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STATE OF NEW JERSEY

In the Matter of Gerard Eatman
City of Newark,
Police Department

CSC DKT. NO. 2008-2331
OAL DKT. NO. CSV 09544-09
(ON REMAND CSV 01457-08)

DECISION OF THE CIVIL SERVICE COMMISSION

ISSUED: September 16, 2015 BW

The appeal of Gerard Eatman, Police Officer, City of Newark, Police Department, removal effective October 19, 2007, on charges, was heard by Administrative Law Judge Richard McGill, who rendered his initial decision on May 7, 2015. No exceptions were filed.

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 September 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield,* 282 N.J. *Super.* 121,128 (App. Div. 1995): *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections,* unpublished, Docket No. A-5581-01T2F (App. Div. Feb.

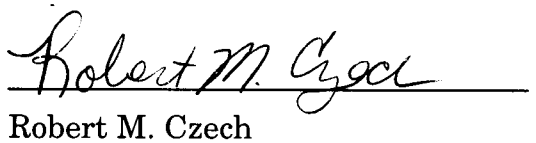
26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. However, in the interim, as the court states in *Phillips, supra,* if it has not already done so, upon receipt of this decision, the appointing authority shall reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modified the removal to a 60 working day suspension. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. It is noted that the appellant is not entitled to back pay for any period of time he was disabled from work. *See N.J.A.C* 4A:2-2.10(d)9. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
SEPTEMBER 16, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 09544-09
AGENCY DKT. NO. 2008-2331
(Remand of CSV 01457-08)

IN THE MATTER OF GERARD EATMAN,
CITY OF NEWARK.

Darryl M. Saunders, Esq., for Gerard Eatman

Michael A. Oppici, Assistant Corporation Counsel, for City of Newark

Record Closed: March 6, 2014 Decided: May 7, 2015

BEFORE **RICHARD McGILL**, ALJ:

Gerard Eatman ("appellant") appeals from a removal on charges from the position of Police Officer with the Police Department of the City of Newark ("respondent"). The charges in this matter relate to a situation in which appellant allegedly was employed teaching martial arts classes while on sick leave.

The first charge alleges that appellant violated of a provision in the Newark Police Department ("NPD") Rules and Regulations entitled "Conduct in Public and Private," which requires a police officer to avoid impugning the reputation of the NPD.

A related charge is conduct unbecoming a public employee. The specification states in essence that appellant participated in teaching martial arts classes at Essex County College while on sick leave. Additionally, appellant left the state of New Jersey to coordinate a martial arts tournament in Maryland.

The second charge alleges that appellant engaged in malingering in violation of a provision of the NPD Rules and Regulations. The specifications are the similar to those for the first charge.

The third charge alleges that appellant made false statements in violation of a provision of the NPD Rules and Regulations which states that a police officer shall not falsify any official record or report. The specifications allege that appellant made three false statements in the course of the investigation that led to the charges in this matter.

The fourth charge alleges that appellant violated provisions of the NPD Rules and Regulations entitled Disobedience of Orders. The specifications state that appellant disobeyed a lawful order in regard to outside employment in two respects.

Appellant denies the charges. Appellant seeks dismissal of the charges and restoration to the position of Police Officer.

PROCEDURAL HISTORY

Respondent notified appellant of the charges by Preliminary Notice of Disciplinary Action dated November 1, 2007. Thereafter, respondent advised appellant by Final Notice of Disciplinary Action dated November 13, 2007, that the charges were sustained and that the disciplinary action was removal.

Appellant requested a hearing on December 14, 2007, and the matter was transmitted to the Office of Administrative Law on January 28, 2008, for determination as a contested case. Prior to hearing, the parties agreed to a settlement, which was

approved by the undersigned on May 5, 2009. The settlement envisioned that appellant would receive a pension. By letter dated July 27, 2009, appellant advised the Civil Service Commission that his application for a pension had been denied, and he requested that the matter be referred back to the Office of Administrative Law for a hearing. By Order dated August 7, 2009, the Civil Service Commission remanded the matter to the Office of Administrative Law.

Hearings were conducted on January 28, 2013, November 26, 2013, and December 27, 2013, at the Office of Administrative Law in Newark, New Jersey. The record closed on March 6, 2014, upon receipt of written summations.

ISSUES

The issues in this proceeding are whether the charges should be sustained and, if so, whether removal is the appropriate disciplinary action.

SUMMARY OF EVIDENCE

A. Respondent's Witnesses

1. William Perez

William Perez was employed by respondent as a lieutenant in the NPD's Anti-Corruption Division until his retirement on April 1, 2012. Lt. Perez held the rank of sergeant in 2007, when he was assigned to investigate appellant based upon information that he was employed while booked off sick and possibly malingering.

A police officer must submit a form to request approval of outside employment. As set forth in General Order 67-5 (revised) dated December 2, 2003, no outside employment is authorized until the request form is returned to the Department member

with approval from the Chief of Police. Additionally, a police officer is not allowed to work while booked off long-term sick.

On or about August 24, 2007, Lt. Perez reviewed appellant's file and determined that he went off sick on February 3, 2007, as the result of a work-related injury. Appellant did not have a request or an approval for outside employment in his file. Appellant also did not have a request for an exception to the prohibition against outside employment while booked off long-term sick.

On September 18, 2007, Lt. Perez responded to Essex County College, where a representative advised him that appellant was employed there as a karate instructor for children. Appellant had worked in that capacity for approximately three years. Records from Essex County College showed that appellant was employed for the spring 2007 term from January 20, 2007, to March 24, 2007. Further, appellant was employed for the fall 2007 term from September 22, 2007, to December 1, 2007. In each term, appellant was paid at a rate of $33 per hour for thirty hours for a total of $990. This meant that appellant had outside employment, and the nature of his work suggested that he was engaging in activities that were inconsistent with his claimed injuries.

On September 22, 2007, an undercover unit was sent to Essex County College to create a videotape of appellant conducting a karate class. The undercover unit included Lt. Antonio Domingues and Lt. Derek White, and they observed appellant bending, stretching and instructing in the gymnasium. The unit was unable to make a video recording on that occasion.

Lt. White led an undercover unit from the Essex County Prosecutor's Office to Essex County College on September 29, 2007, to videotape appellant. The video recording was viewed at the hearing. According to Lt. Perez, the video recording corroborated that appellant was teaching a class and performing some type of martial arts at Essex County College. Those circumstances amounted to disobedience of an order in that appellant did not have approval for outside employment. Additionally,

appellant accepted outside employment while he was booked off long-term sick. Outside employment is prohibited under those circumstances.

Lt. Perez reviewed reports from Dr. Antonio Ciccone and Kinematic Consultants, Inc. ("Kinematic"), which performed a functional capacity evaluation and work ability assessment. The Kinematic report dated August 14, 2007, states that appellant made a sub-maximal effort, which indicated that appellant was malingering.

Lt. Perez acknowledged that Dr. Ciccone completed a form in which he stated that appellant demonstrated the ability to perform light duty. According to the form, this would include administrative duties, interviewing witnesses of accidents, directing traffic temporarily around accident scenes and work areas, public relations work and handling loads up to twenty pounds.

Lt. Perez interviewed appellant on October 19, 2007. According to Lt. Perez, appellant described his level of pain as eight out of ten, and he said that his whole body hurts. When asked what changes he has made, appellant stated that he has not done any heavy lifting, running or judo. Appellant stated that he has not done exercise or judo since February 3, 2007. This is the date when appellant booked off sick. According to Lt. Perez, this was clearly a false statement. Appellant admitted that he teaches martial arts at the Essex County College.

At one point, appellant attended a karate tournament in Maryland. In the opinion of Lt. Perez, the level of pain that was claimed by appellant was inconsistent with the activity of teaching a class in martial arts and attending a karate tournament in Maryland. Lt. Perez acknowledged that judo and karate are two different martial arts.

2. Joseph Johnson

Joseph Johnson testified that he is employed by the Millburn Police Department as a detective and that he was assigned to the Essex County Prosecutor's Office.

While so assigned, Detective Johnson was asked to perform a surveillance of appellant at Essex County College with a hidden camera. On the hearing date, Detective Johnson viewed the video recording of the surveillance, and he stated that the video recording accurately reflected his observations during the surveillance.

3. Antonio Domingues

Antonio Domingues is currently employed by the NPD as a lieutenant. In 2007, he was a sergeant assigned to the Anti-Corruption Unit, which deals with corruption and fraud within the NPD. In September 2007, Lt. Domingues was asked to investigate appellant, because he was working at Essex County College while booked off sick. Police officers who book off long-term sick are not permitted to have outside employment. There are no exceptions to this rule.

Lt. Domingues and Lt. Derek White were instructed to respond to Essex County College, observe appellant and, if possible, videotape him. On September 22, 2007, Lt. Domingues observed appellant at Essex County College teaching a karate class. The situation was not conducive to videotaping, but Lt. Domingues and Lt. White observed appellant instructing younger children. Later in the morning, appellant was observed instructing a class for older children. Lt. Domingues observed appellant bending over, stretching, walking around and generally instructing a class for older children. Lt. Domingues reported his observations to Lt. Perez and completed a written report dated September 24, 2007.

Lt. Domingues was also present when Lt. Perez interviewed appellant on October 19, 2007. When asked about his pain level, appellant said that it was eight on a scale from one to ten. Appellant initially said that he was not working. When specifically asked about Essex County College, appellant said that he was present but that he was instructing another person who was actually teaching the class. Lt. Domingues did not observe appellant directing another instructor in the class on September 22, 2007. Appellant was the only instructor for the class. The interview

occurred approximately a month after Lt. Domingues' observation of appellant. At the time of the interview, appellant did not appear to be in pain.

4. Derek White

Derek White is employed by the NPD, and he currently holds the rank of lieutenant. In August 2007, Lt. White was assigned to the Anti-Corruption Unit, which is like an Internal Affairs unit. The Anti-Corruption Unit investigates alleged wrongdoing by police officers.

Lt. White was assigned to conduct an investigation in regard to appellant. The first step was to determine whether appellant was teaching at Essex County College. The classes were held on Saturday mornings. Lt. White and Lt. Domingues went to Essex County College on a Saturday morning and observed appellant in the class doing minor stretching exercises.

Lt. White was aware that appellant had been injured and that he booked off sick. A police officer who is booked off long-term sick is not allowed to work while off duty. Lt. White is not aware of any exception to this rule.

5. Video Recordings

Respondent presented two video recordings as exhibits in this proceeding. On September 29, 2007, a video recording was made of appellant in a karate class at Essex County College. On October 19, 2007, a video recording was made of the interview of appellant.

The video recording from September 29, 2007, is in three segments and shows appellant and an assistant with two groups of children. There is no audio component. The first group is comprised of children from six to nine years of age. These young children used sword-like objects and shields. The small children handled the sword-like

objects easily, indicating that they were very light. For the most part, appellant stands upright or walks slowly, seemingly giving verbal instructions. On a few occasions, appellant bent over to help children with equipment such as head gear. Appellant demonstrated a bow, which was not at all deep. Appellant pointed at times, but his hands were not above his shoulders. Appellant was often stationary, while his assistant moved around the room. Appellant generally looked stiff.

In the second segment, a group of children from ten to fifteen years of age entered the room. Appellant sat for an extended period of time, while his assistant led the children in exercises. Appellant then demonstrated sword technique. Appellant's movements were mostly slow and deliberate, but he did raise his hands above his head on a few occasions.

In the third segment with the same group of children, appellant is seen walking slowly and sitting. The ease and fluidity of the assistant's movements in comparison to appellant were striking. Appellant then stood in front of the class and, while giving verbal instructions, demonstrated hand movements. All of the movements were below appellant's shoulders. Appellant then went to the children individually and adjusted their hand positions. At no time did appellant engage in any striking or falling to the floor.

A videotape was made of a statement taken from appellant on October 19, 2007. Appellant stated that on February 3, 2007, he injured his neck, shoulders, back and hip. His pain level was eight on a scale from one to ten, and he was taking medication. Appellant stated that he cannot do any bending or heavy lifting. As a result of the injuries, appellant stopped doing judo and other martial arts. Appellant cannot work out the way that he wants, and he cannot swim or play golf. Appellant can raise his arms to approximately parallel to the floor. Appellant can do a little training at home or at the school. The pain has not gotten any better. Appellant returned to work on light duty in October 2007.

Appellant further stated that he is an instructor at Essex County College and that he receives a salary. Appellant did not submit a form for approval, and he did not tell anyone at the NPD. The form would be for security-type jobs.

Appellant said that he does not demonstrate technique in the karate classes. Normally, another black belt would perform this function. Appellant takes medication for pain every day, but it would still hurt to throw a punch.

Appellant worked for Essex County College prior to October 2007. In January 2007, appellant began a ten-week class in karate only with an assistant. Appellant was paid to teach classes one day per week. Appellant did no security work. In the class, appellant does not do exercises. Appellant has difficulty sitting or standing for a long time. Appellant teaches two classes for 1.5 hours each for a total of three hours.

In May 2007, appellant was the coordinator of a karate tournament in Maryland. He received no pay for this activity. The tournament could take all day, but he did not participate in karate.

6. Matthew Gerdes

Matthew Gerdes was accepted as an expert in conducting functional capacity evaluations and physical therapy. In August 2007, Mr. Gerdes was employed by Kinematic.

On August 14, 2007, Kinematic conducted a functional capacity evaluation of appellant for respondent. A functional capacity evaluation is intended to be used by the attending physician for back-to-work decisions. The evaluation focused on appellant's neck and shoulders. Mr. Gerdes determined that appellant demonstrated significant sub-maximum effort in the relevant event protocols for the functional capacity evaluation. This means that there was poor reliability with respect to appellant's test results due to inconsistent effort. Appellant showed deficits in his range of motion and

strength, but the test results should be consistent. The variations are consistent with strong symptom magnification. As a result, the evaluation is not a reliable assessment of appellant's physical capacity.

7. Antonio Ciccone, D.O.

Dr. Antonio Ciccone was accepted as an expert in medicine. On February 6, 2007, appellant was referred to Dr. Ciccone for diagnosis and treatment of work-related injuries to his back and right shoulder.

Dr. Ciccone examined appellant on several occasions in 2007 in regard to pain from injuries caused by a motor vehicle accident that occurred on February 3, 2007. Appellant reported pain in his neck, back, right shoulder and both knees, and Dr. Ciccone ordered various tests. On March 15, 2007, Dr. Ciccone referred appellant to Jerald P. Vizzone, D.O., who is an orthopedic surgeon. Dr. Vizzone recommended epidural steroid injections and surgery on appellant's right shoulder to repair the rotator cuff.

After reviewing multiple MRIs, Dr. Ciccone issued a report on May 17, 2007. Appellant reported pain in his neck, low back, knees and right shoulder. Appellant also had headaches. Appellant was treated with trigger point injections, anti-inflammatories and pain medication. Despite treatment, appellant made minimal progress, and he still reported pain at the level of eight on a scale from one to ten. The MRIs and other tests confirmed multiple injuries to appellant's lumbar spine, cervical spine and both shoulders. Dr. Ciccone recommended surgery on appellant's shoulder for the rotator cuff and epidural injections of the lumbar and cervical spine. Dr. Ciccone stated that appellant could not return to work because he needed surgery on his shoulder. Appellant could perform light duty such as clerical work at a desk with difficulty. Activities of daily living could cause pain for appellant.

After additional tests, Dr. Ciccone issued another report on June 26, 2007. Dr. Ciccone's recommendations included continuation of medication for severe pain and physical therapy for the cervical and lumbar spine. Dr. Ciccone found that appellant was totally disabled and placed appellant on disability status.

Appellant was in severe pain, and he was taking some of the strongest pain medications available. Appellant could not work as a police officer with his injuries and pain. Dr. Ciccone attached a list of ten diagnoses to his report.

Dr. Ciccone completed a form related to appellant's application for a disability retirement. Dr. Ciccone checked a box which indicates that appellant is totally and permanently disabled and no longer able to perform his job duties.

The Kinematic report was part of the fit for duty assessment. The report was compatible with the statements from appellant and Dr. Ciccone's examination. The conclusion that appellant's effort was submaximal could be the result of pain. Further, the statement about magnification of symptoms in the Kinematic report did not alter Dr. Ciccone's opinion that appellant was experiencing significant pain. Dr. Ciccone would not take the conclusions in the Kinematic report to mean that appellant was not truthful.

Dr. Ciccone stated that the Kinematic report was helpful but not essential as the injuries to appellant's shoulder, back and neck were verified by objective data. Appellant could perform some activities for a short time, but he could not meet the high standards required for a police officer.

Dr. Ciccone stated that appellant's condition would impede his work. Powerful pain medications such as narcotics and opiates would mask his pain, but they would impair his judgment. Additionally, movement by appellant while taking pain medication could aggravate his own injuries or endanger others.

The eight level of pain would be without medication. With medication, appellant would experience less pain. The types of medications taken by appellant would not be appropriate for a police officer on active duty.

A long drive or teaching karate would cause appellant to experience pain. Activities such as walking and bending by appellant would be limited by pain. Pain medication would make appellant tired and fatigued.

Dr. Ciccone discharged appellant in July 2007, because he had reached maximum medical improvement. In October 2007, Dr. Ciccone re-evaluated appellant in regard to his right shoulder.

With respect to the video recording, Dr. Ciccone stated that appellant's movement was not consistent with an eight out of ten pain level. Dr. Ciccone noted that the video lasted approximately a half hour, while even light duty would be for eight hours.

B. Appellant's Testimony

Appellant testified that as of 2007, he had been employed by the NPD for thirteen years as a police officer. His past record consisted of only two minor disciplinary actions including a suspension on April 18, 2007, for neglect of duty. In February 2007, appellant was involved in a motor vehicle accident.

Appellant visited Dr. Ciccone ten times in 2007. Appellant experienced pain at the eight level on the one to ten scale. Appellant reported that he could not lie on his shoulder or raise his arm. Dr. Ciccone told appellant that he needed surgery, but the City would not give approval, because a doctor, who was consulted for a second opinion, said that surgery was not necessary. Dr. Ciccone prescribed medication and therapy. Dr. Ciccone wrote that appellant is totally disabled, and appellant accepted that he was disabled. Appellant did not have any surgical procedures. Appellant's

application for a disability retirement was denied, and he did not have the resources for an appeal.

Appellant was referred to Kinematic for an evaluation on August 14, 2007. Kinematic reported that appellant made a sub-maximal effort. Appellant stated that he was in pain at the time of the evaluation by Kinematic and that he did the best he could. After the evaluation, appellant was allowed to return to light duty on or about September 9, 2007.

Appellant's shoulder still bothers him, and he experiences pain with certain movements. Appellant cannot lie on his right side due to pain. Appellant now has good days and bad days.

Appellant taught a martial arts class at Essex County College from 2004 to 2007. Appellant is a high ranking black belt in karate, which is different from judo. Karate entails striking, while judo involves takedowns and wrestling. Appellant did not teach judo at Essex County College.

Appellant was paid for teaching martial arts classes at Essex County College, but he did not do it for the money. He did it for the children, and all of the money went back into the program. Appellant did limited hands on instruction, and he paid his assistant, who was also a black belt in karate, to perform the instruction. The assistant actually taught the class. Appellant did not lift anything heavy, and he did not demonstrate any karate moves. The younger children were from six to nine years of age, and the older ones were from ten to thirteen. Appellant remembered swinging a stick, which was a training tool in the class. Appellant still works at Essex County College one day per week for ten weeks in the fall.

At the hearing, appellant presented a training tool that he used in the karate classes. This item was a hollow plastic tube approximately one and a half inches in diameter and thirty inches in length with foam rubber on the outside. According to

appellant, this item is one of the training tools that he used in the video. Other items may have a handle, but they are of similar weight. The undersigned handled this item, which was extremely light and easily held with one finger.

Appellant coordinated a karate tournament in Maryland. Appellant's wife drove the car on the three-hour trip, and appellant took pain medication. He set up divisions and made sure that rules were applied correctly. Appellant sat there and told other people what to do. He did not do any karate himself.

After the evaluation by Kinematic, appellant returned to work on light duty and did not book off again. Light duty involved answering the telephone and checking in prisoners. Appellant took the prisoners to the cell block. Appellant stated that he did not request light duty.

Appellant could do his job as a Newark police officer to some extent. He could answer the telephone, but he could not make arrests. Appellant can drive a car, but he could not chase and apprehend a person. It would be difficult for appellant to run, and he could not do pull-ups.

Appellant stated that he was not malingering. He was hurt, and he had pain in his shoulder and lower back. In regard to the charge of false statements, appellant said that the sword that he was swinging on the video was made of foam and could not cause an injury. Appellant further stated that he cannot do any heavy lifting, exercise, running or judo. Appellant can do some stretching. He can bend his knees, but he cannot touch his toes. Appellant did not participate in teaching judo.

During an interview by the NPD Anti-Corruption Unit, appellant was asked if he worked at Essex County College. Appellant responded in the affirmative and said that he was an instructor. Appellant did not tell anyone that he was teaching karate, because he did not demonstrate any karate technique or give any commands.

Appellant stated that he was under the impression that he needed approval for outside employment only if he was doing security work in uniform. Appellant did not think that it was necessary to get approval to teach a karate class at Essex County College. Appellant now acknowledges that he needed permission for outside employment, but he states that he will request approval in the future.

LAW AND ANALYSIS

An appointing authority may discipline an employee for conduct unbecoming a public employee and other sufficient cause. N.J.A.C. 4A:2-2.3(a). The appointing authority's action is subject to review by the Civil Service Commission, which after a de novo hearing makes an independent determination as to both the charge and the penalty. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); West New York v. Bock, 38 N.J. 500, 519 (1962). In an appeal concerning a major disciplinary action, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The appointing authority must prove its case by a fair preponderance of the believable evidence. In re Polk License Revocation, 90 N.J. 550, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971).

One charge against appellant is disobedience of orders. Specifically, respondent charges that appellant disobeyed a written lawful order by engaging in outside employment at Essex County College teaching martial arts classes without requesting approval thereof and having the same approved by the Chief of Police. Further, appellant engaged in this outside employment while booked off for illness and/or injury. Respondent relies on records from Essex County College which show that appellant was employed in both the spring and fall 2007 terms as a karate instructor for children. It is undisputed that appellant did not request or receive approval of outside employment from the Chief of Police.

Appellant maintains that an assistant was actually teaching the class, while appellant essentially provided supervision. Further, appellant asserts that he did not

engage in this activity for the money, as all of the funds went back into the program. Rather, appellant engaged in the activity for the benefit of the children. Finally, appellant states that he believed that approval was required only for outside employment for which the police officer wears his uniform or carries a weapon.

In regard to the facts related to this charge, I **FIND** as follows:

1. Appellant began his employment with the NPD in 1995, and as of 2007, he had been employed by the NPD for thirteen years.
2. Appellant has an interest in martial arts, and he is a black belt in karate.
3. On February 3, 2007, appellant was involved in a motor vehicle accident which caused injuries to his neck, shoulder and spine.
4. Appellant was booked off long-term sick from February 3, 2007, until he returned to light duty in or about September 2007.
5. Appellant was employed by Essex County College during the spring and fall 2007 terms as a karate instructor for children.
6. Appellant was paid $33 per hour for a total of $990 per term.
7. Appellant gave verbal instructions to the children, and he provided limited physical teaching such as adjusting their hand positions.
8. Appellant did not perform any karate moves. The assistant performed this function.
9. The funds went back into the program in the form of payment for equipment and an assistant.
10. Appellant engaged in this activity due to his interest in martial arts and for the benefit of the children.
11. Appellant did not request approval for his employment with Essex County College.
12. Appellant did not receive approval for his employment with Essex County College from the Chief of Police.

The records of Essex County College clearly show that appellant was employed there as a karate instructor for children during the spring and fall 2007 terms. The fact that an assistant demonstrated the karate moves rather than appellant does not alter the fact that appellant was employed by Essex County College as a karate instructor. Likewise, appellant's motivation for teaching the class and his use of the proceeds do not alter the fact that he was employed by Essex County College as a karate instructor. Appellant's contention that the requirements to request and receive approval of outside employment applies only to situations in which the police officer wears his uniform or carries a weapon is without support in the language of General Order #67-5 (revised) dated December 2, 2003. It follows that appellant engaged in outside employment without requesting or receiving approval from the Chief of Police in disobedience of General Order #67-5 (revised) dated December 2, 2003. Further, appellant was booked off long-term sick while he engaged in outside employment during the spring 2007 term at Essex County College, and he was booked off long-term sick or on light duty during the fall 2007 term. Therefore, I **CONCLUDE** that two counts of the charge of disobedience of orders must be sustained.

Another charge against appellant is that he violated a provision of the NPD Rules and Regulations which requires police officers in both their private and public lives to conduct themselves so as to avoid impugning the reputation of the Department. A related charge is conduct unbecoming a public employee. The specification for this charge states that while booked off sick for injuries appellant participated in teaching martial arts classes at Essex County College. Additionally, appellant left the state of New Jersey to coordinate a martial arts tournament in Maryland.

In regard to this additional factual allegation, I **FIND** as follows:

13. In or about May 2007, appellant traveled to Maryland to coordinate a karate tournament.
14. Appellant's wife drove the car, and appellant took pain medication.

15. Appellant was not a competitor in the tournament, and he did not engage in any karate moves.

Conduct unbecoming a public employee constitutes grounds for disciplinary action. N.J.A.C. 4A:2-2.3(a)6. "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a government unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). 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." Hartmann v. Police Dept. of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dept. of Civil Serv., 17 N.J. 419, 429 (1955).

The charges of a violation of the NPD Rule concerning Conduct in Public and Private and conduct unbecoming a public employee are essentially the same. By participating in employment teaching a karate class while on sick leave, appellant engaged in conduct that would tend to give the impression that he was involved in improper behavior by being on paid sick leave when he was not really too sick to work. Appellant's contention that he was not really teaching the karate class was rejected above. Additionally, his presence giving verbal instructions would be sufficient to create the negative impression. It follows that appellant's conduct participating in teaching a karate class would tend to bring the NPD into dispute. Appellant's trip to Maryland to coordinate a martial arts tournament could give the same negative impression. Appellant was required to avoid this type of situation. Similarly, appellant's conduct would tend to undermine public respect for the delivery of governmental services. Therefore, I **CONCLUDE** that the charge of violation of the NPD Rule concerning Conduct in Public and Private must be sustained. I **FURTHER CONCLUDE** that the charge of conduct unbecoming a public employee must be sustained.

Another charge against appellant is malingering in violation of a provision of the NPD Rules and Regulations which states that an NPD member shall not feign illness, injury or incapacity to perform required duties. The first specification states that while booked off sick due to injuries since February 3, 2007, and reporting that he was unable to perform his duties due to the pain level, appellant worked participating in teaching martial arts classes. The second specification added that appellant left the state of New Jersey to coordinate a martial arts tournament in Maryland. It is noteworthy that there is no specification about a sub-maximal effort on a functional capacity evaluation.

The findings have been made that appellant participated in teaching martial arts classes at Essex County College and that he traveled to Maryland to coordinate a martial arts tournament. The critical factual issue is whether appellant was unable to perform his duties as a police officer due to his pain level.

Respondent's proofs in regard to this issue stem from four sources. Dr. Ciccone testified to appellant's reports of pain at eight on the one-to-ten scale, extensive testing which objectively verified appellant's multiple injuries and various diagnoses. Further, Dr. Ciccone expressed the opinion that appellant is totally and permanently disabled and that he is unable to perform the duties of a police officer.

Dr. Ciccone also commented on pain medication. The eight out of ten pain level is without medication. Strong medications would provide appellant with relief from pain, but they would also impair his alertness and judgment. Appellant would not be able to perform the duties of a police officer while taking these medications. Dr. Ciccone agreed that appellant did not appear to be at the eight level of pain while teaching the karate class, but he was taking medication at that time.

Mr. Gerdes of Kinematic stated that appellant made a sub-maximum effort during the functional capacity evaluation and that the variations in his effort were consistent with strong symptom magnification. It is noteworthy that Mr. Gerdes did not state that appellant was in fact magnifying his symptoms but rather concluded only that

the functional capacity evaluation was not a reliable assessment of appellant's physical capacity.

Lt. Perez testified to his observations and interview of appellant. In the opinion of Lt. Perez, the level of pain that was claimed by appellant was inconsistent with teaching a class in martial arts and attending a karate tournament in Maryland. The fourth source is the video recording as summarized above.

It seems evident that Dr. Ciccone's opinion was the most reliable evidence as to whether appellant was unable to perform the duties of a police officer. Dr. Ciccone was qualified to express an opinion on this question, and he found that appellant's injuries were objectively verified by multiple test results.

Mr. Gerdes did not offer an opinion on this specific point, and he also did not testify that appellant did in fact engage in symptom magnification. Likewise, the conduct of appellant during the karate class as contained in the video recording and mentioned in the testimony of Lt. Perez and Dr. Ciccone is not reliable evidence on this point. The eight level for appellant's pain on the one-to-ten scale was without medication. Appellant testified that he took pain medication, and there is no indication that he was not doing so on the date of the video recording. It follows that appellant's pain level probably was not at the eight level while he was teaching the karate class or traveling to Maryland for the tournament. Further, as Dr. Ciccone testified, appellant could not work as a police officer while taking strong pain medication. Finally, appellant's movements on the video recording were slow and lacked fluidity. The video recording certainly does not demonstrate that appellant was able to perform the duties of a police officer.

Based upon the evidence presented at the hearing, I **FIND** as follows:

16. From the time that appellant sustained injuries in a motor vehicle accident on February 3, 2007, he was unable to perform the duties of a police officer.

This charge is premised upon the belief that appellant's activities in regard to the karate class and tournament demonstrate that he was able to perform the duties of a police officer. The difficulty with this premise is that appellant's activities in regard to the karate class and tournament do not demonstrate that he was able to perform the duties of a police officer. In fact, the finding was made that appellant was not able to perform the duties of a police officer. Therefore, I **CONCLUDE** that the charge of malingering must be dismissed.

The final charge is comprised of three instances where appellant allegedly violated a provision of the NPD Rules and Regulations which provides that a police officer shall not falsify any official record or report. The first specification is that appellant knowingly made the false statement that he was unable to perform his duties. In view of the finding above that appellant was in fact unable to perform his duties, the inference is warranted that appellant's statement was not false. Therefore, I **CONCLUDE** that this count of the charge related to false statements must be dismissed.

The second specification under this charge has two parts. The first part alleges that appellant falsely stated that he cannot do any bending, heavy lifting, running or judo. As support for this allegation, respondent relies on the interview of appellant as contrasted with the observations of Lt. Perez and Lt. Domingues. Specifically, appellant was observed in the karate class bending, stretching, walking around and instructing a class. During the interview, appellant stated that as a result of his injuries, he stopped doing judo and other martial arts, that he cannot work out the way that he wants, and that he cannot swim or play golf. It is noteworthy that appellant also stated that he can do a little training at home or at the school.

These facts are not in dispute, and I **FIND** as follows:

17. During the karate classes, appellant engaged in some bending, stretching, walking around and instruction.
18. Appellant did not demonstrate any karate techniques during the classes.
19. During the interview on October 19, 2007, appellant stated that he stopped doing judo and other martial arts, that he cannot work out the way that he wants, that he cannot do any bending or heavy lifting and that he cannot swim or play golf.
20. Appellant also stated that he can do a little training at home or at the school.

Putting aside the reference to judo which is the subject of the second part of the specification, appellant's initial response was not entirely accurate in that he said that he does not do any bending when in fact he was observed by Lt. Perez and Lt. Dominguez and on videotape doing some bending. Nonetheless, appellant also stated during the interview that he did a little training at home and at the school. Viewing the interview as a whole, appellant responses were quite accurate. The minor discrepancy in regard to bending is at most a matter of imprecise use of language. It would have been more accurate for appellant to say that he can do very little bending. This circumstance does not support a charge of false statements.

The second part of this specification alleges that appellant falsely stated that he has not done judo or exercise since February 3, 2007. The situation in regard to "exercise" is substantially the same as the first part of this specification. With respect to "judo", appellant makes two points. First, judo is a different martial art from karate. Second, appellant did not actually demonstrate any karate techniques. These arguments are persuasive, and it follows that appellant's response to this portion of the specification was accurate. Because appellant's responses in regard to this specification were accurate, I **CONCLUDE** that the second count of the charge of false statements must be dismissed.

The third specification under this charge alleges that appellant falsely stated during the interview on October 19, 2007, that he does not participate in the teaching of the judo class at Essex County College. As found above, appellant participated in the teaching of a karate class at Essex County College. Further, judo is a separate and distinct martial art from karate. It follows that appellant's denial that he conducted a judo class at Essex County College is accurate. Therefore, I **CONCLUDE** that this count of the charge of false statements must be dismissed. Since all three counts are without merit, **I FURTHER CONCLUDE** that the charge of false statements must be dismissed.

Disciplinary Action

The factors to consider with respect to the disciplinary action are the nature of the charges sustained and appellant's past record. West New York v. Bock, 38 N.J. at 523-24. Progressive discipline is a recognized and accepted principle in choosing the appropriate disciplinary action. In re Herrmann, 192 N.J. 19, 33 (2007). But removal may be the appropriate discipline for a single instance of severe misconduct. Ibid.

In regard to appellant's past record, I **FIND** as follows:

21. On December 9, 2005, appellant received a warning for neglect of duty.
22. On January 4, 2006, appellant received a one-day suspension for neglect of duty.
23. On April 18, 2007, appellant received a one-day suspension with two days held in abeyance for neglect of duty.

The charges against appellant are serious in that his conduct could impugn the reputation of the NPD. In addition, appellant engaged in outside employment without approval for an extended period of time. On the other hand, the situation is mitigated by the limited time devoted to appellant's outside employment. Appellant worked only three hours on Saturday mornings for ten weeks during the spring term and ten weeks

during the fall term at Essex County College. Another consideration is that appellant's past record consists only of three minor disciplinary actions. Appellant has not had any prior major disciplinary actions.

In view of the specific details of appellant's conduct, the charges are not sufficiently serious to disregard considerations of progressive discipline. Considering the seriousness of the charges which were sustained and appellant's limited past record, I **CONCLUDE** that a suspension for a period of two months is the appropriate disciplinary action.

Accordingly, it is **ORDERED** that:

1. Charge I is sustained.
2. Charge IB is sustained.
3. Charge II is dismissed.
4. Charge III is dismissed.
5. Charge IV is sustained.
6. The disciplinary action is a suspension for a period of sixty (60) days.
7. Appellant shall receive back pay to the extent permitted by N.J.A.C. 4A:2-2.10.

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

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

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

May 7, 2015
DATE

RICHARD McGILL, ALJ

Date Received at Agency:

Date Mailed to Parties: MAY - 8 2015
ljb

DIRECTOR AND
~~CHIEF ADMINISTRATIVE LAW JUDGE~~

APPENDIX

WITNESS LIST

For appellant:

Gerard Eatman

For respondent:

William Perez
Joseph Johnson
Antonio Domingues
Derek White
Matthew Gerdes
Antonio Ciccone, D.O.

EXHIBIT LIST

R-1 Investigative report pp. N9 to N112
R-2 General Order No. 67-5 pp. N224 to N252
R-3 Video of karate class on September 29, 2007
R-4 Records of Essex County College pp. N276 to N322
R-5 Video of interview of Gerard Eatman on October 19, 2007

J-1 Preliminary Notice of Disciplinary Action dated November 1, 2007 pp.N5 to N8
J-2 Final Notice of Disciplinary Action dated November 13, 2007 pp. N1 to N4

STATE OF NEW JERSEY

In the Matter of
Gerard Eatman

City of Newark

CSC Dkt. No. 2008-2331
OAL Dkt. No. CSV 1457-08

DECISION
OF THE
CIVIL SERVICE COMMISSION

REMAND
TO THE OFFICE OF
ADMINISTRATIVE LAW

(BH)

ISSUED: August 7, 2009

The appeal of Gerard Eatman, Police Officer, City of Newark, removal effective October 19, 2007, on charges, was considered by Administrative Law Judge Richard McGill, who rendered his initial decision on May 5, 2009, recommending acknowledgement of the settlement of the parties.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission at its meeting of August 5, 2009, ordered that no action be taken on the settlement and that this matter be remanded to the Office of Administrative Law (OAL) for further proceedings.

DISCUSSION

The settlement agreement provides that Eatman would withdraw his appeal and request for a hearing in exchange for his removal to be modified to an accidental disability retirement. The Division of Merit System Practices and Labor Relations (MSPLR) contacted the Division of Pensions and Benefits to confirm that Mr. Eatman was retired effective September 1, 2007 and learned that Mr. Eatman's request for an accidental disability retirement was disapproved.

The ALJ recommended that the settlement be acknowledged and forwarded it to the Civil Service Commission for that purpose. However, the Commission finds the terms of this settlement cannot be honored. The terms of a settlement must be definite and specific and serve as a final disposition of the appeal. As this settlement provides for an outcome that cannot be implemented, it cannot be approved. Accordingly, the Commission will take no action on the settlement agreement and orders that this matter be remanded to the OAL for further proceedings.

ORDER

The Civil Service Commission orders that this matter be remanded to the Office of Administrative Law for further proceedings as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5th DAY OF AUGUST 5, 2009

Hope L. Cooper
Chairperson
Civil Service Commission

Inquiries
and Correspondence

Henry Maurer
Director
Merit System Practices
& Labor Relations
Civil Service Commission
PO Box 312
Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CSV 1457-08

AGENCY DKT. NO. 2008-~~2338~~-I
2331

IN THE MATTER OF GERARD EATMAN,
CITY OF NEWARK.

Justin L. Talley, Esq., for Gerard Eatman
(Roy R. Macaluso, Esq., attorney)

Madge R. Buckle, Assistant Corporation Counsel, for the City of Newark
(Julien X. Neals, Corporation Counsel, attorney)

Record Closed: May 4, 2009 Decided: May 5, 2009

BEFORE **RICHARD McGILL,** ALJ:

Gerard Eatman appeals from a removal on charges from the position of Police Officer with the City of Newark. The matter was transmitted to the Office of Administrative Law on January 23, 2008, for determination as a contested case.

Prior to hearing, the parties agreed to an amicable resolution of the matter and submitted a written Settlement Agreement and General Release. Having reviewed the record and the settlement terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the settlement evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of the all issues and controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the terms of the settlement, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded.

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

This recommended decision may be adopted, modified or rejected by the **DIRECTOR, MERIT SYSTEM BOARD**, which by law is authorized to make a final decision in this matter. If the Merit System Board 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.

May 5, 2009

DATE

RICHARD McGILL, ALJ

Date Received at Agency: 5-7-09

Mailed to Parties:

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

MAY 7 2009

DATE

OFFICE OF ADMINISTRATIVE LAW

cml

JULIEN X. NEALS, CORPORATION COUNSEL
MADGE R. BUCKLE, ASSISTANT CORPORATION COUNSEL
920 Broad Street, Room 316
Newark, New Jersey 07102-2672
Telephone: (973) 733-3880
Attorney for Employer, the City of Newark

GERARD EATMAN	:	
	:	OAL Docket No.: CSVLT 01457- 2008N
	:	
v.	:	**SETTLEMENT AGREEMENT AND GENERAL RELEASE**
	:	
CITY OF NEWARK	:	

This Settlement Agreement and General Release ("Agreement") is made and entered into by the City of Newark, its affiliates, subsidiaries, officers, agents, employees, attorneys, successors, heirs, and assigns (the "City"), the Fraternal Order of Police, Newark Lodge No.: 12 ("Union"), and Gerard Eatman, his agents, attorneys, union, successors, heirs and assigns ("Eatman") in full settlement of the Final Notice of Disciplinary Action (CAP 07-255 IOP 07-816) dated November 13, 2007 ("FNDA"), which terminated Eatman's position as police officer. The City, the Union and Eatman are collectively referred to hereinafter as the "Parties." Eatman's termination, which is the subject of the instant appeal, was transmitted to the Office of Administrative Law ("OAL") and filed under OAL Docket. No.: CSVLT 01457-2008N (the "Action").

WHEREAS, the City and Eatman have independently determined that it is the best interests of all Parties to resolve the disputes between them based on the issues raised in this matter, including but not limited to the Action; and

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. The City will amend the FNDA to reflect that Eatman retired due to accidental disability, said retirement to be effective September 1, 2007.

2. Eatman will cause this Action to be withdrawn without prejudice. All costs, if any, shall be borne by the respective parties themselves.

3. The Parties agree that the City shall hold in abeyance all charges as specified in FNDA, prior to any amendment to the FNDA as is set forth in paragraph "1" hereinabove. The period of abeyance will be for a duration of not less than five (5) years and one (1) day, and which period will begin to run from the effective date of Eatman's Accidental Disability Retirement as granted by the Police and Firemen's Retirement System.

4. Eatman agrees to neither seek, nor accept any future employment, nor seek reemployment with the City except only except as that provided under N.J.S.A. 43:16A-8 and N.J.A.C. 17:4-6.12.

5. Eatman and the Union each further agree that should Eatman accept future employment and/or seek reemployment with the City as provided by N.J.S.A. 43:16A-8 and N.J.A.C. 17:4-6.12, then it is agreed and understood that the charges held in abeyance as set forth in this Agreement will be in full force and effect and Eatman may pursue an appeal that may be available to him.

6. In exchange for the consideration receipted in this Agreement, Eatman hereby irrevocably and unconditionally waives, releases and forever discharges any and all claims or rights arising out of his employment, claims arising from this Action, and all claims known or which should have been known against the City, its Departments, Divisions, Offices, Agencies, Authorities and third-party affiliates, as well as the City's officers, administrators, agents, employees and attorneys, including but

not limited to, any claims for attorneys' fees, back pay or front pay, any claims arising under any federal, state or local law or ordinance, including, but not limited to Title VII of the Civil Rights Acts of 1871 and 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, as amended, the Employee Retirement Income Security Act, the Federal Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Workers' Adjustment Retention and Notification Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Conscientious Employee Protection Act, the New Jersey Wage and Hour Law, the Employer-Employee Relations Act; any collective negotiations agreement, any common law claim and any other claims for harassment, discrimination or retaliation of any kind, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, violation of public policy, wrongful or constructive discharge or any other tort, contractual or quasi-contractual claim

7. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives.

8. Eatman acknowledges that he was given at least twenty-one (21) days within which to review and consider this Agreement, although he may choose to sign it sooner, and thereafter, has seven (7) days to revoke this Agreement by delivering written notification to the City of Newark, Department of Law, Attn.: Madge R. Buckle, Assistant Corporation Counsel. It is understood that if this Agreement is revoked, it will not be effective or enforceable and Eatman will not be entitled to the consideration described herein.

9. It is further specifically acknowledged and understood by the Parties that this Agreement, and/or the terms contained herein are not an

indication or admission of any liability or the violation of any law, statute or regulation and/or the breach of any duty by the City. This Agreement and compliance with the terms herein shall not be construed as an admission by any party of any liability whatsoever with respect to any matter. This Agreement may not be introduced into evidence or used in any other way in any other legal or administrative proceeding other than a proceeding seeking enforcement of the terms of this Agreement, or as required by law.

10. This Agreement shall be governed by the laws of the State of New Jersey and any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction of the Courts of the State of New Jersey.

11. If any provision of this Agreement or the application thereof is held invalid, such invalidity shall not affect or impact the other provision or applications of the Agreement and, to this end, the Parties agree that the provisions of this Agreement are severable.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

13. This Agreement constitutes the complete understanding and entire Agreement between the Parties and it cannot be amended, terminated, discharged or waived, except by a suitable writing, agreed and signed by all Parties.

14. The Parties acknowledge that this Agreement is the result of arms length negotiations between the Parties. The Parties have consulted with their respective counsel and are fully aware of all the ramifications of this Agreement, including, without limitation, the claims and rights that they

are waiving herein and the affirmative obligations that they are agreeing to undertake. The Parties are fully satisfied with the services of their counsel with respect to both this Agreement and all other aspects of this case and they enter into this Agreement knowingly, willingly and without any coercion or improper inducements.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date indicated below.

4/29/09
Date

By _____
Gerard Eatman

4-29-09
Date

By _____
Fraternal Order of Police
Newark Lodge No 12

THE CITY OF NEWARK

4-29-09
Date

By _____
Madge R. Buckle
Assistant Corporation Counsel