Blohm supports the conclusion that Cummins did not admit all, if any, of the accusations contained in the charges at issue.

I FIND that no evidence, either documentary or testimonial, was presented that Cummins admitted to the wrongful conduct taking place for approximately six months to a year. Yet, this extended period of wrongful conduct was detailed in the charge to be admitted by Cummins.

After hearing all four witnesses—Liston, Tabakin, Cummins, and Nieves, and accessing their credibility, I do not FIND Liston and Tabakin's testimony regarding when Cummins requested union representation to "ring" true. Liston testified that they questioned Ricciardi first and only after Ricciardi denied responsibility and indicated that Cummins had access to the same machine that Ricciardi did, did they question Cummins. Tabakin testified that they questioned Cummins first. Liston and Tabakin state that Cummins confessed prior to asking for union representation. In contrast, Cummins testified that after he was asked if he ever looked at the Mayor's email, he became uncomfortable with the questioning and asked whether he needed his union representative. Cummins testified that Liston and Tabakin just ignored his comment and kept questioning him. Cummins further testified as to the circumstances that lead to his three more requests for union representation. Cummins said that he did not understand, most of the time, "what Liston and Tabakin were talking about." He "did not exactly know what was going on but he knew something was going on." Tabakin became agitated and confrontational. Cummins did not want to be alone with Liston

and Tabakin while they continued to question him. He asked for his union representation about three more times before he "just shut down on them." After assessing all of the witness's testimony, in light of their internal consistency and the manner in which it "hangs together" with other evidence, I FIND that Liston and Tabakin intended to question Cummins themselves, without his union representative, and that they did not respond to Cummins's initial requests to provide him with union representation. Instead, they delayed calling Nieves until Cummins stopped answering their questions.

I FIND that Nieves's demeanor and the substance of her testimony made her the most credible witness. She has interfaced with Hoboken for numerous years, regarding various employees. She has nothing personal to gain should the charges against Cummins be sustained or reversed. Upon analysis, her testimony substantiates Cummins's testimony as to the number of times that he asked for representation and the manner in which he was treated after he requested union representation. Nieves stated that upon her first entering the room where Liston and Tabakin were with Cummins, Cummins yelled out to her that he requested her "numerous times" before she was sent for. Nieves also bolstered Cummins testimony by her own description of what occurred once she arrived. After she arrived and was told by Tabakin that Cummins had already "admitted to stuff" that may be criminal in nature, she told Tabakin that she was not a lawyer and that Cummins should not say another word. Tabakin continued to insist that Cummins had already admitted to the questions that they asked him. Tabakin ignored Nieves's statements that she is not a lawyer and kept informing her that Cummins had confessed. When Nieves expressly asked that Linsky be present, Tabakin became irate and raised his voice to a yelling pitch. Tabakin demanded that if she called the union attorney, he had to "get here right now, not two hours from now." Tabakin's tone and volume was inappropriate, making Nieves question why she was being yelled at and made to feel like she was being interrogated. Nieves called to Liston to, "Do something!" Liston directed Nieves to "just go upstairs, call Linsky, and have him come here as soon as possible." Nieves was so concerned at that point, she instructed Cummins to accompany her, because she wanted to ensure that he remained silent. Such described behavior on the part of Tabakin supports Cummins's testimony that Tabakin's demeanor caused him to ask for union

representation three times. It also supports the assertion that Tabakin did not initially comply with his request. It further indicates the kind of questioning of employee that should have only taken place in the presence of union or legal representation. I FIND that Cummins asked for union representation and Nieves requested that the union attorney several times before Liston and Tabakin stopped speaking and/or questioning Cummins and/or Nieves.

Shockingly, the parties even disagree if further questioning occurred after Limsky, union counsel, arrived. Liston does not testify that there was further questioning. Accordingly to Tabakin, no further dialogue occurred until Limsky showed up about an hour or two later. Tabakin spoke with Limsky and explained Cummins admitted to breaching the Hoboken email security. Limsky indicated that Cummins needed a criminal attorney and that he was not one. Limsky never said that Cummins could be interviewed again, and Cummins was not questioned again in Limsky's presence. According to Tabakin, Limsky never accused him of denying Cummins's right to representation or indicated that they should not have questioned Cummins without union representation present. Tabakin described his conversation with Limsky as very matter-of-fact and describes their relationship as cordial and professional.

In contrast, Limsky testified, that after speaking with Cummins and Nieves, Limsky initially spoke with Tabakin, without Cummins being present. He asked Tabakin how he came to question one of the union's members without allowing the employee his union representative present and to question him about a matter that could have been clearly viewed as a criminal matter that should have just gone to the prosecutor's office. Limsky rejected Tabakin's explanation that they were not accusing the Cummins of wrongdoing, but merely thinking of Cummins as a witness.

Limsky testified that after their discussion as to Hoboken's failure to provide timely union representation, Limsky offered them the opportunity to question Cummins again in his presence, because he told them that if Cummins was asking for a union representative during the questioning, they could not use that conversation. Limsky estimates that Cummins was questioned in Limsky's presence for approximately twenty to twenty-five minutes. Limsky was not sure whether they asked Cummins the same

questions or new questions. He described Tabakin as excited and agitated while questioning Cummins in an "accusatory" manner. The statements made by Cummins in Limsky's presence were different from Tabakin's assertions that Cummins admitted that he had illegally obtained passwords, created ghost files, and improperly forwarded emails. Limsky explained that if evidence had been presented during the discussion that was contrary to his understanding of Cummins's conduct and that indicated criminal action, he could have ended the interview, but that was not the case. Limsky stated that he allowed Cummins to answer questions, despite his initial impression that this matter was criminal in nature, because after he spoke with Cummins, he was comfortable that there was no criminal conduct on Cummins's part. Accordingly, Limsky saw no harm in Cummins answering questions and being cooperative.

Clearly either Cummins was questioned after Limsky arrived, or he was not questioned after Limsky arrived. Whether Cummins was so questioned is not subject to interpretation. Accordingly, one attorney could not have testified truthfully. I note that Tabakin stated that Limsky indicated that Cummins needed a criminal attorney and accordingly, he left shortly after he arrived. In contrast, Limsky testified that after speaking with his client, he was comfortable that there was no criminal conduct on Cummins's part, offered Cummins for questioning and the questioning occurred in his presence. Limsky's belief that he, though not a criminal attorney, could handle this matter, is supported by the fact that his firm continues to represent Cummins in this matter and that Limsky only agreed to cease handling the matter himself in response to a motion to have him relieved as counsel since Hoboken deemed him a fact witness. Since whether or not there was a second session of questions is not material to my decision, I choose not to make a **FINDING** as to whether there was a second session of questioning.

LEGAL ANALYSIS AND CONCLUSIONS

The first issue that will be addressed is whether the actions of Hoboken violated Cummins's rights under National Labor Relations Board v. J. Weingarten, 420 U.S. 251 (1975). Public employees have the right to request and receive a union representative's assistance during investigatory interview if he or she reasonably believes that the

interview may lead to discipline. In re Univ. of Med. and Dentistry of N.J., 144 N.J. 511, 537 (1996); Weingarten, *supra*, 420 U.S. at 256-57. The basis for Weingarten rights, the National Labor Relations Act, 29 U.S.C.A. §§ 151-169, does not apply to state employees pursuant to 29 U.S.C.A. § 152(2), but Weingarten rights have been extended to state employees under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -13. Weingarten rights were adopted by the Public Employment Relations Commission under N.J.S.A. 34:13A-5.3, which was modeled after 29 U.S.C.A. § 159(a). The New Jersey Supreme Court has held that "the 'experience and adjudications' under the federal act may appropriately guide the interpretation of the provisions of the New Jersey statutory scheme." See Galloway Twp. Bd. of Educ. v. Galloway Twp. Ass'n of Educ. Secretaries, 78 N.J. 1, 8 (1978) (quoting Lullo v. Intern. Ass'n of Fire Fighters, 55 N.J. 409, 424 (1970)). Parallels between the New Jersey Employer-Employee Relations Act and the National Labor Relations Act were more recently confirmed in Univ. of Med. and Dentistry of N.J., *supra*, 144 N.J. at 528.

However, the Civil Service Commission has previously explained that it has no jurisdiction over claims under Weingarten, because such matters are properly before the Public Employment Relations Commission under N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-5.4. See In re DeMarzo, CSV 4930-07, Final Decision at n. 2, Civil Serv. Comm'n (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>; In re Nikiper, CSV 5463-11, Final Decision at 1, Civil Service Comm'n (May 2, 2012), <<http://njlaw.rutgers.edu/collections/oal/>>; see also In re Smalls, CSV 2839-11, Initial Decision at 7 (March 1, 2012), matter dismissed as moot, Civil Serv. Comm'n (May 16, 2012), <<http://njlaw.rutgers.edu/collections/oal/>> (explaining that a deprivation of Weingarten rights is not curable through a Civil Service Commission disciplinary appeal because the remedy which would be available for such a violation from the Public Employments Relations Commission is not available from the Civil Service Commission).

The proper course of action in a situation where an employee asserts that an appointing authority violated his Weingarten rights in connection with discipline he or she is appealing to the Civil Service Commission would appear to be the filing separately with the Public Employees Relations Commission and the Civil Service

appeal and then having the two matters consolidated. See, e.g., In re Santiago, CSV 2700-08 and PRC 4044-09 (consolidated), Initial Decision (October 1, 2009), adopted, Public Employment Relations Comm'n, (August 12, 2010), <[http://www.perc.state.nj.us/percdecisions.nsf/IssuedDecisions/85257575007C21048525776E004BAD48/\\$File/PERC%202011%204.pdf?OpenElement](http://www.perc.state.nj.us/percdecisions.nsf/IssuedDecisions/85257575007C21048525776E004BAD48/$File/PERC%202011%204.pdf?OpenElement)>² (concerning whether the employee's Weingarten rights were violated based on the allegation the a police officer was denied the right to union representation during an investigatory interview) and adopted, Civil Serv. Comm'n, (September 21, 2010), <http://njlaw.rutgers.edu/collections/oal/> (concerning whether disciplinary action was warranted under Civil Service laws).

Cummins argues that he never confessed to any wrongdoing, "[a]nd even if the City could prove that he did, as there was no taped or written statements made, the violation of [his] Weingarten rights prohibit the information from being used to discipline [him]." However, he filed no Public Employees Relations Commission complaint, and the present dispute involves only the Civil Service Commission. Therefore, since jurisdiction over the Weingarten claim is lacking in this matter, I **CONCLUDE** that Cummins's Weingarten defense is moot for purposes of these disciplinary action appeals.³

The remaining issues to be addressed are whether Hoboken established by a preponderance of the credible evidence that Cummins improperly accessed the appointing authorities' officials' emails, archived those emails, and/or forwarded those emails to any unauthorized individuals and/or if Cummins truthfully or falsely confessed to such conduct.

² The final decision from the Public Employees Relations Commission is not available from the Rutgers website or LEXIS, but is available from the Public Employees Relations Commission website.

³ Although the Weingarten issue is moot for purposes of this disciplinary action appeal, Hoboken's argument that the interview with Cummins was not investigatory because it did not expect discipline to result and had not identified a target is incredulous. At that point, Hoboken knew that the leak was coming from a computer in the IT office shared by Cummins and Ricciardi, and Hoboken officials had already contacted the FBI. Moreover, Hoboken officials had informed Reiss that Ricciardi was suspected of wrongdoing before the interviews with Ricciardi and Cummins commenced. When Ricciardi was interviewed, he denied any knowledge about the leak but indicated to Liston and Tabakin that Cummins had access to the computer. Liston and Tabakin then questioned Cummins about the leak.

Civil service employees may be disciplined for various wrongful acts including conduct unbecoming a public employee, neglect of duty, insubordination, and other sufficient cause. N.J.A.C. 4A:2-2.3(a). However, an appointing authority bears the burden of proof when it imposes major discipline including removal upon a civil service employee, N.J.A.C. 4A:2-1.4(a), and it must establish by a preponderance of the credible evidence that appellant was guilty of the charge. Atkinson v. Parsekian, 37 N.J. 143 (1982). Preponderance has been described as "the greater weight of credible evidence in the case [and] does not necessarily mean the evidence of the greater number of witnesses but means that evidence which carries the greater convincing power to our minds." State v. Lewis, 67 N.J. 47, 49 (1975). An employee maybe removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007).

The two disciplinary actions brought against Cummins in this matter are based entirely on the allegation that, on May 17, 2011, he confessed to improperly accessing City officials' emails, archiving those emails, or forwarding those emails to any unauthorized individuals. The first action, encompassed in the PNDA dated May 17, 2011, and FNDA dated October 24, 2011, alleged that he admitted to this conduct and that it constituted conduct unbecoming a public employee, misuse of public property, and other sufficient cause under N.J.A.C. 4A:2-2.3(a). The second action, encompassed in the PNDA dated June 20, 2012, and FNDA dated July 5, 2012, alleged that he had falsely confessed to those allegations, and the false confession constituted conduct unbecoming a public employee, insubordination, and neglect of duty under N.J.A.C. 4A:2-2.3(a). The alleged confession is hearsay.

Hearsay is admissible in administrative agency proceedings, subject to the "residuum rule," which mandates that the administrative decision cannot be predicated on hearsay alone. For a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal competent evidence in the record. Weston v. State, 60 N.J. 36 (1972). In assessing hearsay evidence, it should be accorded "whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability." N.J.A.C. 1:1-15.5(a).

As noted in detail in my findings, Hoboken presented no actual evidence that Cummins was responsible for the email leaks or any writing or recording which corroborates the claim that he confessed to the charged conduct. Further, Hoboken's testimony of Liston and Tabakin that Cummins "almost out of nowhere" confessed to having passwords/pass codes that he was not supposed to have; to impermissibly accessing a voluminous number of emails from password-protected email accounts of employees and elected officials; to archiving those emails to a local computer for invalid purposes; and transmitting such emails to an unauthorized third parties for approximately six months to a year, lacked credibility. In contrast, the evidence presented by Cummins regarding his questioning by Liston and Tabakin and in support of his denial that he confessed was plausible. I **CONCLUDE** that Hoboken failed to meet its burden of demonstrating, by a preponderance of the credible evidence, that Cummins is guilty of any wrongdoing in connection with the alleged email breach. I **CONCLUDE** that Hoboken failed to meet its burden of demonstrating, by a preponderance of the credible evidence, that Cummins confessed to any wrongdoing and further failed to present a residuum of legal competent evidence in the record to support the alleged hearsay confession. The sole evidence submitted, in support of the assertion that Cummins confessed, was the testimony of Liston and Tabakin, and that testimony did not provide the greater convincing power than the contrary testimony of Cummins. I further **CONCLUDE** that Hoboken failed to meet its burden of demonstrating by a preponderance of the credible evidence that Cummins falsely confessed in an attempt to deceive the City and thwart its investigation in the second disciplinary action, because the City failed to demonstrate that Cummins confessed to any improper conduct.^[1]

^[1] Although the footnote contained in the affidavit with the criminal complaint against Ricciardi claims that Cummins had falsely confessed to City employees because of his friendship with Ricciardi, Cummins denied ever stating that to the affiant. The basis relied upon by that affiant remains unclear, but the City failed to present that affiant as a witness to refute Cummins's testimony that he never told anyone that he had falsely confessed.

ORDER

It is **ORDERED** that the charges of conduct unbecoming a public employee, misuse of public property, and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a), detailed in Docket No. CSV 14319-11 be **DISMISSED**.

It is further **ORDERED** that the charges of conduct unbecoming a public employee, insubordination and neglect of duty pursuant to N.J.A.C. 4A:2-2.3(a), detailed in Docket No. CSV 10784-12 be **DISMISSED**.

It is further **ORDERED** that Cummins be reinstated to his position as agency aide and that back pay and other benefits be issued to Cummins as dictated by N.J.A.C. 4A:2-2.10.

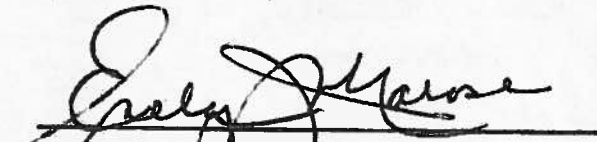
It is further **ORDERED** that counsel fees be awarded to Cummins as the prevailing party, subject to an affidavit of services and supporting documentation to Hoboken, if settlement of fees is not successful, in accordance with N.J.A.C. 4A:2-2.12.

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 the decision within forty-five (45) 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 MERIT SYSTEMS PRACTICES AND LABOR RELATIONS UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0716**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 20, 2013
DATE


EVELYN J. MAROSE, ALJ

Date Received at Agency: 5/21/13

Date Mailed to Parties: 5/21/13

kep

APPENDIX

WITNESSES

For Cummins:

Jonathan Cummins

For the City of Hoboken:

Edward Reiss

Arthur Liston

Mark Tabakin, Esq.

Diana Nieves

Merick Linsky, Esq.

EXHIBITS

For Cummins:

None

For the City of Hoboken:

- R-1 Final Notice of Disciplinary Action, dated October 24, 2011**
- R-2 Letter from Cummins to the Civil Service Commission, dated November 6, 2011**
- R-3 Preliminary Notice of Disciplinary Action, dated May 17, 2011**
- R-4 United States District Court, District of New Jersey, Criminal Complaint against Ricciardi, dated November 7, 2011**
- R-5 Preliminary Notice of Disciplinary Action, dated June 20, 2012**
- R-6 Final Notice of Disciplinary Action, dated July 5, 2012**
- R-7 Report of Tag Solutions**



A-9

CHRIS CHRISTIE
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of Appeals and Regulatory Affairs
P.O. Box 312
Trenton, New Jersey 08625-0312
Telephone: (609) 984-7140 Fax: (609) 984-0442

ROBERT M. CZECH
Chair/Chief Executive Officer

September 6, 2013

Marcia J. Tapia, Esq.
Loccke Correia Limsky & Bukosky
24 Salem St
Hackensack, NJ 07601

Melissa Longo, Esq.
City of Hoboken
Office of Corporation Counsel
94 Washington Street
Hoboken, NJ 07030

Re: *In the Matter of Jonathan Cummins, City of Hoboken, Department of Administration*, (CSC Docket No. 2012-1458 and OAL Docket No. CSV 14319-11)

Dear Ms. Tapia and Ms. Longo:

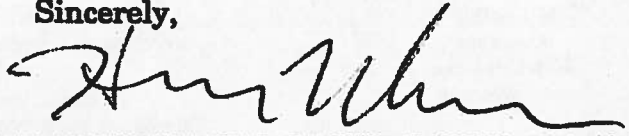
The appeal of Jonathan Cummins, a Clerk 1 with the City of Hoboken, Department of Administration, of his two removals, on charges, was before Administrative Law Judge Evelyn J. Marose., (ALJ), who rendered her initial decision on May 20, 2013, recommending reversal of the two removals. Exceptions and cross exceptions were filed by the parties.

The matter came before the Civil Service Commission (Commission) at its September 4, 2013 meeting. Currently, only four members constitute the Commission. A motion was made to adopt the ALJ's recommendation in full. Two Commission members voted for this motion while the remaining two members voted to uphold the two removals. Since there was a tie vote, the motion was defeated and no decision was rendered by the Commission. Henry M. Robert, Sarah Corbin Robert, Henry M. Robert III, William J. Evans, Daniel H. Honemann, and Thomas J. Balch, *Robert's Rules of Order, Newly Revised*, Tenth Edition, October 2000, Da Capo Press, Perseus Book Group, Chapter 2, Section 4, p. 51. Under these circumstances, the ALJ's recommended decision will be deemed adopted as the final decision in this matter. *N.J.S.A. 52:14B-10(c)*. Any further review should be pursued in a judicial forum.

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www.state.nj.us/csc

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Maurer", written in a cursive style.

Henry Maurer
Director

Attachment

c: **The Honorable Evelyn J. Marose, ALJ**
Kenneth Connolly
Joseph Gambino

RECEIVED
OCT 17 2014

SUPREME COURT OF NEW JERSEY
M-102 September Term 2014
074822

IN THE MATTER OF JONATHAN
CUMMINS, CITY OF HOBOKEN,
DEPARTMENT OF ADMINISTRATION

FILED ORDER

OCT 17 2014

Stuart Rabner
CLERK

It is ORDERED that the motion of the City of Hoboken (City) for a stay is denied without prejudice to City reapplying to the Civil Service Commission for more limited relief, including relief in the form of a stay of City's obligation to reinstate respondent to his prior position provided that such application does not also seek to stay City's obligation to pay respondent the salary associated with such position pending the Appellate Division's disposition of City's pending appeal (A-000885-13).

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 14th day of October, 2014.

The foregoing is a true copy of the original on file in my office.

Stuart Rabner
CLERK OF THE SUPREME COURT
OF NEW JERSEY

Stuart Rabner
CLERK OF THE SUPREME COURT

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