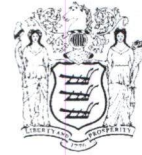


A-5



STATE OF NEW JERSEY

In the Matter of William Pierce
City of Hackensack
Police Department

CSC DKT. NO. 2015-1891
OAL DKT. NO. CSV 01242-15

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FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: **SEP 07 2017** (BW)

The appeal of William Pierce, Police Sergeant, City of Hackensack, Police Department, return to prior permanent title at the end of the working test period, was heard by Administrative Law Judge Caridad F. Rigo, who rendered her initial decision on July 24, 2017 granting a new working test period. Exceptions were filed on behalf of the appellant, a reply to exceptions was filed on behalf of the appointing authority and a cross reply was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 6, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

DISCUSSION

Although the appellant will be permitted to complete a new working test period, he has not obtained permanent status as a Police Sergeant. The appellant must successfully complete a working test period in order to obtain permanent status. Although the appellant has shown his release was not proper, the record does not adequately establish the appellant's satisfactory work performance. Accordingly, the appropriate remedy in this matter is to afford him a new working test period.

In non-disciplinary appeals, such as an appeal of a release at the end of the working test period, the standard for determining whether an appellant is entitled to back pay or counsel fees is governed by *N.J.A.C. 4A:2-4.3(c)* and *N.J.A.C. 4A:2-1.5(b)*. *N.J.A.C. 4A:2-1.5(b)* provides, in pertinent part, that back pay and counsel fees for appeals that are not based on disciplinary action or the challenge of the good faith of a layoff "may be granted . . . where the Commission finds sufficient cause based on the particular case." In this case, it was found that the appellant is not entitled to a permanent appointment since he had not successfully completed his working test period. Therefore, sufficient cause has not been demonstrated in this matter to award back pay or counsel fees. See e.g., *In the Matter of Melvin Robinson* (MSB, decided December 21, 2005), *In the Matter of Rocky Rembert* (MSB, decided December 3, 2003).

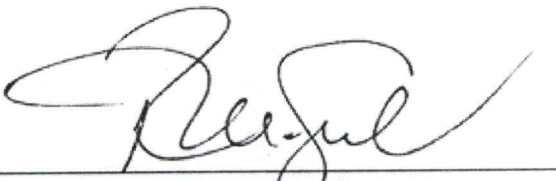
ORDER

The Civil Service Commission finds that the action of the appointing authority in returning the appellant to his prior permanent title at the end of the working test period was not justified. The Commission therefore reverses that action and grants a new working test period for William Pierce.

Back pay and counsel fees are denied.

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
SEPTEMBER 6, 2017



Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01242-15

AGENCY DKT. NO. 2015-1891

WILLIAM PIERCE,

Petitioner,

v.

CITY OF HACKENSACK POLICE DEPARTMENT,

Respondent.

Maurice W. McLaughlin, Esq., for petitioner (McLaughlin & Nardi, attorneys)

Raymond R. Wiss, Esq., for respondent (Wiss & Bouregy, attorneys)

Record Closed: February 8, 2017

Decided: July 24, 2017

BEFORE **CARIDAD F. RIGO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner appeals his demotion from sergeant to patrolman because he allegedly failed to successfully complete a ninety-day working test period (WTP).

On December 18, 2014, petitioner was advised that he failed to successfully complete his working test period and was reassigned to the rank of patrolman. On December 31, 2014, he sent a notice of appeal to the Civil Service Commission appealing

the demotion from sergeant. On January 23, 2015, the matter was transmitted to the Offices of Administrative Law (OAL) for a hearing as a contested case. Hearings were held on June 1, 2, 15 and 30, 2016, and July 1 and 22, 2016. Written summations were submitted on September 27, 2016, however the record remained open until February 8, 2017, when a list of the exhibits was finalized.

ISSUES

1. Did petitioner receive his written evaluations or progress reports within sufficient time so he could improve any of his alleged deficiencies?
2. Was respondent's evaluations and decisions made on objective measures of performance?
3. Did the respondent act in bad faith?

FACTUAL BACKGROUND

Petitioner, William A. Pierce, is a police officer with the Hackensack Police Department (HPD) and has been for approximately nineteen years. After being a patrol officer for thirteen years he took the sergeant's exam, passed it, and became eligible to be a sergeant. He was originally promoted to sergeant in February 2013, as a sergeant he was given a working test period (WTP) which he failed; this was his first sergeant's WTP. Petitioner appealed the HPD's decision and the matter was settled. The settlement included that petitioner was re-promoted and given a second chance at a new WTP. It is this second WTP that is the subject of the instant matter. This WTP occurred from September 2014 to December 2014.

SUMMARY OF TESTIMONY

The following is a summary of the relevant testimony of the witnesses.

Captain Patrick Coffey

Captain Patrick Coffey is employed by the HPD and has been since February 2000. He was assigned to the Detective Bureau in 2003, he made sergeant in 2008, he was assigned to Internal Affairs in 2010, in February 2013 he was a lieutenant assigned as shift commander, and in March of 2016 became captain. His role as a lieutenant is that of a shift commander overseeing sergeants. He explained that sergeants are viewed as street supervisors or first-line supervisors: a patrol officer goes to a sergeant for assistance and direction. He further explained that the HPD has 115 employees and eighty of them are patrol officers.

Captain Coffey had nothing to do with petitioner's first WTP. He was assigned to assist in the oversight of petitioner's second WTP. Coffey was petitioner's immediate supervisor during the second WTP. He was personally involved in overseeing all of the police officer and sergeant's work. He was able to make personal observations of the petitioner. He documented his observations in a memo dated November 18, 2014, exhibit R-14. The memo did not say anything negative about petitioner's performance other than that petitioner took a little longer to complete certain paperwork.

Coffey testified that a few of the patrol officers working with petitioner complained about how at times petitioner spoke to them in a condescending manner. Coffey testified that he told petitioner about these complaints and petitioner acknowledged that he needed to improve in that area.

Coffey next prepared exhibit R-18, a memo dated December 4, 2014. This memo noted that petitioner had made improvements in his processing of paperwork but not on his demeanor when dealing with subordinate police officers. Coffey related that he listened to a phone conversation Pierce had with a subordinate officer and that Pierce was abrasive and demanding. Coffey testified that he spoke to Pierce about it.

Coffey next identified Exhibit R-20 as a memo he wrote on December 13, 2014, this was his summation of Pierce's performance over the WTP. As to Pierce's administrative abilities Coffey said that Pierce was not good. In his opinion, Pierce took too long in processing the necessary paperwork and he could not multitask. He said that

Pierce's inability to multitask could present a danger to the public and fellow police officers.

In the same Exhibit R-20, and in his testimony Coffey expressed his concern over Pierce's lack of communication, leadership, and supervisory skills. Coffey based this opinion on the reports and complaints he received from other officers and his observations of Pierce when relating to the officers.

Coffey acknowledged that he did not give his evaluation reports to Pierce but he reiterated that he spoke to Pierce directly several times about his concerns and observations.

Under cross-examination Coffey related that the shifts were eleven hours. He supervised petitioner about four to five weeks, which turned out to be about eight days out of the ninety days.

There were no written protocols to be applied during a WTP either by the Civil Service Commission or the HPD.

The witness acknowledged to this ALJ's direct question that he did not keep petitioner abreast of his progress or lack of progress and that he did not give petitioner any copies of the memos.

Captain Timothy Lloyd

Captain Timothy Lloyd was hired in August 1993 as a patrolman, he went through the ranks until achieving the office of captain. He has been a captain with the HPD since June 2014, his entire law enforcement career has been with the HPD. He is now one of six captains in the HPD. He is in charge of the patrol division directly overseeing Pierce—he is Pierce's top supervisor.

Captain Lloyd provided a brief history of his dealings with Pierce. He said Pierce was out on medical leave for ten to eleven months before his first WTP. Pierce also

sustained an injury in the interim so he was out of work in total about twenty months. In the interim, he stated that the HPD underwent a tremendous amount of changes so he made a unilateral decision to work with Pierce to bring him up to speed.

Lloyd further explained that sergeants are the first line of field supervisors and are responsible for the day-to-day functions of officers under their command, and are responsible for making sure that such officers are current on their training and getting the best training they can. To assist Pierce on his return to active duty he assigned two patrol officers to bring Pierce up to speed on the many departmental changes that occurred during his absence. Ultimately, Pierce was deemed ready to perform his duties as a patrol officer again. Within thirty days following his return to patrol duty Pierce was promoted to the rank of sergeant but subject to completion of a WTP. This WTP took place February to March 2013 and was the first WTP.

Lloyd testified that after Pierce's first WTP his supervisors concluded that Pierce was unfit for the position of sergeant because he lacked the skills sets required. Captain Lloyd then testified that Pierce appealed the department's decision not to permanently promote him to sergeant and as a result of that appeal a settlement agreement was entered into. The terms of the settlement were that Pierce would return to the rank of a patrolman for one year and then he would be re-evaluated for the rank of sergeant and given a second WTP.

Lloyd said he was not involved in petitioner's first WTP.

Lloyd next testified that on September 22, 2014, he met with then-Lieutenant Coffey, Lieutenant Busciglio, Sergeant Peterson, and Pierce and he explained to them his new plan of action for the second WTP for Pierce. He stated that this new plan for the conduct of WTPs was to be utilized not just on Pierce but it was to be applied to all sergeants in a WTP. Sergeant Peterson was to be Pierce's main instructor or supervisor. Peterson was to ride with Pierce in the first thirty days of the ninety-day WTP. Lieutenants Busciglio and Coffey were to oversee Pierce and Peterson. Lloyd said that all efforts were made to make sure Pierce passed his second WTP.

According to Llyod's testimony all of the reports he received from Pierce's supervisors/instructors showed one theme about Pierce's performance: that Pierce had trouble handling several matters at one time (he could not multitask); took too long to make decisions; he needed better computer skills; and his communication with his subordinates lacked tact (he had a poor demeanor speaking to subordinates). Lloyd furthered that Pierce should have known certain things, common knowledge in policing, especially after having been on the force for eleven-plus years and having gone through a WTP before.

Lloyd testified that Pierce had fairly good evaluations while he was a patrol officer.

Lloyd stated that during the subject WTP Sergeant Peterson provided approximately nine reports/evaluations/memos to him. Lieutenant Busciglio gave him one report/evaluation/memo for one work cycle, which is eight days but he only observed Pierce for one day out of that eight-day cycle. Busciglio also gave him one report which was his final summative evaluation. Then Lieutenant Coffey gave him two observations reports and one summary report. Lloyd said he did not check what he was told verbally against what they wrote.

Under cross-examination Lloyd could not provide specific details as to exactly what Pierce could and could not do. He explained that he was not concerned about the absence of any formal feedback or progress reports to Pierce because he had instructed Pierce's instructors to give him real time input directly and personally to Pierce as it was happening. Pierce was not evaluated on any objective standard of performance. Lloyd was never present when Peterson, Coffey, or Busciglio were with Pierce.

Lloyd stated that Pierce never received a copy of these reports as they were submitted because Pierce never asked for them. He furthered that he gave Pierce the reports at the end of the WTP when Pierce asked for them. Lloyd clearly stated that Peterson, Coffey, and Busciglio did not give Pierce any of their written reports or evaluations because they gave them to him directly. Lloyd said Peterson, Coffey, and Busciglio told him that they told Pierce what they wrote on the reports/evaluations. So as far as he was concerned Pierce was on notice because he had been told of his progress

or lack of progress. Lloyd stated he was not present at any time that Peterson, Coffey, or Busciglio were training, evaluating or meeting with Pierce.

Lloyd furthered that this WTP was newly designed by him and that the new WTP program was a new system for Pierce as well as for Peterson, Coffey, and Busciglio.

Under questioning by this ALJ, Lloyd said his decision to not retain Pierce at the rank of sergeant had mostly to do with the written reports he had received as well as the verbal representations made to him by the officers working with him.

Sergeant Walter Peterson III

Sergeant Walter Peterson has been with the HPD since February 1998. As an officer with the HPD he has served in the housing police department, detective investigating major crimes, he has supervised five to ten patrol officers.

In the Fall of 2014 he supervised the WTP for Pierce. He was told by Lloyd to ride with Pierce and report to him every four days (end of a tour). Lloyd told him to write what he saw, what went well and what went bad. Lloyd also told him to meet with him and discuss what was going on. He was also told that Busciglio and Coffey would meet with Pierce at the end of each four-day work cycle. He rode with Pierce approximately the first thirty days; however, in total he rode with petitioner sixty days.

Peterson stated that his daily routine was to review emails, review duty rolls, attend line up, go with patrol officers on calls, and assist with typing up of the paper work. The writing up requires proficiency with the computer. Multitasking is a must.

Peterson said in the first four days of the WTP he showed Pierce all of the paper work and administrative functions that a sergeant needs to do on a daily basis. He made sure Pierce go onto emails, making sure he had an email account. Pierce received all his computer codes and once Pierce grasped that he simply stood over him making sure all was done correctly. Pierce always had questions and if the question could not be answered right away Pierce always made sure that he asked the question the next day.

Peterson testified that he had a fairly good relationship with Pierce, they would ride together for nearly eleven hours a day. During the WTP there were no major incidents so they would discuss hypothetical situations so he would have an opportunity to assess Pierce's thought processing. Peterson said Pierce would hit all of the points and it would be good except that he thought Pierce took too long and wished Pierce was a little faster. Peterson felt that Pierce had sufficient time and knowledge of police work to have been able to make most decisions faster and easier. Peterson said line-ups went longer than they should have. He said petitioner was always asking questions about things he should know. And, the patrol officers that Pierce supervised complained that Pierce spoke to them as if they were children. He heard complaints from the patrol officers that Pierce was unable to make timely decisions and they had no confidence in him. Pierce was unable to interact with people. Peterson said by October Pierce had improved his performance during the lineups, Pierce knew what the assignments were, where the guys were going and in what cars, the lineups went very smooth.

Peterson denies that Lloyd told him anything about Pierce.

Peterson acknowledged writing Exhibit R-7 and that it was his first observation report after his first week with Pierce. He said the reports he wrote were for Captain Lloyd and as far as he was concerned the reports were interoffice memos to Lloyd. Peterson told Pierce to ask Lloyd for copies of his reports.

Peterson said that by the second week of November Pierce continued to improve in the performance of his administrative duties and during the line-ups but he was concerned that in a major incident Pierce would not be able to make proper decisions in a timely manner, Pierce might freeze in a life-or-death situation.

Because there were no major incidents on which he could evaluate Pierce's performance Peterson said he posed numerous hypotheticals to Pierce to see how he would handle a major incident. Peterson opined that Pierce would not be able to handle a major incident. In total he said he evaluated Pierce on his ability to lead, discharge his responsibilities, give advice, and supervise and opined that Pierce was not capable.

Peterson observed Pierce for sixteen and one-half days out of the forty-five days; he said a ninety-day WTP turns out to be forty-five days because they don't work a full week.

Under cross-examination Peterson acknowledged that he worked with Pierce four days on and four days off and that he was to do a report after each four-day tour and that either Busciglio or Coffey were supposed to do one as well. Peterson was supposed to meet with Pierce after each tour to go over the reports. He stated that Pierce was not given a copy of the reports/evaluations. Peterson did not remember if Pierce was shown the reports.

After asking Pierce a series of hypothetical questions, that he answered correctly, but because Pierce did not answer them fast enough, Peterson thought Pierce would freeze in a major incident and would therefore be unfit to assume the responsibilities of a sergeant.

I **FOUND** Peterson honest and credible. However, I note he was uncomfortable testifying.

William A. Pierce

William A. Pierce has been a Hackensack police officer for thirteen years and in law enforcement for nineteen years. Prior to the HPD he was a correction officer with the Bergen County Sheriff's Department. In thirteen years with the HPD he has not had any disciplinary actions. He has gone through two police academies; one for corrections and the other for the HPD. He has thirty college credits from Bergen County College in criminal justice. He passed the initial test to be hired as a HPD police officer. However, he was not hired until he appealed his not being hired. Pierce feels that he was disciplined for appealing and was put on a walking post for fourteen months, when new hires generally do three to four months on a walking post.

Pierce furthered that in 2008 he applied to take the sergeant's test and he passed it. He was # 15 on the list and they went to # 22 and promoted that officer skipping him. He said all twenty-two eligible officers were promoted and received a badge but he did not. He said the list came out in 2009 and the HPD slowly made promotions. He was promoted on February 27, 2013, to the position of sergeant. At this promotion he started his first WTP and was failed and demoted. He appealed and they settled, a term of that settlement was that he would do another WTP, hence, the current matter. He was promoted to sergeant again on September 22, 2014.

His first WTP began on February 25, 2013, and ended on May 25, 2013. He received one discipline during his first WTP, it was received on May 24, 2013, and his first WTP was ended the next day. (See Exhibit P-31.)

Pierce testified that no one gave him suggestions as to ways he could improve. No one gave him feedback as to his improvement or lack thereof. He said that when he asked for feedback everyone told him he did not need to be concerned. He testified that Captain Lloyd never told him what he was to improve. Pierce said he did not understand what it was that he needed to improve.

Pierce said that he saw his first evaluation during his second WTP on December 9, nine days before the end of that WTP. In the interim he said he was told not to be concerned.

Pierce counters to the HPD's allegation that it was difficult to evaluate him during the second WTP because nothing major happened by bringing attention to several major incidents. For example, the incident that occurred on November 9, 2014, at 2130 hours when he assisted the Hasbrouck Heights P.D. in locating a suspect involved in a stolen car. On November 14, 2014, when an individual drove a vehicle into a building. Pierce said he handled a suicide, a burglary, a pedestrian being struck by a train, an attempted robbery with a knife, a fire at a church, a fire with possible arson, a motor vehicle fatality, a robbery, a bar fight, and a call from a bar stating that a customer was in the bar and he had a gun. In total Pierce testified he handled about fifteen major incidents during his WTP.

Pierce received commendations but none during his WTP.

Pierce believes Captain Lloyd is predisposed against him.

During cross-examination Pierce stated that between December 2010 and January 7, 2013, (sixteen months) he was out ill and when he returned he started his first WTP. He furthered that on promotion day six officers were promoted to sergeant and five got their badges he was the only one that did not get his badge—he said it was humiliating.

Pierce said he asked Peterson multiple times for his written reports but Peterson never gave them to him. He was told verbally on December 18 that he had failed this WTP.

On December 8 when he was given Peterson's negative report, he requested a meeting on December 9, and he received all of the reports on December 9. He only requested the reports from Peterson.

Pierce admitted that he never complained about the fact that the procedures outlined in the memo dated November 3, 2014, and the meeting of September 22, 2014, were not followed because he did not want to make waves.

Pierce reiterated numerous times throughout his testimony that he was told by his supervisors not to worry about his performance that it was no big deal and he was doing fine.

FINDINGS OF FACT

Having heard the testimony of the witnesses and reviewed the documentary evidence I make the following findings of **FACT**:

1. Appellant did not get copies of his written evaluation reports until December 9, 2014, approximately one week before the end of his ninety-day WTP.
2. Captain Coffey was assigned to work and meet with Pierce during his second WTP to monitor his progress or lack thereof and to otherwise oversee and supervise Pierce during the WTP.
3. Captain Coffey completed three evaluations on the appellant when he should have done twelve. And, Coffey observed appellant eight days out of the ninety days.
4. Peterson's written evaluations/progress reports and his testimony are not consistent with his opinion and conclusions about Pierce's abilities. Peterson criticizes Pierce for taking too long to make decisions; however, at no time does he define what too long is and under what circumstances. According to Peterson because no major incidents occurred while he was supervising Pierce he was forced to pose hypothetical scenarios to assess Pierce's abilities. However, Peterson failed to provide the details of the hypothetical scenarios he posed to Pierce neither in writing or through his testimony.
5. Appellant should have received copies of the written evaluations/reports as they were completed during his ninety-day WTP.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

In an appeal from an employee's termination at the conclusion of a working test period, the employee shoulders the burden of proving that the appointing authority's "action was in bad faith." N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee is entitled to a new full or shortened working test period and, if appropriate, other remedies. N.J.A.C. 4A:2-4.3(c). The basic test is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of the position. See Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960); Devine v. Plainfield, 31 N.J. Super. 300, 303-04 (App. Div. 1954); Lingrell v. New Jersey Civil Serv. Comm'n, 131 N.J.L. 461 462 (1944). In general, good faith has been defined as meaning "honesty of purpose and integrity of conduct with respect to a given subject." Smith v. Whitman, 39 N.J. 397, 405 (1963). As stated in Schopf v. New Jersey Department of Labor, 96 N.J.A.R.2d (CSV) 853, 857:

No set rule may be formulated when attempting to determine whether an employee's termination at the end of the working test period was based on opinions of the appointing authority formed in good or bad faith. If the opinion is formed based upon actual observations of the employee's performance of the duties of the position, and is an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties if the appointment becomes permanent, it must be considered to have been made in good faith. If, on the other hand, the decision to terminate is not based upon actual observations of performance, or if it is made based upon dishonest motives, is based on bias, prejudice or self-interest, or is made with ill will toward the employee or because of some furtive design, it must be set aside. The use of the good faith standard also implies that if the employer's decision to terminate is made in good faith, the fact that the Merit System Board may not have decided the question in the same way is of no import. It is only required that the opinion be based on actual observations and that those observations form a rational basis for the opinion.

In addition, "[a] fair evaluation period is further evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance." Sokolowsky v. Twp. of Freehold, 92 N.J.A.R.2d (CSV) 155, 157; Davis v. Newark Public Library, 9 N.J.A.R. 84, 87-88. In this regard, the Merit System Board has consistently emphasized the necessity on the part of an appointing authority to comply with the regulatory requirements governing the provision of progress reports. The progress reports required by N.J.A.C. 4A:4-5.3 are a means of notice to an employee in the working test period that his performance is unsatisfactory so that the employee has an opportunity to improve specified performance deficiencies toward completing a successful working test period and attaining permanent appointment. The termination of an employee in situations in which the appointing authority has failed to provide that mandated notice has been found to be demonstrative of a lack of good faith and a denial of a fair evaluation of the employee's work performance.

In Sokolowsky, the Merit System Board concurred with the ALJ's conclusion that the employee should be afforded a new working test period where the appointing authority failed to fulfill the evaluation requirements. Although the employee had received verbal criticism from his supervisor during his working test period, the employee never had the

impression that his supervisor was unsatisfied with his work. While the employee's supervisor had prepared an interoffice memorandum stating that he was dissatisfied with the appellant's work approximately two months into the employee's working test period, the supervisor did not discuss the contents of this memorandum with the appellant and the evidence did not establish that the appellant received it. In concluding that the appellant was entitled to a new full working test period, the ALJ noted that a "fair evaluation period" is "evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance." Sokolowsky, supra, 92 N.J.A.R.2d (CSV) at 157. The ALJ held that "the appointing authority failed to fulfill the . . . requirements for a fair evaluation period." Ibid. Specifically, although the appellant "was verbally advised concerning deficiencies in his performance," "he received no written report concerning his progress," and "[t]he consequence of the appointing authority's failure to provide the appellant with timely written notification of deficiencies was denial of a fair evaluation of his work performance." Ibid.

In the case of Niosi v. Department of Public Works, 95 N.J.A.R. (CSV) 238, 240, the appointing authority's failure to issue the required two-month and final progress reports "in and of itself constitutes bad faith, the requirement that the employee must have an opportunity to correct any deficits," warranting a new working test period). Smith v. N. State Prison, 92 N.J.A.R.2d (CSV) 342 (ordering an extended working test period where employee did not receive progress reports); Richardson v. Dep't of Corr., 92 N.J.A.R.2d (CSV) 63 (concluding the employee demonstrated that the appointing authority reached its determination that his performance was unsatisfactory is bad faith where the employee did not receive the required progress reports on his performance, warranting a new four-month working test period).

The irregularities in the procedures regarding Pierce's working test period cannot be ignored. Peterson, Coffey, Busciglio, and Lloyd were charged with preparing Pierce's evaluations/progress reports yet they all admitted that they did not give Pierce their reports; and Lloyd said he gave the reports to Pierce on December 9, one week before the end of his WTP. The fact that the HPD did not have a set procedure that it was an *ad hoc* program put together by Lloyd shows that the WTP was also being tested and there were no objective guidelines in place.

Peterson's testimony is void of the specifics of the numerous hypotheticals he posed to Pierce to see how Pierce would handle a major incident. And, as per Captain Lloyd, Pierce was not evaluated on any objective tests. Peterson, who was Pierce's immediate supervisor during the second WTP, acknowledged that he did not give Pierce the written progress reports. On its face, the failure to offer adequate time to remediate deficiencies in job performance during a WTP constitutes bad faith on the part of the HPD, a week if that, is insufficient time to correct deficiencies

CONCLUSION

Therefore, having considered all of the above I **CONCLUDE** that the HPD failed to provide Pierce with adequate notice of his work performance during his ninety-day WTP and therefore did not exercise good faith during the WTP. I recommend that Pierce be given another WTP so that a true evaluation of his abilities can be made.

ORDER

I hereby **ORDER** that the Hackensack Police Department's demotion of William Pierce be **REVERSED**.

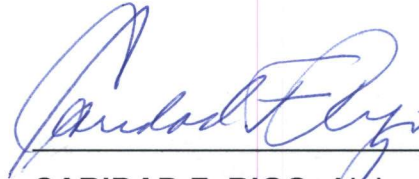
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

July 24, 2017

DATE



CARIDAD F. RIGO, ALJ

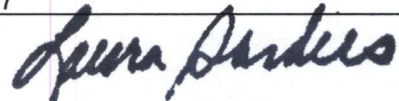
Date Received at Agency:

July 24, 2017

Date Mailed to Parties:

lr

JUL 25 2017



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

LIST OF WITNESSES

For Appellant:

William A. Pierce

For Respondent:

Cpt. Patrick Coffey
Cpt. Timothy Lloyd
Lt. Walter Peterson
Cpt. Peter Busciglio

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

Policies, Handbooks, Etc.

- P-1 Hackensack PD: Harassment in the Workplace 7/22/11
- P-2 City of Hackensack Employee Handbook 11/8/12
- P-3 Agreement between Hackensack and PBA, From 1/ 1/13-12-31-15
- P-4 Hackensack PD: Promotional Process 4/19/13
- P-5 Hackensack PD: Training 4/24/13
- P-6 Hackensack PD: Performance Evaluation 4/24/13
- P-7 Hackensack PD: Disciplinary Act
- P-8 Arrest Step by Step

Before Training Period

- P-9 Letter from Chief Zisa 1/28/03
- P-10 Internal Affairs Complaint Notification from Captain Salcedo 11/1/09
- P-11 Notice of Minor Disciplinary Action Hearing from Chief Zisa 12/18/09
- P-12 Employee Evaluation Report from Sergeant Capone 12/27/11

Field Training Period

- P-13 Daily Observation Report from PO Kiselow 1/12/13
- P-14 Daily Observation Report from PO Kiselow 1/13/13

- P-15 Daily Observation Report from PO Kiselow 1/19/13
- P-16 Daily Observation Report from PO Kiselow 1/21/13
- P-17 Daily Observation Report from PO Kiselow 1/27/13
- P-18 Report Sheet from PO Kiselow 2/14/13
- P-19 Report Sheet from PO Lopez Arenas 2/14/13
- P-20 Report Sheet from PO Pierce 2/14/13

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- P-21 Interoffice communication from Lo Iacono 2/14/13
- P-22 Hackensack PD Personnel Order 2/15/13
- P-23 Interoffice communication from Lieutenant Corcoran 3/31/13
- P-24 Interoffice communication from Captain Foley 4/9/13
- P-25 Interoffice communication from Lieutenant DeWitt 4/24/13
- P-26 Interoffice communication from Lieutenant DeWitt 5/17/13
- P-27 Incident Report from Lieutenant DeWitt 5/17/13
- P-28 Counseling/Training from DeWitt 5/17/13
- P-29 Interoffice communication from Captain Salcedo 5/22/13
- P-30 Interoffice communication from Mordaga 5/23/13
- P-31 Incident Report from Lieutenant DeWitt 5/25/13
- P-32 Performance Notice from Lieutenant DeWitt 5/25/13
- P-33 Interoffice communication from Mordaga 5/26/13
- P-34 Letter from PBA 5/30/13

Appeal of Demotion

- P-35 Formal Appeal of Pierce's Demotion 6/11/13
- P-36 Letter from William Smith to CSC 6/13/13
- P-37 Notice of Settlement Conference 6/21/13
- P-38 Reprimand/Performance Notice from Sergeant Marino 12/6/13
- P-39 Letter from William Smith 1/28/14
- P-40 Interoffice communication from Mordaga 4/14/14
- P-41 Letter from William Smith to Hackensack 4/22/14
- P-42 Initial Decision Dismissal 6/17/14
- P-43 Letter from William Smith to CSC 6/26/14
- P-44 Agreement of Settlement 7/14/14
- P-45 Letter from Bernstein to Smith 7/24/14

P-46 Letter from William Smith to Pierce 7/25/14

P-47 Decision of the CSC 8/13/14

P-48 Letter from Smith to OAL 10/15/14

Second Working Test Period

P-49 Interoffice communication from Sergeant Peterson 9/30/14

P-50 Interoffice communication from Lieutenant Busciglio 9/30/14

P-51 Interoffice communication from Sergeant Peterson 10/8/14

P-52 Interoffice communication from Lieutenant Busciglio 10/9/14

P-53 Interoffice communication from Mordaga 10/31/14

P-54 Interoffice communication from Sergeant Peterson 10/29/14

P-55 Interoffice communication from Captain Lloyd 11/3/14

P-56 Interoffice communication from Sergeant Peterson 11/6/14

P-57 Interoffice communication from Sergeant Peterson 11/17/14

P-58 Interoffice communication from Lieutenant Coffey 11/18/14

P-59 Interoffice communication from Captain Lloyd 11/20/14

P-60 Interoffice communication from Lieutenant Coffey 11/25/14

P-61 Interoffice communication from Sergeant Peterson 12/1/14

P-62 Interoffice communication from Lieutenant Coffey 12/4/14

P-63 Interoffice communication from Sergeant Peterson 12/4/14

P-64 Interoffice communication from Sergeant Peterson 12/11/14

P-65 Interoffice communication from Lieutenant Coffey 12/13/14

P-66 Interoffice communication from Sergeant Peterson 12/16/14

P-67 Interoffice communication from Lieutenant Busciglio 12/16/14

P-68 Interoffice communication from Sergeant de la Bruyere 12/16/14

P-69 Interoffice communication from Sergeant Cappadonna 12/16/14

P-70 Interoffice communication from Captain Lloyd 12/18/14

P-71 Interoffice communication from Mordaga 12/18/14

P-72 Interoffice communication from Mordaga 12/18/14

P-73 Interoffice communication from Mordaga 1/6/15

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P-74 Employee Evaluation Report from Lieutenant Busciglio 2/18/15

P-75 Employee Evaluation Report from Lieutenant Busciglio 2/22/15

P-76 Report Sheet from Pierce 8/22/15

- P-77 Interoffice communication from Sergeant Natale 12/8/15
- P-78 Interoffice communication from Sergeant Capone 12/1/02
- P-79 Certificate in Cultural Diversity 2/5/03
- P-80 Certificate in Ethical Issues in Community Policing 2/6/03
- P-81 Certificate in Strategic Planning 2/11/03
- P-82 Certificate in Conflict Resolution 2/11/13
- P-83 Certificate in Problem Solving Strategies 2/12/03
- P-84 Certificate in Community Organization 2/12/03
- P-85 Certificate in Crime Prevention 2/13/03
- P-86 ASP Tactical Baton Certificate 4/23/03
- P-87 Certificate of Basic Course for Police Officers 6/27/03
- P-88 Certificate for Basic Police Training 6/27/03
- P-89 Certificate of Commendation 6/27/03
- P-90 Certificate of Commendation 6/30/03
- P-91 Certificate of Crime Scene Preservation 4/20/04
- P-92 Certificate of Appreciation 11/17/04
- P-93 Certificate in Hazmat Awareness 11/30/05
- P-94 Certificate in Report Writing 5/12/06
- P-95 Report Sheet from Sergeant Lopez 7/21/10
- P-96 Report Sheet from Sergeant Corcoran 8/6/10
- P-97 Certificate of Commendation 8/18/10
- P-98 Law Enforcement Distinguished Service Award 6/14/12
- P-99 Public Safety Telecommunicator Training 9/20/1
- P-100 Emergency Medical Dispatch Training 10/17/13
- P-101 AHA Cognitive and Skills Evaluation 10/18/13
- P-102 Certificate in Motor Vehicle Stops 2/27/14
- P-103 Certificate in Proactive Police Supervision 1/16/14
- P-104 Certificate in SERVE Intersection Analysis 3/18/15
- P-105 Report Sheet from PO Pierce 9/7/15

Second Appeal of Demotion

- P-106 Formal Appeal of Pierce's Second Demotion 12/31/14
- P-107 Pierce's Interrogatories to Hackensack PD
- P-108 Pierce's Document Demands to Hackensack PD

P-109 Hackensack PD's Answers to Interrogatories

P-110 Hackensack PD's Response to Document Demands

P-111 NJ Civil Service Commission Job Description

Daily Activity Sheets

P-112 Daily Activity Sheet 9/27/14

P-113 Daily Activity Sheet 9/28/14

P-114 Daily Activity Sheet 10/5/14

P-115 Daily Activity Sheet 10/8/14

P-116 Daily Activity Sheet 10/13/14

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P-121 Daily Activity Sheet 11/1/14

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P-127 Daily Activity Sheet 11/24/14

P-128 Daily Activity Sheet 12/1/14

P-129 Daily Activity Sheet 12/2/14

P-130 Daily Activity Sheet 12/3/14

P-131 Daily Activity Sheet 12/7/14

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P-133 Daily Activity Sheet 12/14/14

P-134 Employee Evaluation Report from Sergeant de la Bruyere 2/8/16

P-135 Recognition of PO Pierce from Sergeant de la Bruyere 3/11/16

P-136 Tour Commander Report 12/10/14

P-137 Interoffice communication from Chief Padilla 1/2/13

For Respondent:

- R-1 February 2013 Report Sheets from Police Officers Kiselow, Lopez-Arenas, and Pierce Relating to PO Pierce Returning to Patrol duties following extended leave
- R-2 2013 Working Test Period Evaluations by Captain Salcedo, Captain Foley, Lieutenant Corcoran and Lieutenant DeWitt
- R-3 Order of Settlement Relating to Initial Working Test Period
- R-4 New Jersey Civil Service Commission
- R-5 September 30, 2014, Memo from Lieutenant Busciglio to Captain Lloyd re: Providing docs to Pierce on 9/11/14 re: working at desk and re: progress report for 9/27/14 to 9/30/14
- R-6 November 3, 2014, Memo from Captain Lloyd to Director Mordaga re: September 22, 2014, meeting with Pierce, Busciglio, and Peterson to discuss process of Pierce's promotion and ninety-day working test period
- R-7 September 30, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation for September 22, 29 and 30, 2014
- R-8 October 9, 2014, Memo from Lieutenant Busciglio to Captain Lloyd re: Evaluation Pierce for October 5-8, 2014
- R-9 October 8, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation of Pierce for October 6-8, 2014
- R-10 October 29, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation of Pierce for October 21, 22 and 23, 2014
- R-11 October 31, 2014, Memo from Director Mordaga to Captain Lloyd requesting progress reports from Pierce's supervisors
- R-12 November 6, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation of Pierce for October 29, 30 and 31, 2014
- R-13 November 17, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation of Pierce for November 6-9, 2014
- R-14 November 18, 2014, Memo from Lieutenant Coffey to Captain Lloyd re: Evaluation of Pierce for 4 days in November 2014
- R-15 November 25, 2014, Memo from Lieutenant Coffey to Captain Lloyd re: Evaluation of Pierce on November 22, 2014
- R-16 December 1, 2014, Memo from Sgt. Peterson to Captain Lloyd re: Evaluation of Pierce for November 22-25, 2014

- R-17 December 4, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation of Pierce for December 1-2, 2014
- R-18 December 4, 2014, Memo from Lieutenant Coffey to Captain Lloyd re: Evaluation of Pierce for three days in first week of December 2014
- R-19 December 11, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Evaluation of Pierce for December 8, 9, and 10, 2014
- R-20 December 13, 2014, Memo from Lieutenant Coffey to Captain Lloyd re: Lieutenant Coffey's Working Test Period Review of Pierce
- R-21 December 16, 2014, Memo from Sergeant Peterson to Captain Lloyd re: Sergeant Peterson's evaluation of Pierce during Working Test Period Review
- R-22 December 16, 2014, Memo from Lieutenant Busciglio to Captain Lloyd re: Lieutenant Busciglio's Ninety-Day Working Test Period Review of Pierce
- R-23 December 16, 2014, Memo from Sergeant de la Bruyere to Captain Pierce re: Evaluation of Pierce during Working Test Period
- R-24 December 16, 2014, Memo from Sergeant Cappadonna to Captain Lloyd re: Evaluation of Pierce during Working Test Period (with attached marked-up N.J.-Civil Service Commission job specs for Police Sergeant)
- R-25 December 18, 2014, Memo from Captain Lloyd to Director Mordaga re: Recommendation to demote Pierce
- R-26 December 18, 2014, Memo from Director Mordaga to Pierce re: Failure of working test period and reassignment to rank of Police Officer
- R-27 December 18, 2014, Memo from Director Mordaga to Art Koster re: Pierce's failure of working test period and reassignment to rank of Police Officer
- R-28 January 6, 2015, Memo from Director Mordaga to Art Koster re: Demotion of Pierce
- R-29 February 22, 2015, Employee Evaluation Report prepared by Sergeant Busciglio re: Pierce for September 2014 to December 2014 Evaluation Period
- R-30 February 21, 2015, Report Sheet prepared by Pierce and sent to Director Mordaga setting forth Pierce's comments of disagreement with February 22, 2015, Employee Evaluation Report
- R-31 Volume 2, Chapter 18 of HPD Rules and Regulations entitled "Promotional Process," effective April 19, 2013

R-32 Volume 5, Chapter 3 of HPD Rules and Regulations entitled "Performance Evaluation," effective April 24, 2013