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STATE OF NEW JERSEY

In the Matter of Carlos Vega
New Jersey State Prison
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2014-3023
OAL DKT. NO. CSV 07277-14

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ISSUED: March 4, 2015 PM

The appeal of Carlos Vega, a Correction Officer Recruit with New Jersey State Prison, Department of Corrections, removal effective May 14, 2014, on charges, was heard by Administrative Law Judge Michael Antoniewicz, who rendered his initial decision on January 23, 2015. Exceptions and cross exceptions were filed on behalf of the parties.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on March 4, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

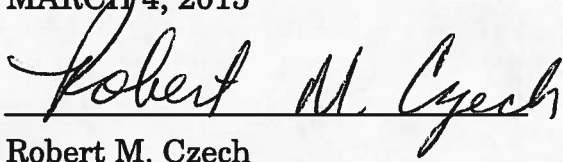
ORDER

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

Re: Carlos Vega

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
MARCH 4, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 07277-14

AGENCY DKT. NO. 2014-3023

**IN THE MATTER OF CARLOS VEGA,
NEW JERSEY STATE PRISON,
DEPARTMENT OF CORRECTIONS.**

Robert A. Fagella, Esq., for appellant Carlos Vega (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys)

Robert M. Strang, Deputy Attorney General, respondent New Jersey State
Prison (John J. Hoffman, Acting Attorney General of New Jersey,
attorney)

Record Closed: October 28, 2014

Decided: January 23, 2015

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

Carlos Vega (Vega), appellant, appeals the determination by the New Jersey State Prison, Department of Corrections (Department), respondent, that terminated appellant effective May 14, 2014. Respondent charged appellant in violation of N.J.A.C. 4A:2-2.3 with insubordination, conduct unbecoming a public employee, and other

sufficient cause. Respondent contends that the appellant's violations were severe and termination was warranted.

Appellant contends the charges are unfounded and the Department disregarded the principles of progressive discipline and imposed an excessive penalty for the conduct that occurred. Appellant seeks immediate reinstatement.

PROCEDURAL HISTORY

On March 20, 2014, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) against appellant, charging appellant with insubordination, conduct unbecoming a public employee, and other sufficient cause. The PNDA described the incidents giving rise to the charges during a March 7, 2014, taped interview conducted by SID investigators. Specifically, COR Vega refused to meaningfully respond to each and every question that asked for an account of his observations of the acts of others during the mess hall disturbance of February 14, 2014. COR Vega was directly ordered to provide those investigators with complete and honest answers by his superior officer Major Sanderson and COR Vega disobeyed that lawful order. It is alleged by the respondent that Vega's refusal to follow a direct order and cooperate with an investigation is unacceptable conduct for a sworn law enforcement officer. A disciplinary hearing was held on March 24, 2014. The decision was rendered recommending suspension without pay.

Respondent issued a Final Notice of Disciplinary Action (FNDA), dated May 14, 2014, upholding all charges and incidents. Appellant was terminated effective May 14, 2014. On or about June 2, 2014, appellant appealed his suspension to the Civil Service Commission (Commission). The Commission, Division of Appeals and Regulatory Affairs, transmitted the within matter to the Office of Administrative Law, where it was filed on June 12, 2014, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. This matter was assigned to the undersigned and prehearing status conference was held on July 17, 2014, where the nature of proceedings and issues to be resolved were determined. Hearings were held

by this tribunal on October 6 and 7, 2014. Counsel's post-hearing briefs were received at the OAL on or before October 28, 2014, at which time the record closed.

An extension was requested and granted for the issuance of an Initial Decision because of a voluminous caseload, extending the time for filing the initial decision until January 26, 2015.

ISSUES

Is appellant guilty of one or more of the charges in the FNDA of:

Violation of Civil Service Rules N.J.A.C. 4A:2-2.3(a):

- (2) insubordination;
- (6) conduct unbecoming a public employee; and
- (12) other sufficient cause.

If so, is removal the appropriate disciplinary action warranted under the circumstances? Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

SUMMARY OF TESTIMONY

Investigator William Whittaker

William Whittaker (Whittaker) is an investigator with the New Jersey State Prison system. On March 7, 2014, Whittaker was present when a taped interview was conducted with Officer Vega. As a result of an incident which occurred on February 14, 2014, in the mess hall, Vega wrote a Special Custody Report. It was Whittaker's opinion that the information in the report was insufficient, as there was lots of information not included in the report. The report was required to have as much information as possible.

The incident that occurred was the result of two inmates assaulting another inmate. Correction officers then entered the mess hall. After some time, the general

prison population became aggressive and the correction officers left the mess hall.

Whittaker looked at the report of COR Hannemann (R-2), which contained information beyond what was done by him alone. This report was more descriptive of the February 14, 2014, incident (unlike that created by Vega). In addition, the Special Custody Report created by Sgt. Readon (R-3) also contained information beyond the scope what Readon did himself. These types of reports are far more useful to the investigators.

Whittaker testified that Vega did not answer questions; that when the interview was concluded, Vega was ordered to answer the investigators' questions; that Vega failed to cooperate with the interview; and that Vega left out details of the incident to the investigators.

Whittaker felt that Vega created a breach of duty because his report should include his observation of others. It was Vega's position that all he had to report was what he did. According to Whittaker, the account lacked information such as who ordered the action, the actions of Vega, and the actions of others.

On cross-examination, Whittaker admitted that he had no authority over Vega and had no right to bring any disciplinary charges against Vega. Whittaker was merely a fact-finder. It was Whittaker's position that correction officers are paid to observe things. Whittaker described Vega's report as grossly inadequate as it contained only thirty-six words. Whittaker did not believe that he was badgering Vega in the interview. Whittaker admitted on cross that many other correction officers' reports were inadequate. Whittaker did not interview any of the other witnesses and thus was unable to say if other witnesses filled in gaps in their reports through testimony. On redirect, Whittaker found reports P-14 and P-15 to contain more information and thus to be more helpful.

Major Wayne Sanderson

Major Wayne Sanderson (Sanderson) has worked for the New Jersey State Prison system for nearly twenty-five years. He was aware that CO Vega was interviewed on March 7, 2014, by Investigator Whittaker and Investigator Dolce. Approximately forty-five minutes into the interview, Sanderson issued an order to Vega for him to cooperate. The order was to have Vega provide full and complete answers to the questions. Sanderson did not believe that Vega was compliant with his order. Sanderson believed that many of the questions could be answered "yes" or "no" and Vega did not provide such answers. Sanderson also believed that Vega did not provide full disclosure and was evasive. Sanderson testified that Vega did not obey his order and thus he was insubordinate.

As part of the Internal Management Procedure, the staff was required to work cooperatively, which Vega did not do. Staff was required to follow all orders issued by authority, and Vega did not do this. Law Enforcement Rule and Regulations required CO Vega to obey any lawful orders and this was also not done. It further requires an officer not to withhold any information on such matters for any reason.

On cross-examination, Sanderson stated that he did not know Vega and had no problems with him. Sanderson confirmed that a SID cannot give orders. Sanderson was advised that Vega was not giving detail to his answers. Sanderson then looked at the taped interview some time later. He felt that Vega was not providing answers and instead he just kept referring to his report. Sanderson felt that Vega was asked clear questions and Vega provided unresponsive answers.

On redirect, Sanderson believed that Vega understood the question because Vega generally did not ask to rephrase the question. Referring to his report over and over again is not answering the question.

Investigator Raphael Dolce

Investigator Raphael Dolce (Dolce) was an investigator for the New Jersey Prison System since April 2005. Dolce participated in the investigation of the incident which occurred in the mess hall on February 14, 2014. It happened at the West Compound, in the Mess Hall. At that time there was a Code 33, which is a general emergency. The correction officers assembled at the Sally Port Gate. Force was used by the correction officers after they entered the mess hall and the investigators needed to know why. It appeared as though an officer used his baton. Several officers went to the left, including Vega. Because all of the correction officers were wearing masks, they could not clearly identify each officer. The incident nearly caused a riot. It was a very serious event. Force was used against the victim of the assault by other inmates, but it was not determined why. The officers were stacked (one in front of the other) as they entered the mess hall. It was Dolce's position that the officers should have seen what was going on when they entered the mess hall.

In several of the interviews, Dolce assisted Whittaker. Dolce found that Vega would answer questions not asked. The interviewers relied on a written report by Vega that had no information in it. They wanted to know if Vega, or someone he saw, acted improperly. It seemed that Vega was unwilling to give up information.

Dolce was surprised at the non-cooperation of Vega, since he was still a recruit. Recruits know the rules and must complete a one-year test period and thus are usually forthright in giving information. Dolce stated that the other interviews with correction officers were acceptable. Dolce testified that Vega was uncooperative in his interview. In fact, Sanderson had to come into the interview to order Vega to cooperate.

In his cross-examination, Dolce stated that he was an investigator since 2005, spent one year on a Special Response Team, and about ten years as a uniformed correction officer. Dolce's training was attending the academy for nineteen weeks and numerous other trainings, including gang training, interviewing, court testimony, etc. Dolce also received training in interviewing techniques. Dolce stated that he was familiar with the Attorney General Guidelines, which he stated applies to law

enforcement officers, but the Department does not follow these guidelines. The Department follows their own guidelines, entitled Internal Procedures.

When they were doing the investigation, they had no idea if the acts were criminal or not. If there is a use of force, a use of force report is required. Dolce stated that Whittaker decided which witnesses will be interviewed. Whittaker also decided the order of witnesses. Dolce only sat in on interviews when asked to do so. Dolce stated that he is only in the interviews for fact finding and that he had no authority for discipline. Dolce stated that he would not bully a witness nor be sarcastic. It was Dolce's position that Vega did not fully answer questions. That is, Vega's answers were couched and framed.

Dolce's position was that Vega's report was insufficient. Dolce also believed that many of the other reports written by other officers were insufficient. (P-2 through P-9, P-11 through P-15.) Dolce believed that Vega was not telling the full story, because Vega should have known who the supervisors were. Vega's statement that a report should contain everything he did and that was what he was taught to do could not be accurate because Dolce knows what was taught and Vega's statement was incorrect. What correction officers are taught to include in their reports are what they hear, feel, and say. Dolce stated that Vega's response, "Sir I did not see anything" is not an acceptable answer because something is always seen. Dolce believed that Vega was giving false answers.

Dolce also believed that Vega was misrepresenting when he said that he did not use any force, yet he stated that he "attempted to secure the victim's head." Dolce stated that Vega's answer that he did not know how long the victim was on the ground was unacceptable. Vega also stated that he could not recall whether that victim was compliant. Dolce defined insubordination as the deliberate refusal to follow an order.

Correction Officer Carlos Vega

Carlos Vega (Vega) was employed as a correction officer for the Department beginning 2013. Vega took a course in report writing for approximately a day/day and a

half. It was Vega's belief that what was required of him to put in his report was to include any observation he saw that was out of the ordinary or any misconduct. Vega stated that he did not see any force being used by correction officers. Vega further stated that he was attempting to secure the head of the inmate but that he was not successful. Vega testified that he did not handle the inmate and did not witness any use of force. It was Vega's belief that his report was fine as written.

Vega's work assignment was from 2:00 p.m. to 10:00 p.m. During his work term, there was a Code 33, which was a general emergency. There was an announcement that the emergency was in the mess hall. Vega was required to suit up and put on riot gear which consisted of a vest, helmet, and baton. Vega described the environment as chaotic. Vega and other correction officers gathered near the center gate. Vega stated that he was standing for one to two minutes until the time that he and the other officers went into the mess hall. Vega said that he was not given an assignment. The officers were stacked up (closely following one another) as they entered the hall. Vega claimed that he had poor vision due to wearing a helmet. As Vega entered the hall, he went to the left side and proceeded ten to fifteen feet.

Vega stated that he did not see the video, nor was he offered a chance to see the video prior to his interview. Vega testified that he did not know what was going on other than someone (an inmate) was on the floor. At that point, Vega was trying to secure the inmate's head. When Vega got to the inmate, the inmate was already down. Vega stated that he was unsure if the inmate's limbs were secure. Vega stated that he had a baton in one hand. The inmate was on the ground for five to ten seconds. Vega said that he had a fear for his safety. Vega knew that there were 200-300 inmates in the mess hall.

At this point, the supervisor directed the officers to get out of the mess hall. Vega cannot recall who the supervisor was that gave that order. Vega also did not know who was on his team that entered the hall. Thereafter, Vega stood out of the mess hall with ten to fifteen officers. Vega learned the name of the inmate (Smart) after the incident. Vega did not see if the inmate was injured. Vega did not see Smart's face when he was in the hall. It was Vega's position that he did not use force when he was in the mess

hall. Vega admitted that he could have described his actions more clearly in his report.

After the incident, Vega was asked to be interviewed by SIDs Dolce and Whittaker. When one of the interviewers told him to "start recalling," he was surprised. Vega was unsure why the interviewer said that. From the look on Dolce's face, Vega believed that it was a personal issue. Vega described Dolce as having a menacing look on his face. Vega said that he was not trying to get anyone angry and answered the questions. Vega believed that the best answer he could give was referring to his full and complete report. Vega testified that he never said that he would not answer a question; he believed that he was responsive. Vega was unsure as to who the shield officer was. Vega testified that he did not see any physical force on the inmate. Vega stated that he was unable to tell Dolce what the other team members were doing. Vega did not see the inmate pushed by a shield.

When Vega was told that he had memory lapses, he took that to mean that he was lying. Vega admitted that he could have been more articulate. Vega recalled that the incident felt like it took seconds. Vega stated that he never made contact with the inmate's head and thus it could not have been the use of force. It was Vega's position that he did not leave facts out of the report. Vega believed that his report was complete and accurate.

After Sanderson came into the room and ordered Vega to cooperate, Dolce asked the same questions. Vega believed that Dolce was badgering him. Vega stated that he became frustrated during the interview. Vega had to answer the same questions over and over again. Vega stated that he believed that every answer he gave was responsive.

On cross-examination, Vega stated that he had no interrogation training. However, he had his correction officer training in Sea Girt, New Jersey and was told that his reports should contain the facts as to what he did and only observations as to what he observed was out of the ordinary.

Vega stated that he was three or four out of five members of the team. Vega stated that he did not make any contact with the inmate. Vega also stated that he did not refer to his report often. It was Vega's position that referring to his report was an adequate answer to many of the questions. There were times he answered a question by saying, "I can only tell you what I did." In response to the question, "Does your report include all facts relative to that incident?" Vega stated, "Everything that I did sir, yes." In addition, Vega was then asked, "Does that report detail all of the facts regarding the incident?" Vega responded, "As far as what I did." Vega continued to respond to questions limiting his responses to what he did and no reference to what other officers did.

On redirect, Vega maintained that a report should include everything he did only and nothing else should be in the report. Vega maintained that he did not leave anything out of his report. Vega testified that he did not have any other information. Vega stated that he was not charged with writing an inadequate report.

FINDINGS OF FACT

Based on the documentary and testimonial evidence presented, and having had the opportunity to observe the demeanor of the witnesses and to assess credibility, I **FIND** the following **FACTS**:

1. Appellant, Carlos Vega, was employed as a correction officer by the New Jersey Department of Corrections in 2013.
2. On February 14, 2014, a general alarm sounded at the New Jersey State Prison as a result of a fight in the mess hall in that prison.
3. Correction Officer Vega was a member of the response team who gathered outside the mess hall and entered the mess hall in order to stop the fight in the hall.

4. The fight was captured on video and showed that some actions were taken by correction officers against the inmate who was the victim of the fight.
5. An investigation occurred afterwards whereby many officers were questioned, including Officer Vega.
6. During his interview, Officer Vega failed to cooperate with the investigators by failing to fully and properly answer the questions presented to him.
7. As a result of his non-cooperation, Major Sanderson entered the interview and ordered Vega to cooperate and give complete and honest answers to the questions presented to him by the investigators.
8. Even after receiving the order to cooperate from a superior officer, Vega continued to be uncooperative and failed to fully answer the questions asked of him.
9. As done prior to the order to cooperate, Vega continued to "answer" questions by simply referring to his bare-bones report which contained little or no useful information regarding the February 14, 2014, fight in the mess hall.
10. As a result of Vega's actions, his interview resulted in no useful information regarding the fight of February 14, 2014, in the mess hall.
11. Vega received a PNDA dated March 20, 2014, with the following charges: insubordination; conduct unbecoming an employee and other sufficient cause. (J-3.)
12. Appellant received a FNDA, dated May 14, 2014, terminating him as a correction officer. (J-5).

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Credibility Determinations

In assessing a witness's credibility, an Administrative Law Judge must consider his/her testimony in "light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder may reject a witness's testimony "when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958) (rejecting testimony "inconsistent with other testimony or with common experience" or "overborne by other testimony."); D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). An ALJ may consider the "interest, motive, bias, or prejudice of a witness" but "where such choice is reasonably made, it is conclusive on appeal." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952); Renan Realty Corp. v. State, Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

In the instant matter, there was conflicting testimony between appellant and the respondent's witnesses. Appellant maintains that he was cooperative and truthful in answering questions in the interview. Although he claims in his testimony that he did not refer to his report often during the interview, the record of the interview shows otherwise. Most of the appellant's testimony attempted to explain away his actions when not directly admitting to them. Vega's explanation when compared to the taped interview shows that his testimony lacked credibility.

Applicable Standard

The New Jersey Civil Service Law protects classified employees from arbitrary dismissal and other onerous sanctions. Prosecutor's Detectives and Investigators Ass'n v. Hudson County Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). The law

provides relief to civil service employees from public employers who may attempt to deprive them of their rights. Prosecutor's, supra, 130 N.J. Super. at 41. To this end, the law is liberally construed. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). Consistent with this policy of civil service law, there is a requirement that in order for a public employee to be fined, suspended or removed, the employer must show just cause for its proposed action. The Merit System Board is charged with the duty of ensuring that the reasons supporting disciplinary action are sufficient and not arbitrary, frivolous, or "likely to subvert the basic aim of the civil service program." Prosecutor's, supra, 130 N.J. Super. at 42 (quoting Kennedy v. Newark, 178 N.J. 190 (1959)).

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including insubordination and the failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a) and (11). A civil service employee who commits a wrongful act related to his duties may be also subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

In disciplinary cases the appointing authority has both the burden of persuasion and production and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the employee and lodge the charges. See Coleman v. E. Jersey State Prison, CSV 1571-03, Initial Decision (February 25, 2004), adopted, Comm'r (April 13, 2004), <<http://njlaw.rutgers.edu/collections/oal/final/csv1571-03.pdf>> (citations omitted); see also N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971); N.J.S.A. 11A:2-6(a) (2), -21; N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. A preponderance of evidence has been defined as that which "generates belief that the tendered hypothesis is in all human likelihood the fact." Martinez v. Jersey City Police Dep't, CSV 7553-02,

Initial Decision (October 27, 2003), <<http://njlaw.rutgers.edu/collections/oal/>> (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)).

Based on testimonial and documentary evidence presented, in regard to charges creating violations of N.J.A.C. 4A:2-2.3(a), I **CONCLUDE** that Vega was extremely uncooperative in the interview even in light of his commanding officer's clear and direct order to fully cooperate in the interview and to provide full and honest answers to the interviewers' questions. Vega's repetitive reliance on his report not only contained little useful information but the report also did not contain information necessary to be complete. The fact that many other reports written by other correction officers were also as poorly written as Vega's is of no consequence because Vega was not charged with writing a poor report and I have no way of knowing if the other officers' answers in the subsequent interviews were the same as that of Vega. In addition, I have no idea if these other officers were charged with similar charges as Vega. This is a plenary hearing and must rise or fall based on the facts presented.

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(2), appellant did engage in insubordination. Although the New Jersey Administrative Code definitions, N.J.A.C. 4A:1-1.3, does not provide a definition for insubordination, case law generally interprets the term to mean the refusal to obey an order of a supervisor. See, e.g., Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982); Millan v. Morris View, 177 N.J. Super. 620 (App. Div. 1981); Rivell v. Civil Service Comm'n, 115 N.J. Super. 64 (App. Div. 1971), certif. denied, 59 N.J. 269 (1971). According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Stanziale v. County of Monmouth Bd. of Health and Merit Sys. Bd., 350 N.J. Super. 414 (App. Div. 2002), certif. denied, 174 N.J. 361 (2002). In In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit System Board (December 18, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to complete an assignment. The Administrative Law Judge found that appellant's employment history evidenced a pattern of refusal to accept supervision and disrespect for those who attempted to supervise him and upheld appellant's removal.

In the within matter, appellant clearly did not follow the direct orders of Major Sanderson regarding his cooperation in the post-incident interview. Appellant did not change his behavior in the interview. Instead, evidence shows that appellant simply repeated his evasiveness and his failure to cooperate in the investigation by failing to provide full, complete, and honest answers. I, therefore, **CONCLUDE** that the charge of insubordination should be upheld.

It is clear, as in the above-mentioned cases, that appellant's conduct was unbecoming an employee. Even prior to the Major's direct and clear order, Vega was uncooperative and clearly barring an important investigation. To see this type of behavior in a rather new recruit is somewhat disturbing, where correction officers should be fully cooperative during investigations. "A police officer is a special kind of public employee. His primary duty is to enforce and uphold the law He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have respect of the public." Twp. of Morestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). I, therefore, **CONCLUDE** that charge of appellant's conduct was unbecoming an employee should be sustained.

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(6), appellant did engage in conduct unbecoming a public employee. There is no precise definition for conduct unbecoming a public employee and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <<http://njlaw.rutgers.edu/collections/oal/>>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit System Board (June 26, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. Unbecoming conduct is not precisely defined in N.J.S.A. 11A or N.J.A.C. 4A; see, e.g., In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a

racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase “unbecoming conduct” is an “elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services.” Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), it was stated that a finding of misconduct need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior, which devolves upon one who stands in the public eye as an upholder of that, which is morally and legally correct.”

In the within matter, appellant stonewalled the investigators in an important investigation of a serious and violent episode in New Jersey State Prison. Vega failed to fully cooperate throughout his interview. Accordingly, there is sufficient evidence in the record to support the charge of conduct unbecoming a public employee, and I, therefore, **CONCLUDE** that the charge of conduct unbecoming a public employee should be sustained.

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(12), respondent did not provide a basis for the other sufficient cause listed on the FNDA. There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against appellant. The charge of other sufficient cause has been dismissed when “respondent has not given any substance to the allegation.” Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm’r (April 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>>. The FNDA fails to provide details regarding “other sufficient causes”. I, therefore, **CONCLUDE** that respondent has not proven by any competent and credible evidence that appellant was suspended for other sufficient cause and that the charge of other sufficient cause should be dismissed.

Appropriateness of Penalty

If sufficient cause is established, then a determination must be made on what is a reasonable penalty. In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in Bock, supra, 38 N.J. 500. In Bock, the Court found the six-month suspension of a town fireman, on charges of being tardy three times in the previous four weeks, was a proper penalty. Furthermore, Bock explains an appropriate remedy should be related to the employee's past record including service ratings, promotions, commendations, and "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated by having been called to employee's attention or admitted by him." Id. at 186.

In the instant matter, appellant's history of previous disciplinary actions during his short term of employment is of no consequence. The severity of the infractions must also be balanced against "whether removal or something less is appropriate under the circumstances." In re Figueroa, CSV 3819-01, Initial Decision (October 10, 2003), <http://njlaw.rutgers.edu/collections/oal/>; see Henry, supra, 81 N.J. at 580. Progressive discipline may be "bypassed when an employee engages in severe misconduct," especially where the offense involves "public safety" and risks "harm to persons or property." In re Herman, 192 N.J. 19, 33-34 (2007). In assessing penalties, "[t]he overriding concern" is the "public good." George v. N. Princeton Developmental Ctr., 49 N.J.A.R.2d (CSV) 463, 465. Also, "where the underlying conduct is of an egregious nature," an individual may be removed regardless of disciplinary history. In re Glenn, CSV 5051-03, Initial Decision (May 23, 2005), <http://njlaw.rutgers.edu/collections/oal/>; see Henry, supra, 81 N.J. at 571.

Regarding the penalty of termination, respondent contends the penalty imposed is proper due to the extremely serious nature of the offenses. I agree. Although appellant has not received any prior minor disciplinary actions, major discipline is warranted as appellant has demonstrated a refusal to cooperate in a serious investigation and a refusal to obey a direct and reasonable order directly from a

superior. Some infractions are so serious that termination is warranted. In re Carter, 191 N.J. 474, 484 (2007) (citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993)). I, therefore, **CONCLUDE** that appellant's termination is an appropriate penalty for the conduct that occurred.

ORDER

It is hereby **ORDERED** that appellant's termination, effective May 14, 2014, is **UPHELD**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

January 23, 2015

DATE

Date Received at Agency:

Date Mailed to Parties:

jb

JAN 26 2015

MICHAEL ANTONIEWICZ, ALJ

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

LIST OF WITNESSES

For Appellant:

Carlos Vega

For Respondent:

William Whittaker

Major Wayne Sanderson

Raphael Dolce

LIST OF EXHIBITS IN EVIDENCE

Joint

J-1 DVD of incident of February 14, 2014

J-2 DVD of interview of Vega, dated March 7, 2014

J-2a Transcript of audio-taped transcript of interview of Officer Carlos Vega, dated March 7, 2014

J-3 Preliminary Notice of Disciplinary Action, dated March 20, 2014

J-4 Loudermill Hearing, Decision of Informal Pre-Termination Hearing, (date of hearing March 24, 2014)

J-5 Final Notice of Disciplinary Action, dated May 14, 2014

J-6 Department of Corrections, Disciplinary Action Policy

For Appellant:

P-1 Special Custody Report of Carlos Vega dated February 14, 2014

P-2 Special Custody Report of A. Houghton dated February 14, 2014

P-3 Special Custody Report of J. Seiler dated February 14, 2014

P-4 Special Custody Report of Shawn Smith dated February 14, 2014

P-5 Special Custody Report of J. Berger dated February 14, 2014

P-6 Special Custody Report of M. Karaba dated February 14, 2014

- P-7 Special Custody Report of R. Daniel dated February 14, 2014
- P-8 Special Custody Report of R. Remy dated February 14, 2014
- P-9 Special Custody Report of D. Thompson dated February 14, 2014
- P-10 Special Custody Report of K. Morelli dated February 14, 2014
- P-11 Special Custody Report of B. Lohr dated February 14, 2014
- P-12 Special Custody Report of R. Hebel dated February 14, 2014
- P-13 Special Custody Report of C. Jensen dated February 14, 2014
- P-14 Special Custody Report of S. Pazik dated February 14, 2014
- P-15 Special Custody Report of N. Dattoli dated February 14, 2014
- P-16 Internal Management procedure, effective June 2008

For Respondent:

- R-1 Special Custody Report of C. Vega dated February 14, 2014
- R-2 Special Custody Report of R. Hannemann dated February 14, 2014
- R-3 Special Custody Report of J. Reardon dated February 14, 2014
- R-4 Administrative Investigation Report by William Whittaker
- R-5 Internal Management Procedure document, effective June 2008
- R-6 Law Enforcement Personnel Rules and regulations