



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Yessenia Montalvo,
Bloomfield, Department of Municipal
Court

CSC Docket Nos. 2022-1463 and
2022-3149
OAL Docket Nos. CSV 00517-22,
CSV 04830-22, and PRC 02350-23
(Consolidated)

ISSUED: APRIL 9, 2025

The appeals of Yessenia Montalvo, Clerk 1, Bloomfield, Department of Municipal Court, 90 working day suspension and removal, effective June 1, 2022, on charges were heard by Administrative Law Judge Andrew M. Baron (ALJ), who rendered his consolidated initial decision on October 25, 2024.¹ Exceptions and replies were filed on behalf of the parties.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 9, 2025, accepted and adopted the ALJ's recommendation to uphold the 90 working day suspension. However, the Commission did not adopt the ALJ's recommendation to modify the removal to a 45 working day suspension. Rather, the Commission reversed the removal.

DISCUSSION

This matter is procedurally complex, as it involves three separate matters: the appellant's appeals to the Commission of her 90 working day suspension and removal; and her union's unfair practice challenge to the Public Employment Relations Commission (PERC) that the charges underlying the removal were invalid as they were in violation of the New Jersey Employer-Employee Relations Act (NJEER Act).

¹ The October 25, 2004, initial decision was pursuant to a remand of the matter from the Public Employment Relations Commission (PERC), which had the predominant interest over this consolidated matter. The original initial decision was issued on March 7, 2024, and is thus, incorporated herein.

At the Office of Administrative Law, the ALJ consolidated all three of these matters. In that regard, it was determined that PERC had the predominant interest over the consolidated removal/NJEER Act challenge. As such, the ALJ's initial decision on remand was first forwarded to PERC to allow it to make its final decision on the issue as to whether the charges underlying the removal were proffered in violation of the NJEER Act. In his October 25, 2024, initial decision, the ALJ found that appointing authority's recording policy in question "must stand in its present form, until it is re-negotiated as part of the handbook and contract between the parties." Additionally, he recommended modifying the removal to a 45 working day suspension.

In its final decision, issued January 30, 2025, PERC considered the ALJ's initial decision and the exceptions and replies filed. Ultimately, it rejected the ALJ's above conclusion, rather, finding that the appointing authority's application of its policy to discipline the appellant after she used her workplace recordings as evidence in her departmental hearing interfered with her exercise of her protected rights in violation of the NJEER Act. As such, PERC found that the ALJ's modification of the removal to a 45 working day suspension was improper, and it instead ordered that the disciplinary removal be removed from the appellant's record. *See P.E.R.C. No. 2022-214*. It also provided its remedies under the Act. PERC then forwarded the matter to the Commission to allow it to make its final determination regarding both the 90 working day suspension, which was not subject to the unfair practice challenge, and the removal. In this regard, the Commission notes that as PERC has exclusive jurisdiction over the NJEER Act, it is bound by PERC's findings made therefrom.

90 Working Day Suspension

In his original and remand initial decisions, the ALJ recommended upholding the charges underlying the 90 working day suspension as well as the original penalty. In this regard, the ALJ's conclusions in this regard, although not explicitly enunciated, were based on his assessment of the credibility of the witnesses' testimony. For example, the ALJ found clearly credited testimony from "multiple" witnesses corroborating that the appellant's actions contributed to "a tense and unnecessary working climate" as well as the testimony from the other employee involved in the "knife incident." The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or

modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). The Commission finds no persuasive evidence in the appellant's exceptions or the record to demonstrate that the ALJ's detailed findings and conclusions were arbitrary, capricious or unreasonable. Here, while the ALJ did not "explicitly enunciate" his credibility determinations as to each witness, his findings and conclusions based on his assessment of the record makes those findings clear. As such, the Commission finds the ALJ's credibility determinations and subsequent findings worthy of due deference and ascertains no basis in the record or the appellant's exceptions to find otherwise.

In her exceptions, the appellant argues that the 90 working day suspension imposed is too harsh. The Commission disagrees. Similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007). Regarding the penalty, the ALJ found:

The question before me is, was a ninety (90) day suspension too harsh, as other than a two-day suspension before, she did not have a record of previous suspension of a lesser amount. And, do a person's personality traits and quirks including difficulty getting along with others, warrant such a long term suspension, especially when the Chief Judge and Court Administrator identify her as a "good worker."

The problem here for Ms. Montalvo is, while each of these incidents and others cited as well, taken by themselves are not overly serious, she repeatedly ignored warnings and counseling sessions with Ms. Santos, Ms. Duva and the Chief Judge where they tried to explain and identify for Ms. Montalvo, why her behavior was so disruptive. Though she acknowledged in her testimony being an aggressive and assertive individual, she never really made a good faith effort to understand the impact of her behavior on others, whose sole collective

goals was to timely process almost 10,000 cases, collect fines and other responsibilities of the municipal court.

As Civil Service cases go, this matter is somewhat unusual in that we are not reviewing an individual who broke the rules, showed up late on a regular basis, called in sick too often or most of the things associated with disciplinary cases that are more clearcut.

However, I can see where Bloomfield officials, who were finally pushed to an extreme by several other employees whose comfort level at work was being impacted, felt they had to act in a more severe manner, resulting in the imposition of a ninety (90) day suspension. Ms. Montalvo's behavior never changed. She expected her co-workers to adjust to her pattern of conduct and ignored prior warning from the Chief Judge and Court Administrator. Under the totality of the circumstances, taking all the factors into account, some minor, some major, I **CONCLUDE** that a ninety-day suspension under the first FNDA was appropriate and justified, and I **THEREFORE CONCLUDE** the ninety-day suspension was warranted under the circumstances and is hereby **sustained**.

As laid out by the ALJ, it is the appellant's cumulative actions that warrant the penalty imposed. Especially troubling is the "knife incident." Clearly, such behaviors require corrective actions and where, as here, it appears that the employee is either unwilling or unable to engage in appropriate workplace behaviors, stern disciplinary sanction is required to impress upon the individual the severity and inappropriateness of their behavior. In this regard, the 90 working day suspension, a weighty penalty, should serve to impress upon the appellant the gravity of her actions as well as serve as a clear warning that any further inappropriate conduct may lead to more severe disciplinary action, up to removal from employment.

Removal

As noted above, the ALJ recommended modifying the removal to a 45 working day suspension. However, PERC subsequently found that the modification of the removal to a 45 working day suspension was improper, as it found that the appointing authority's application of its policy to discipline the appellant after she used her workplace recordings as evidence in her departmental hearing interfered with her exercise of her protected rights in violation of the NJEER Act. As PERC has exclusive jurisdiction over the NJEER Act, the Commission is bound by PERC's findings made therefrom. As such, the Commission finds that there is no basis to uphold any of the charges underlying the appellant's removal from employment, and it is therefore, reversed.

Since the removal has been reversed, pursuant to *N.J.A.C.* 4A:2-2.10, the appellant is entitled to be reinstated to her position with mitigated back pay, benefits and seniority from the effective date of her removal until the date of her reinstatement. Pursuant to *N.J.A.C.* 2-2.12, the appellant's attorney is entitled to reasonable counsel fees. The Commission notes that the counsel fees awarded are solely for the appellant's counsel's work on the Civil Service portion of the removal action, as it has no jurisdiction to award counsel fees for other matters that do not arise under its law and rules.

This decision resolves the merits of the dispute between the parties concerning the removal imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. 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 immediately reinstate the appellant to her permanent position.

ORDER

90 Working Day Suspension

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 90 working days was justified. The Civil Service Commission therefore upholds that action and dismisses the appeal of Yessenia Montalvo.

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

Removal

The Civil Service Commission finds that the appointing authority's action in removing the appellant was not justified. Therefore, the Commission reverses that action and upholds the appeal of Yessenia Montalvo. The Commission further orders that the appellant be reinstated to her position with back pay, benefits and seniority from the effective date of her removal to her reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. The Commission further awards reasonable counsel fees as provided for in *N.J.A.C.* 4A:2-2.12. However, the counsel fees awarded are solely for the appellant's counsel's work on the Civil Service portion of the removal action, as it has no jurisdiction to award counsel fees for other matters that do not arise under its law and rules.

Proof of income earned and an affidavit of mitigation in support of back pay and an affidavit of services in support of reasonable counsel fees shall be submitted

by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. The Commission directs that the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending any back pay or counsel fees dispute,

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees 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 should be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF APRIL, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

BLOOMFIELD TOWNSHIP,

Petitioner,

v.

IUOE LOCAL 68,

Respondent.

OAL DKT. NO. PRC 05670-24

CSC NO.: CO-2022-214

BLOOMFIELD TWP.

Petitioner,

v.

IUOE LOCAL 68,

Respondent.

(ON REMAND)

OAL DKT. NO. PRC 02350-23

AGENCY NO. CO-2022-214

YESSENIA MONTALVO,

Petitioner,

v.

**TOWNSHIP OF BLOOMFIELD,
DEPARTMENT OF MUNICIPAL COURT,**

Respondent.

CONSOLIDATED

OAL DKT. NO. CSV 00517-22

CSC NO.: 2022-1463

**I/M/O YESSENIA MONTALVO,
TOWNSHIP OF BLOOMFIELD,
DEPARTMENT OF MUNICIPAL
COURT,**

Respondent.

OAL DKT. NO. CSV 04830-22

CSC NO.: 2022-3149

Raymond G. Heineman, Esq., for petitioner (Kroll, Heineman, Ptasiewicz & Parsons, attorneys)

John J.D. Burke, Esq., for respondent Township of Bloomfield (Antonelli, Kantor, Rivera, attorneys)

Record Closed: September 10, 2024

Decided: October 25, 2024

BEFORE **ANDREW M. BARON, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Yessenia Montalvo, a former Clerk with the Bloomfield Municipal Court, appeals two Final Notices of Disciplinary Action charging her with incompetency, insubordination, conduct unbecoming and other sufficient cause under N.J.A.C. 4A:2-2 et. seq. The initial charge first assessed on December 10, 2021 issuing a ninety-day (90-day) suspension from work, without pay, as a result of an accusation of insubordination concerning alleged threats made to a co-worker, and other related personality conflicts between Ms. Montalvo and her co-workers.

Said discipline was subsequently followed four (4) months later on April 1, 2022, with a second Final Notice of Disciplinary Action which assessed a termination for recording co-worker conversations in violation of Township policy. On behalf of Montalvo and within six months of bringing a second charge for violating the Township's no recording in the workplace policy, the her union, Local 68 filed an unfair practice labor practice charge against the Township with PERC.

Both actions against Ms. Montalvo were the subject of a hearing conducted by Township Attorney Steven Martino. In each case, limited witnesses were called, and Ms. Montalvo was not allowed to cross-examine them, leading to questions about the lack of due process prior to imposing the disciplinary charges against her which ultimately led to

termination. Shortly thereafter, Ms. Montalvo filed timely appeals on both matters with the Civil Service Commission. The Township's request at the beginning of this hearing to re-prosecute certain other charges, including but not limited to racism on the part of Ms. Montalvo was denied, as this charge was deemed unfounded by the hearing officer, and Ms. Montalvo and her representatives had no notice that the Township was going to seek a second opportunity to prove this charge against her.

The first two matters were transmitted to the Office of Administrative Law (OAL) on January 21, 2022 and June 16, 2022 respectively for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

By consent of the parties and for the sake of judicial economy, the matters were consolidated with a third matter, an Unfair Practice charge, PRC 02350-23 was originally filed on April 25, 2022 as amended on June 3, 2022 by petitioner's union Local 68 on her behalf against the Township and was subsequently transmitted and consolidated with the other two cases for a global determination on all issues. (The Consolidation Order identified the PERC case as the Predominant matter, and this decision reflects that as a matter of procedure only. However, the testimonial part of the case was primarily focused on the two Civil Service actions, with less emphasis on the challenge to the overall recording policy filed before PERC by Ms. Montalvo's union Local 68.)

The purpose of this decision on Remand is to clarify and focus on the two remaining aspects of petitioner's case brought before PERC, whether or not Local 68's complaint was timely filed, and, if so, whether or not the determination by the Township was appropriate and in compliance with its no recording policy.

Having reviewed the record as directed by the PERC Remand to make more specific Findings as to the timeliness of the Unfair Practice Charge as well as the propriety of the Township's action, these two additional issues as identified in the Remand are set forth below.

DISCUSSION

This case comes before me on Remand from the Public Employees Relations Commission as part of a consolidated case with two other matters that were transmitted by the Civil Service Commission.

(In order to properly address the concerns as reflected in the Remand, much of the language and law contained herein is reflected and restated from the Remand transmittal from PERC, some of which came from the language reflected in the exceptions respectively filed by each party).

After five (5) days of hearings and the issuance of an Initial Decision on March 7, 2024, the PRC remanded this matter for further proceedings concerning the issue of the timelines of the Complaint filed on petitioner's behalf by Local 68, and the propriety of the actions against petitioner by the Township.

Yessenia Montalvo has worked in the public sector for almost eighteen (18) years. Prior to her employment with the Township of Bloomfield Municipal Court, she accepted a position as a Newark Police officer, where she served in that position for twelve (12) years.

Seeking a more regular schedule which would allow her to spend more time with her children, Ms. Montalvo took early retirement from her position in Newark, and on June 2, 2016, she was hired by the Township of Bloomfield as a Municipal Court Clerk. Within a year, she was promoted to the position of Assistant Violations Clerk.

On December 10, 2021, the Township of Bloomfield issued a Final Notice of Disciplinary Action, (FNDA) for a ninety-day suspension without pay for a variety of workplace actions against co-workers.

During the course of the Township's hearing, petitioner revealed that she recorded

certain conversations involving her in the workplace out of fear that another unilateral disciplinary action would be taken against her.

Although she revealed this voluntarily, the Township treated this as another adverse action and issued a second Final Notice of Disciplinary Action against her with a recommendation of termination on June 6, 2022.

The charges contained in the second FNDA alleged violations of the Township's "No Recording in the Workplace" policy, which had been adopted and incorporated as part of the Bloomfield Township employee handbook some time in 2018.

On April 25, 2022, Ms. Montalvo's union, the International Union of Operating Engineers, Local 68, filed an unfair practice charge alleging the Township violated N.J.S.A. 34:13A-5.4 (a1) and (a3) of the New Jersey Employer-Employee Relationships Act, (hereinafter referred to as (the Act)), when it terminated Ms. Montalvo for submitting recordings of workplace interactions as part of her defense in the initial FNDA.

Local 68 asserts that the Township enforcement of its policy restricting the use of electronic recording devices impermissibly restricts protected activities under the Act. In essence, the Union on behalf of petitioner, is challenging the entire scope of the Township's no recording policy, and more specifically as it relates to the termination of petitioner.

The Township contends that not only does it have full authority to enact such a provision, but the Union's Complaint was untimely, since its challenge to the policy was brought well past the required six (6) months as allowed under the PERC statute.

Following the issuance of a formal complaint by PERC, this matter became the predominant case of the three consolidated cases.

The Township called seven (7) witnesses regarding Ms. Montalvo's conduct in the workplace all but one of whom worked in or with the Municipal Court. The employees

who appeared included Deborah Washington, Tiyanna Barnes, Judesca Correa, Leonna Carribon-Baptiste, Claudia Santos, Chief Judge Wilfredo Benitez and for the Township, Assistant Administrator Kim Duva. Ms. Montalvo testified for herself as did union representative Dahlia Vertrese on her behalf.

After a series of conflicts and incidents with her co-workers, and with knowledge that a hostile work environment investigation was ongoing, Ms. Montalvo became concerned that she was being targeted and determined she needed to take action to protect herself. Concerned that none of her co-workers would back her up if charges were filed, she decided on a selective basis to record certain conversations without the knowledge of the people she was speaking with. Though the Township's zero tolerance recording policy appears in the employee handbook, Ms. Montalvo indicated she had no knowledge of it, and even if she did, felt she had the right to protect herself against potentially false charges should anything surface later on.

Three (3) times during this two-year period, she unsuccessfully sought a lateral transfer to another department within the Township but was told each time there was nothing available at an equivalent salary. With nothing available, there was no indication that Township officials enlarged their search for other positions either in neighboring towns or with Essex County.

The cumulative impact of the general ongoing difficult personality conflicts between Ms. Montalvo and others, the window incident involving the driver who blocked Ms. Montalvo's driveway, and the allegations of threatening use of a knife against a fellow employee resulted in the Township suspending Ms. Montalvo for a period of ninety (90) days due to insubordination.

Upon learning during the first internal proceeding that Ms. Montalvo had selectively recorded some of the conversations with her co-workers, including but not limited to her boss, Ms. Santos, the Township moved to terminate Ms. Montalvo for violating the Township's prohibition on recording in the workplace. In addition to filing a timely appeal with Civil Service, Ms. Montalvo also filed an Unfair Labor Practice charge before the

Public Employees Relations Commission, (PERC) representing that Bloomfield's ban on recording in the workplace, and her subsequent termination, violated the New Jersey Employer-Employee Relations Act.

In the Complaint, Local 68 argues that where an employer maintains a work rule that may interfere with the employee's protected rights, the six-month statute of limitations for bringing such complaints does not apply, and only commences with the timing of an enforcement action against the employee, when the original policy was enacted.

Local 68 further argues that the Township's no recording policy violates the New Jersey Employer-employee Act because it does not provide any exceptions for a protected activity, (in this case, recording workplace conversations which might be used to support an employee's defense against workplace charges.

The Township contends Local 68's unfair practice charge must be dismissed because it was filed more than six (6) months after the Township's January 2021 employee handbook was issued which contained the no recording policy.

It is undisputed that there was no Last Chance Agreement in effect that municipalities sometimes rely upon as part of the progressive discipline process to justify termination of an employee.

UNDISPUTED FINDINGS OF FACT

Based on the testimony of the witnesses, together with the evidence presented, set forth below, I make the following **FINDINGS OF FACT**.

1. Yessenia Montalvo has been a public sector employee, subject to the jurisdiction of the Civil Service Commission, for almost eighteen years.
2. Prior to being hired as a Municipal Clerk in Bloomfield, she spent twelve years working as a Newark Police officer.
3. Within a year after she started with the Court, she was promoted to the position of

Assistant Violations Clerk.

4. Her primary supervisors, Chief Judge Wilfredo Benitez and Court Administrator Claudia Santos described her as a "good employee" who at times had difficulty getting along with co-workers.
5. Ms. Montalvo admits to having an "aggressive, confident and assertive" personality that sometimes rubs people the wrong way.
6. In 2019, Ms. Montalvo filed a hostile work environment complaint due to her frustration with the use of improper language in the workplace and related issues that she found offensive.
7. Though the complaint was not sustained, it led to a meeting being called with all court personnel to discuss professionalism in the workplace and suggestions for everyone to get along better.
8. The workspace where the municipal court clerks sit is rather small for the number of personnel who work there. Bloomfield is a busy court, processing and disposing up to 10,000 cases a year.
9. There were ongoing conflicts between Ms. Montalvo and several of her co-workers. Initially the disputes were small, over loud talking, giving orders, phone and door slamming.
10. Some court employees described working with Ms. Montalvo as "walking on eggshells."
11. As a result of the cumulative effect of these conflicts, on September 4, 2019, chief Judge Wilfredo Benitez issued a First Written warning to Ms. Montalvo.
12. Though occasional conflicts remained, for a period of almost two years after the written warning, things remained relatively quiet, or at least tolerable by the other employees.
13. Upon returning on a rotating part-time basis from the pandemic, another round of conflicts ensued, this time over Ms. Montalvo's unhappiness with the type of cleaner being used in the workplace, and the manner of cleaning itself.
14. From there, the conflicts started to escalate.
15. On June 28, 2021, an unidentified individual parked his car in front of Ms. Montalvo's house in a manner that blocked her driveway. The police were called who looked up the car's license plate and issued a summons to the owner of the

vehicle.

16. When the vehicle driver showed up the next day at the court window to pay the summons, ironically it was Ms. Montalvo who went to the window, not knowing this was the same individual who had blocked her driveway.
17. Once she realized who it was by looking at the ticket, she engaged in conversation with the driver for a short period, until she decided since she was directly involved, she needed to call someone else to handle the transaction.
18. Some of her co-workers overheard her yelling at the individual and claimed that it took Ms. Montalvo, (who did not have window duty that day) too long to step away and call someone else to handle the transaction.
19. After interviewing several of Ms. Montalvo's co-workers, the Township issued a two-day suspension to Ms. Montalvo for not stepping away from the window or asking for help sooner. (The video shows her at the window, but her discussion with the individual was not audible, so one can only see her turning and waving for someone else in the office to take over.)
20. Feeling uncomfortable herself in this work setting, at least three times Ms. Montalvo formally requested a transfer to another Township position. Each time she was told there was nothing available in her salary range. .
21. With the existing tension between Ms. Montalvo and the other employees mounting, on September 24, 2021, a conflict developed between Ms. Montalvo and another co-worker Deborah Washington.
22. Prior thereto, Ms. Washington had previously forwarded a cumulative email to Ms. Santos the Court Administrator about Ms. Montalvo's overall conduct and her inability to get along with others. Citing what she believed to be a series of negative actions by Ms. Montalvo, Ms. Washington sought some form of discipline and counseling be imposed.
23. On September 24, 2021, Ms. Montalvo, whose desk is shown to be on the left side of the office near the exit door, picked up a knife from a table close to her desk where some cake had been left out.
24. Though again there is no audio, she is seen holding the knife, and walking it across the room close to Ms. Washington's desk, where she is alleged to blurt out something to the effect of: "this knife is a weapon and can be used to intimidate

individuals.”

25. Though there is no indication that she pointed the knife at Ms. Washington in a threatening manner, the words were enough to make Ms. Washington feel personally threatened, and she again went to Ms. Santos to seek relief.
26. This time the punishment was more severe than the window incident. After a review of the cumulative effect of the ongoing conflicts with other staff, together with the perceived threat while holding the knife which she put away, the Township determined that she should be suspended for a period of ninety (90) days, which was sustained by the local hearing officer.
27. By this time, Ms. Montalvo felt she was a “target” being singled out for punishment. Since she did not trust that any of her co-workers would stand up for her. She took to recording certain meetings and conversations, which she did not know was a direct violation of the Township’s zero tolerance policy against recording in the workplace.

SUPPLEMENTAL FINDINGS OF FACT ON REMAND AS TO TIMELINESS OF FILING THE UNFAIR PRACTICE CHARGE AND ENFORCEMENT OF THE NO RECORDING POLICY

28. The existence of the recordings surfaced while Ms. Montalvo was going through the hearing for the ninety-day suspension.
29. In January 2021, Township incorporated in its employee handbook, a policy which bars recording in the workplace.
30. The Union, which brought the unfair labor practice charge, did not attempt to challenge or negotiate the no recording policy out of its Collective Bargaining Agreement with the Township, nor did the union challenge the enactment of the no recording policy within six months of its enactment.
31. The no recording policy is what is commonly referred to as “zero tolerance,” and has no exceptions, even if an employee such as Ms. Montalvo feels they need to record something in order to defend themselves against workplace charges and allegations. The lack of exceptions may be in contravention of guidance on such policies provided by the National Labor Relations Board.
32. All Township employees, including Ms. Montalvo are subject to this no recording

rule and other policies contained in the handbook.

33. Ms. Montalvo, who was hired in 2018, was also subject to the no recording rule.
34. Shortly after learning during the course of the first proceeding brought against Ms. Montalvo that she had made workplace recordings, the Township filed new charges against her, this time imposing a termination of her employment, for violating the no recording policy.
35. The existence of the recordings was voluntarily disclosed by Ms. Montalvo.
36. In a separate and subsequent FNDA hearing, the termination of Ms. Montalvo was sustained by hearing officer Martino, who also serves as Township Attorney for Bloomfield.
37. There has been no prior litigation challenging the existence of the Township's no recording policy, and neither side presented sufficient evidence including but not limited to experts concerning whether or not the policy was legally valid.
38. There was no Last Chance Agreement in effect between Ms. Montalvo and the Township, which is a vehicle municipalities often use to justify termination of a public employee, instead of imposing progressive discipline.
39. The Unfair Practice complaint was timely filed within six months of the enforcement action against Ms. Montalvo, which occurred on or about April 1, 2022.
40. The enforcement date is separate and apart from the implementation date which occurred earlier.
41. No formal challenge was brought against the Township immediately following the implementation of the no recording rule.
42. Although the no recording policy in its present form has no exceptions, the policy is valid as it is contained in the employee handbook and was not challenged or revised during the negotiations prior to the signing of the Collective Bargaining Agreement which is binding on the Township and its employees.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive

Branch of the New Jersey State government. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period., for permanent career service employees. When workers are disciplined, the role of the Civil Service Commission is to ensure the punishment fits the offense committed. A fundamental function of the Civil Service is to promote and preserve the imposition of progressive discipline. Town of West New York v. Bock, 38 N.J. 500 (1962). See also: In the Matter of Esther Tyndall and City of East Orange Dept. of Property Taxation, OAL Dkt. Nos. CSV 13300-12 and CSV 09602-13 (February 3, 2017), aff'd CSV Nos. 2013-3452 (March 10, 2017), citing George v. N. Princeton Development Ctr. 96 N.J.A.R. 2nd (CSV) 463. Progressive discipline is assessed based on a totality of circumstances standard, including whether the employee has a track record of habitual misconduct or if the employee has a record largely unblemished by significant disciplinary infractions. In re Stallworth 208 N.J. 182.

Insubordination is generally interpreted to mean the refusal to obey an order of a supervisor. In re Williams, 443 N.J. Super. 532 (App. Div. 2016). See N.J.A.C. 12"17-10.5 (a1). a State Unemployment regulation regarding discharge or suspension for insubordination includes where an employee refused without good cause to comply with instructions from the employer, which were lawful, reasonable, and did not require the individual to perform services beyond the scope of his or her customary duties.

The first Preliminary Notice of Disciplinary Action, (PNDA 10/5/21) sought to impose a ninety-day suspension, on the basis of incompetency, inefficiency or failure to perform duties. The same document charged her with insubordination, conduct unbecoming a public employee and other sufficient cause.

I THEREFORE CONCLUDE that the knife incident, when cumulatively considered with all the other conflicts between Ms. Montalvo and others, does fit the charge of

Conduct Unbecoming, and as such, the Township has met its burden as to this allegation.

In a setting where it has already been established that co-workers are “on pins and needles” working with Ms. Montalvo, the knife comments do seem somewhat strange. I **THEREFORE CONCLUDE** the Township did meet its burden and the charges of Conduct Unbecoming and Other Sufficient Cause are both hereby **sustained**.

As to both these charges, there was testimony from multiple witnesses that simply put, Ms. Montalvo “was hard to get along with, thereby creating additional stress in the workplace.” For example, there was testimony corroborated by more than one witness that she “slammed down phones, slammed doors, at times spoke inappropriately to members of the public about some of the people working in the clerk’s office. There was testimony about loud conversations and screaming to her children. One other witness testified that Ms. Montalvo “went into a rage” about the cleaning supplies being used upon the staff’s return to the office during the pandemic. Selectively bringing back lunch for only certain co-workers was another complaint, as well as pointing out errors made by certain co-workers acting as if she was a supervisor was also another problem Ms. Montalvo was accused of. While not providing a corn muffin to Chief Judge Benitez who politely asked is not a crime, it does contribute the existence of a, in other words an atmosphere hostile work environment to which Ms. Montalvo was not helping, in other words contributing to a tense and unnecessary working climate, where she was not “part of the team.”

I previously **CONCLUDED** that the cumulative effect of all of the workplaces actions by Ms. Montalvo, which were corroborated by several co-workers, as well as the “knife incident” which one could see why it would create additional and unnecessary tension in the workplace, does constitute what the Legislature intended by creating the Conduct Unbecoming and “Other Sufficient Cause” categories of discipline. I **FURTHER CONCLUDED** township officials acted with great restraint prior to the formal filing of charges, whereas officials in other municipalities would have acted sooner and with harsher consequences. Though it is unclear why after three requests the Township did not work harder or more creatively to accommodate Ms. Montalvo’s transfer requests, I

THEREFORE CONCLUDED as to the charges of Conduct Unbecoming and "Other Sufficient Cause," which the knife incident should have been incorporated, the Township of Bloomfield has met its burden that discipline should be assessed against Ms. Montalvo. In the form of a ninety (90) day suspension.

Therefore, my **CONCLUSIONS** to the first FNDA are unchanged as the Township met its burden as to why a ninety (90) days suspension was warranted."

SUPPLEMENTAL CONCLUSIONS ON REMAND AS TO TIMELINESS, ENFORCEMENT, PENALTY AND APPROPRIATENESS OF THE NO RECORDING POLICY

Next, I turn to the issues raised on Remand regarding the second FNDA, resulting in termination of Ms. Montalvo for certain workplace recording in violation of the Township's no recording in the workplace policy, whether the union's unfair practice charge was timely filed, and whether the Township's enforcement action and resulting termination in connection with the no recording violation was appropriate.

(The Remand suggested the option of re-opening the record to consider additional limited testimony on the issues of timeliness of the filing of the complaint, and the implementation and enforcement of the no recording policy. In lieu of additional testimony, it was determined that supplemental argument and submissions on these issues would be considered, with submissions filed on June 24th and September 10th respectively, and supplemental argument on June 26th and August 29th respectively).

NJSA 34: 13A-5.4 (c) provides that no complaint shall issue based on an unfair practice charge occurring more than six months before the filing unless the party was prevented from filing the charge.

However, unfair practice charges may be timely based on the implementation date, rather than when it was approved or announced by the employer, which in this case was incorporated into the employer handbook in April 2021. See: Jamesburg Bd. of Ed PERC

No. 80-56, NJ PER 496 aff'd 1980 N.J. Super Unpub. Lexis 15 (App. Div. 1980.) See also: Warren Hills Reg. Bd. of Ed. PERC No. 78-69 4NJ PER 188 (1979).

The event triggering the running of the limitations period is the effective date of an adverse action, (emphasis added), as opposed to the implementation date. See: State of New Jersey Office of Public Defender PERC no. 2009-30, 34 NJ PER 439 (2008).

There is no dispute that there was a no-recording policy in existence. Feeling threatened and like she was a "target" Ms. Montalvo said she felt compelled to record some conversations to protect herself should she be faced with discipline. (The existence of her recording only came out through her testimony at the first proceeding). The Township's policy has no exceptions and is considered 'zero tolerance" resulting in termination for anyone who violates the policy. Recording conversations in a municipal court clerk's office setting is not ideal, especially in a court office where there are confidential police, driver's license, and domestic violence records.

Nonetheless, Ms. Montalvo had a sense that should discipline be forthcoming, none of her co-workers would back her up. Thus, she explained that she resorted to recording selective conversations, so there would be a record should she need it. There is no indication that sensitive information was shared with third parties. She essentially admitted that she violated the policy, but felt she had a valid basis for doing so, in order to protect herself.

A discrete personnel action such as termination, provides a new operative date for purposes of determining timeliness for a charge. See: Rutgers University NE, 2003 28 NJ PER 466 (2002). See also: Mine Hill Twp. PERC No. 86-145, 12 NJ PER (1986), which stands for the proposition that "an employer violates section 5.4 (a1) of the Act if it engages in activities which tend to interfere with or coerce an employee in the exercise of rights guaranteed by the Act provided the actions lack a legitimate and substantial business justification.

For a 5.4 (a1) violation to be found, proof of actual interference, intimidation

restraint or coercion or motive is unnecessary, a tendency to interfere is sufficient." See Trenton Bd. of Ed PERC No. 2022-20, 48 NJ PER 245, (2021). And see: In re Bridgewater Twp. 95 N.J. 235 (1984) which reflects that a moving part has the burden of showing that the protected conduct was a substantial or motivating factor in the adverse action, and that the employer was hostile towards the exercise of the employee's protected right.

While I **CONCLUDE** that the triggering event occurred within six months of the filing therefore leading me to reach the **CONCLUSION**, that the complaint was timely filed, I am unable to **CONCLUDE** that the Township enacted the no recording policy to retaliate, interfere, restrain, intimidate or coerce its employees, and I **FURTHER CONCLUDE** that the enactment of the policy had a legitimate business justification. To be clear, I **CONCLUDE** that although Ms. Montalvo has the right to challenge the penalty assessed against her for violating the policy, this case is not the proper forum for the union to challenge the entire policy and implementation itself. That would have to be done in another forum, and/or through negotiations in connection with the Collective Bargaining Agreement.

Under the circumstances, while I **CONCLUDE** there was a basis to discipline Ms. Montalvo for violating the Township's no recording policy, I **ALSO CONCLUDE**, however that termination was too harsh of a penalty under our accepted doctrine of progressive discipline especially since there was no Last Chance Agreement in place prior to this severe and final action by the Township.

As such, I **CONCLUDE**, as I previously did in my Initial Decision that from a standpoint of progressive discipline, the termination should be converted to a **forty-five-day (45)** suspension, which is assessed against her as a standalone penalty in lieu of termination and should be served **CONSECUTIVE** to the ninety-day suspension which was assessed in connection with the first FNDA.

Finally, having served and been out of work for well more than that time, I **CONCLUDE** Ms. Montalvo should be reinstated to her position with backpay and with corresponding pension credits. ¹

Finally, as to Ms. Montalvo's Unfair Labor Practice charge, I hereby **DISMISS in part** Ms. Montalvo's Unfair Labor Practice charge as it seems to seek to have the entire policy set aside. While I **CONCLUDE** the complaint was timely brought within six months of its enforcement against her, the policy itself was put in place as a deterrent to employees from improperly recording the actions of co-workers. Among things the policy appears in the employee handbook as a rational basis to protect the privacy and confidentiality of matters in the workplace. I **THEREFORE CONCLUDE** until it is set aside as part of a separate action, and/or negotiated and revised as part of the Collective Bargaining Agreement, it is in fact a valid policy. My ruling here is limited to the fact that I **CONCLUDE** that termination was too harsh of a penalty and inconsistent with our State's policy encouraging progressive discipline.

I **FURTHER CONCLUDE** that the more appropriate forum for challenging the no recording policy is through the next round of negotiations in connection with the next Collective Bargaining Agreement.

Having already **CONCLUDED** that the termination penalty for violating the no recording policy was excessive and was too harsh under the standards of progressive discipline I see no reason to address this aspect of the matter any further.

Accordingly, I **CONCLUDE** the Unfair Labor Practice charge though timely filed, can only be **SUSTAINED** as to the penalty assessed which I have modified. The rest of the Union's request to set aside the entire policy is hereby **DISMISSED**.

Ms. Montalvo's decision to record certain conversations contrary to municipal policy only came about after she had just received a "major" ninety-day suspension for another offense which she had vigorously contested. It was obvious throughout the proceedings that there was a lack of trust between Montalvo, her co-workers and her supervisors, including but not limited to the Township Administrator. Whether or not that created sufficient justification to violate the recording policy, is a **CONCLUSION** I am unable to reach., nor can I reach the **CONCLUSION** that despite the lack of exceptions

contained within the policy, the policy in and of itself must stand in its present form, until it is re-negotiated as part of the handbook and contract between the parties.

ORDER

IT IS HEREBY ORDERED that the ninety-day suspension all of which comes under the doctrine of "Other Sufficient Cause" under the first FNDA is hereby **SUSTAINED**.

IT IS FURTHER ORDERED that the Unfair Practice charge brought by the Union was timely filed within six months of its enforcement against Ms. Montalvo, but **IT IS FURTHER ORDERED** that even though the policy in its present form contains no exceptions, the policy must stand until revised and/or modified as part of the next round of contract negotiations between the parties.

FINALLY, IT IS FURTHER ORDERED that under the standard of progressive discipline, the determination that Ms. Montalvo should be terminated under the second FNDA is deemed harsh and excessive and **I HEREBY ORDER** that the penalty for violating the no recording policy should be **MODIFIED** and converted to a separate forty-five (45) day suspension, which is **CONSECUTIVE** to the first ninety-day suspension as it constitutes a separate offense.

IT IS FURTHER ORDERED that Ms. Montalvo is reinstated to her position with back pay and corresponding pension credit, however, in recognition of the potential impact of this development on the court, the parties should meet to discuss potential employment alternatives.

IT IS FURTHER ORDERED that though timely filed, the Unfair Labor Practice charge is hereby **SUSTAINED in part** as to the harshness of the penalty assessed, but **IT IS ORDERED** that the rest of the Complaint seeking to have the no recording policy set aside is **DISMISSED in part** as the no recording policy was appropriately adopted

and is consistent with the language and intent of similar policies adopted throughout the State.

I hereby **FILE** this Initial Decision with the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **PUBLIC EMPLOYMENT RELATIONS COMMISSION**, who/which by law is authorized to make the final decision on all issues within the scope of its predominant interest. If the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision on all of the issues within the scope of predominant interest 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 **CHAIR OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

Upon transmitting the record, the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

October 25, 2024

DATE



ANDREW M. BARON, ALJ

Date E-Mailed to Agency:

PUBLIC EMPLOYMENT RELATIONS COMMISSION: October 25, 2024

CIVIL SERVICE COMMISSION:

October 25, 2024

Date E-Mailed to Parties:

October 25, 2024

lr

APPENDIX

LIST OF WITNESSES

For Petitioner:

Yessenia Montalvo

Dahlia Vertrese

For Respondent:

Tiyanna Barnes

Judesca Correa

Leona Carribon-Baptiste

Claudia Santos

Kimberly Duva

Chief Judge Wilfredo Benitez

Deborah Washington

LIST OF EXHIBITS IN EVIDENCE

Petitioner

P-1 Montalvo and Santos emails 5/11-5/14/18

P-2 Montalvo and Duva emails 7/30/19

P-3 Written warning 9/4/19 Montalvo Grievance 9/26/19

P-4 Montalvo and Washington emails

P-5 Montalvo and Duva emails 5/19/20

Respondent:

R-1 PNDA 10/6/21

R-2 Report of Hearing Officer

- R-3 FNDA 90 days suspension 12/10/21
- R-4 PNDA 4/1/22 Recordings
- R-5 FNDA 6/6/22 Termination
- R-6 Transcript of recorded telephone conversation
- R-7 Township letter 5/25/18
- R-8 First written warning 9/4/19
- R-9 9/21/21 Notice of Minor Disciplinary Action
- R-10 Training acknowledgment form 11/27/18
- R-11 9/24/21 Police incident report
- R-12 11/21/18 email request for clarification re: travel expenses
- R-13 5/14/18 email
- R-13A Washington emails
- R-13B Correa to Santos email
- R-13C Santos/Montalvo emails
- R-13D Correa to Santos email
- R-14 Bloomfield employee handbook
- R-15 Bloomfield no recording policy
- R-16 Petitioner's answers to interrogatories
- R-17 Audio file
- R-18 Audio file
- R-19 Video file
- R-20 Video file
- R-21 Bloomfield employee handbook 2010 edition
- R-22 New Jersey EPL Ethics training
- R-23 2018 Court employee training
- R-24 Court personnel meeting sign-in sheet 4/27/18
- R-25 Request for lateral transfer-2019

¹ By reinstating Ms. Montalvo, instead of sustaining the termination, I recognize it may cause a period of disarray in the court. However, I cannot consider the potential consequences of what may or may not occur, and I leave it to the officials in Bloomfield working together with Ms. Montalvo's union representatives to find a suitable solution that is in everyone's best interest.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

YESSENIA MONTALVO,

Petitioner,

v.

**TOWNSHIP OF BLOOMFIELD,
DEPARTMENT OF MUNICIPAL COURT,**

Respondent.

OAL DKT. NO. CSV 00517-22

CSC NO.: 2022-1463

**I/M/O YESSENIA MONTALVO,
TOWNSHIP OF BLOOMFIELD,
DEPARTMENT OF MUNICIPAL
COURT,**

Respondent.

OAL DKT. NO. CSV 04830-22

CSC NO.: 2022-3149

BLOOMFIELD TWP.

Petitioner,

v.

IUOE LOCAL 68

Respondent.

OAL DKT. NO. PRC 02350-23

AGENCY NO. CO-2022-214

Raymond G. Heineman, Esq., for petitioner (Kroll, Heineman, Ptasiewicz &
Parsons, attorneys)

John J.D. Burke, Esq., for respondent Township of Bloomfield (Antonelli, Kantor,
Rivera, attorneys)

Record Closed: January 22, 2024

Decided: March 7, 2024

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Yessenia Montalvo, a former Clerk with the Bloomfield Municipal Court, appeals two Final Notices of Disciplinary Action charging her with incompetency, insubordination, conduct unbecoming and other sufficient cause under N.J.A.C. 4A:2-2 et. seq. The initial charge first assessed on December 10, 2021 issuing a ninety-day (90-day) suspension from work, without pay, as a result of an accusation of insubordination concerning alleged threats made to a co-worker, and other related personality conflicts between Ms. Montalvo and her co-workers.

Said discipline was subsequently followed four (4) months later on April 1, 2022, with a second Final Notice of Disciplinary Action which assessed a termination for recording co-worker conversations in violation of Township policy.

Both actions against Ms. Montalvo were the subject of a hearing conducted by Township Attorney Steven Martino. In each case, limited witnesses were called, and Ms. Montalvo was not allowed to cross-examine them, leading to questions about the lack of due process prior to imposing the disciplinary charges against her which ultimately led to termination. Shortly thereafter, Ms. Montalvo filed timely appeals on both matters with the Civil Service Commission. The Township's request at the beginning of this hearing to re-prosecute certain other charges, including but not limited to racism on the part of Ms. Montalvo was denied, as this charge was deemed unfounded by the hearing officer, and Ms. Montalvo and her representatives had no notice that the Township was going to seek a second opportunity to prove this charge against her.

The first two matters were transmitted to the Office of Administrative Law (OAL) on January 21, 2022 and June 16, 2022 respectively for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

By consent of the parties and for the sake of judicial economy, the matters were consolidated with a third matter, an Unfair Practice charge, PRC 02350-23 was originally filed on April 25, 2022 as amended on June 3, 2022 by petitioner's union Local 68 on her behalf against the Township and was subsequently transmitted and consolidated with the other two cases for a global determination on all issues. (The Consolidation Order identified the PERC case as the Predominant matter, and this decision reflects that as a matter of procedure only. However, the testimonial part of the case was primarily focused on the two Civil Service actions, with less emphasis on the challenge to the overall recording policy filed before PERC by Ms. Montalvo's union Local 68.)

DISCUSSION

Yessenia Montalvo has worked in the public sector for almost eighteen (18) years. Prior to her employment with the Township of Bloomfield Municipal Court, she accepted a position as a Newark Police officer, where she served in that position for twelve (12) years.

Seeking a more regular schedule which would allow her to spend more time with her children, Ms. Montalvo took early retirement from her position in Newark, and on June 2, 2016, she was hired by the Township of Bloomfield as a Municipal Court Clerk. Within a year, she was promoted to the position of Assistant Violations Clerk.

To meet its burden, the Township called seven witnesses, all but one of whom worked in or with the Municipal Court. The employees who appeared included Deborah Washington, Tiyanne Barnes, Judesca Correa, Leonna Carribon-Baptiste, Claudia Santos, Chief Judge Wilfredo Benitez and for the Township, Assistant Administrator Kim Duva. Ms. Montalvo testified for herself as did union representative Dahlia Vertrese.

Though her primary supervisors, Chief Judge Wilfredo Benitez and Court Administrator Claudia Santos would later testify she was a "good worker," sometime after receiving the promotion, Ms. Montalvo filed a "hostile work environment" complaint due to the use of improper language in the workplace. Though the complaint was not sustained by the Assistant Township Administrator Kim Duva, it led to a meeting with Court

personnel to discuss professionalism in the workplace and how the co-workers could get along better.

Initially, the conflicts with co-workers started out small, with two of the workers, Judesca Correa and Leona Carribon-Baptiste testifying that there were incidents involving Ms. Montalvo with phone slamming, loud talking, giving orders and instructions when it was not her place to do so and other types of behavior that made each of them indicate that working with her was like “walking on egg shells” because no one ever knew from day to day what type of mood Ms. Montalvo would be in. Both Ms. Correa and M. Baptiste were observed to be credible witnesses. As a result of these and other personality conflicts between Ms. Montalvo and some of her co-workers, Chief Judge Benitez issued her a First Written Warning on September 4, 2019. But the conflicts did not stop, and, in fact, according to her co-workers, it escalated, though for two years, until 2021, not to the level of taking disciplinary action against her.

Another co-worker, Tiyanina Barnes, confirmed that the slamming of doors and phones continued. There was a dispute after workers were directed to return to the office on a rotating basis during Covid about the use and type of cleaning supplies.

Another employee, Deborah Washington testified to her challenges getting along with Ms. Montalvo. Although it seems minor, Ms. Montalvo would often offer to buy or bring lunch back, often excluding certain people like Ms. Washington. There was an incident with Ms. Montalvo bringing in corn muffins and refusing to save one for Judge Benitez on a day he had not eaten breakfast, who was looking for something to tide him over on a day where he was facing a long hearing calendar.

From there, the issues of Ms. Montalvo’s conduct in the workplace escalated, with an incident at the violations window involving a member of the public who was alleged to have parked his car in a manner that blocked Ms. Montalvo’s home driveway. This led Ms. Montalvo to note the license plate and call the police who issued a summons to the driver of the car.

Ironically, the same individual who operated the vehicle turned up the next day at

the Municipal Court window to plead guilty and pay the fine for the violation, Unaware it was the same person, Ms. Montalvo, who was not assigned to window duty that day approached the person, and when he handed her the summons, she recognized the vehicle and was alleged to start a confrontation with him, until she called over one of the other clerks to handle the situation since she knew she could not. During the course of the hearing, the Township played a video of the incident, but it turned out to be essentially useless since there was no audio that would allow the conversation between Ms. Montalvo and the driver to be heard.).

Though Ms. Montalvo did the right thing by calling someone else over to handle the transaction, the Township nonetheless issued her a two-day suspension, for her alleged improper behavior in engaging in brief conversation with the driver before she called over a co-worker to handle the matter.

It appeared that the co-worker with whom Ms. Montalvo had the most problems with was Deborah Washington. Ms. Washington had previously forwarded a cumulative email to Ms. Santos the Court Administrator about Ms. Montalvo's overall conduct and inability to get along with others. Citing what she believed to be unprofessional behavior and conduct, Ms. Washington memorialized a series of negative actions by Ms. Montalvo including but not limited to phone and door slamming, yelling and instructing co-workers who she did not supervise, failure to give phone messages and improper conversations about co-workers with members of the public.

With knowledge that a hostile work environment investigation was ongoing, Ms. Montalvo became concerned that she was being targeted and determined she needed to take action to protect herself. Concerned that none of her co-workers would back her up if charges were filed, she decided on a selective basis to record certain conversations without the knowledge of the people she was speaking with. Though the Township's zero tolerance recording policy appears in the employee handbook, Ms. Montalvo indicated she had no knowledge of it, and even if she did, felt she had the right to protect herself against potentially false charges should anything surface later on.

Three times during this two-year period, she unsuccessfully sought a lateral

transfer to another department within the Township but was told each time there was nothing available at an equivalent salary. With nothing available, there was no indication that Township officials enlarged their search for other positions either in neighboring towns or with Essex County.

With the existing tension between Montalvo and the other employees an ongoing issue, the tension escalated with an alleged conflict between Ms. Montalvo and Ms. Washington on September 24, 2021. It is clear from the two videos shown that despite several employees needed to service a large and busy court, they all work together in close quarters. On the day in question, Ms. Montalvo whose desk is on the left side of the office, picked up a kitchen knife from a table near her desk where some cake was left out for the employees to enjoy. For reasons unknown, she picked up the knife and walked towards the file/storage room where the knife was usually kept when it was not being used. On her way to the room, Ms. Montalvo was overheard saying something to the effect that, "this knife is a weapon and can be used to intimate individuals." She said those words just as she was passing Ms. Washington's desk, who at first was not paying attention to Ms. Montalvo as she walked by. When Ms. Washington did look up and saw it was Ms. Montalvo making the comments and holding the knife, she inquired if Ms. Montalvo was referring to her, after which Ms. Washington again complained to Ms. Santos that she felt she was being personally threatened. A second video was shown purportedly to reflect the alleged knife incident, but again there was no audio, so at best what Ms. Montalvo was accused of by Ms. Washington, seemed inconclusive.

Nonetheless, the cumulative impact of the general ongoing difficult personality conflicts between Ms. Montalvo and others, the window incident involving the driver who blocked Ms. Montalvo's driveway, and the allegations of threatening use of a knife against a fellow employee resulted in the Township suspending Ms. Montalvo for a period of ninety (90) days due to insubordination.

Upon learning that Ms. Montalvo had selectively recorded some of the conversations with her co-workers, including but not limited to her boss, Ms. Santos, the Township moved to terminate Ms. Montalvo for violating the Township's prohibition on recording in the workplace. In addition to filing a timely appeal with Civil Service, Ms.

Montalvo also filed an Unfair Labor Practice charge before the Public Employees Relations Commission, (PERC) representing that Bloomfield's ban on recording in the workplace, and her subsequent termination, violated the New Jersey Employer-Employee Relations Act.

It is undisputed that there was no Last Chance Agreement in effect that municipalities sometimes rely upon as part of the progressive discipline process to justify termination of an employee.

UNDISPUTED FINDINGS OF FACT

Based on the testimony of the witnesses, together with the evidence presented, set forth below, I make the following **FINDINGS OF FACT**.

1. Yessenia Montalvo has been a public sector employee, subject to the jurisdiction of the Civil Service Commission, for almost eighteen years.
2. Prior to being hired as a Municipal Clerk in Bloomfield, she spent twelve years working as a Newark Police officer.
3. Within a year after she started with the Court, she was promoted to the position of Assistant Violations Clerk.
4. Her primary supervisors, Chief Judge Wilfredo Benitez and Court Administrator Claudia Santos described her as a "good employee" who at times had difficulty getting along with co-workers.
5. Ms. Montalvo admits to having an "aggressive, confident and assertive" personality that sometimes rubs people the wrong way.
6. In 2019, Ms. Montalvo filed a hostile work environment complaint due to her frustration with the use of improper language in the workplace and related issues that she found offensive.
7. Though the complaint was not sustained, it led to a meeting being called with all court personnel to discuss professionalism in the workplace and suggestions for everyone to get along better.
8. The workspace where the municipal court clerks sit is rather small for the number of personnel who work there. Bloomfield is a busy court, processing and disposing up to 10,000 cases a year.

9. There were ongoing conflicts between Ms. Montalvo and several of her co-workers. Initially the disputes were small, over loud talking, giving orders, phone and door slamming.
10. Some court employees described working with Ms. Montalvo as "walking on eggshells."
11. As a result of the cumulative effect of these conflicts, on September 4, 2019, chief Judge Wilfredo Benitez issued a First Written warning to Ms. Montalvo.
12. Though occasional conflicts remained, for a period of almost two years after the written warning, things remained relatively quiet, or at least tolerable by the other employees.
13. Upon returning on a rotating part-time basis from the pandemic, another round of conflicts ensued, this time over Ms. Montalvo's unhappiness with the type of cleaner being used in the workplace, and the manner of cleaning itself.
14. From there, the conflicts started to escalate.
15. On June 28, 2021, an unidentified individual parked his car in front of Ms. Montalvo's house in a manner that blocked her driveway. The police were called who looked up the car's license plate and issued a summons to the owner of the vehicle.
16. When the vehicle driver showed up the next day at the court window to pay the summons, ironically it was Ms. Montalvo who went to the window, not knowing this was the same individual who had blocked her driveway.
17. Once she realized who it was by looking at the ticket, she engaged in conversation with the driver for a short period, until she decided since she was directly involved, she needed to call someone else to handle the transaction.
18. Some of her co-workers overheard her yelling at the individual and claimed that it took Ms. Montalvo, (who did not have window duty that day) too long to step away and call someone else to handle the transaction.
19. After interviewing several of Ms. Montalvo's co-workers, the Township issued a two-day suspension to Ms. Montalvo for not stepping away from the window or asking for help sooner. (The video shows her at the window, but her discussion with the individual was not audible, so one can only see her turning and waving for someone else in the office to take over.)
20. Feeling uncomfortable herself in this work setting, at least three times Ms.

Montalvo formally requested a transfer to another Township position. Each time she was told there was nothing available in her salary range.

21. Though Township officials including Ms. Duva and Ms. Santos were aware for some time that Ms. Montalvo was a good employee who for some reason had issues getting along with others, no formal counseling program was recommended to her or her union representative that might have offered alternative to having a better relationship with her co-workers. There is also no indication that Township officials with knowledge of the ongoing problems within the court, broadened their search to include positions at other municipalities or with Essex County, since her work ethic was not an issue.
22. With the existing tension between Ms. Montalvo and the other employees mounting, on September 24, 2021, a conflict developed between Ms. Montalvo and another co-worker Deborah Washington.
23. Prior thereto, Ms. Washington had previously forwarded a cumulative email to Ms. Santos the Court Administrator about Ms. Montalvo's overall conduct and her inability to get along with others. Citing what she believed to be a series of negative actions by Ms. Montalvo, Ms. Washington sought some form of discipline and counseling be imposed.
24. On September 24, 2021, Ms. Montalvo, whose desk is shown to be on the left side of the office near the exit door, picked up a knife from a table close to her desk where some cake had been left out.
25. Though again there is no audio, she is seen holding the knife, and walking it across the room close to Ms. Washington's desk, where she is alleged to blurt out something to the effect of: "this knife is a weapon and can be used to intimidate individuals."
26. Though there is no indication that she pointed the knife at Ms. Washington in a threatening manner, the words were enough to make Ms. Washington feel personally threatened, and she again went to Ms. Santos to seek relief.
27. This time the punishment was more severe than the window incident. After a review of the cumulative effect of the ongoing conflicts with other staff, together with the perceived threat while holding the knife which she put away, the Township determined that she should be suspended for a period of ninety (90) days, which was sustained by the local hearing officer.

28. By this time, Ms. Montalvo felt she was a “target” being singled out for punishment. Since she did not trust that any of her co-workers would stand up for her. She took to recording certain meetings and conversations, which she did not know was a direct violation of the Township’s zero tolerance policy against recording in the workplace.
29. The existence of the recordings surfaced while Ms. Montalvo was going through the hearing for the ninety-day suspension.
30. The Township has a policy which bars recording in the workplace.
31. Shortly thereafter, the Township filed new charges against her, this time imposing a termination of her employment, for violating the no recoding policy.
32. In a separate and subsequent hearing, the termination was also sustained by hearing officer Martino, who also serves as Township Attorney for Bloomfield.
33. There has been no prior litigation challenging the existence of the Township’s no recording policy, and neither side presented sufficient evidence including but not limited to experts concerning whether or not the policy was legally valid.
34. There was no Last Chance Agreement in effect which municipalities often use to justify termination of a public employee.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the Civil Service Act,” established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period., for permanent career service employees. When workers are disciplined, the role of the Civil Service Commission is to ensure the punishment fits the offense committed. A fundamental function of the Civil Service is to promote and preserve the imposition of progressive discipline. Town of West New York v. Bock, 38 N.J. 500 (1962). See also: In

the Matter of Esther Tyndall and City of East Orange Dept. of Property Taxation, OAL Dkt. Nos. CSV 13300-12 and CSV 09602-13 (February 3, 2017), *aff'd* CSV Nos. 2013-3452 (March 10, 2017), citing George v. N. Princeton Development Ctr. 96 N.J.A.R. 2nd (CSV) 463. Progressive discipline is assessed based on a totality of circumstances standard, including whether the employee has a track record of habitual misconduct or if the employee has a record largely unblemished by significant disciplinary infractions. In re Stallworth 208 N.J. 182 (2011).

In this type of proceeding, the appointing authority, (Township of Bloomfield) has the burden of proving the charges by a preponderance of the evidence. N.J.A.C. 4A:2-1.4 (a). See also: In re Michelle Adams, Camden Vicinage Judiciary, 2019 CSC LEXIS 216. Appeals before the Civil Service Commission are *de novo* hearings. N.J.S.A. 11A:2-13. See also: West New York v. Brock, 38 N.J. 500 (1962).

The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in the Brock case, and consider, among other things, the employee's history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of adjudicated misconduct.

Insubordination is generally interpreted to mean the refusal to obey an order of a supervisor. In re Williams, 443 N.J. Super. 532 (App. Div. 2016). See N.J.A.C. 12"17-10.5 (a1). a State Unemployment regulation regarding discharge or suspension for insubordination includes where an employee refused without good cause to comply with instructions from the employer, which were lawful, reasonable, and did not require the individual to perform services beyond the scope of his or her customary duties.

The first Preliminary Notice of Disciplinary Action, (PNDA 10/5/21) sought to impose a ninety-day suspension, on the basis of incompetency, inefficiency or failure to perform duties. The same document charged her with insubordination, conduct unbecoming a public employee and other sufficient cause.

As to the charge of incompetency, the Township alleges that she improperly handled mail and failed to answer telephone calls. Though there was some testimony from co-workers that at times she slammed down phones or was overheard speaking loudly, what seems odd about this aspect of the charge is that both Ms. Santos and Judge Benitez confirmed that aside from the ongoing conflicts with co-workers, Ms. Montalvo was a good and reliable worker, (emphasis added.) On the basis of those statements, as well as the fact that there was no testimony to indicate that she regularly missed time from work, or showed up late, and/or just sat at her desk and didn't handle the normal paperwork that goes in a municipal court clerk's office, **I AM UNABLE TO CONCLUDE** that the Township met its burden to demonstrate that Ms. Montalvo was either Incompetent, Inefficient and/or Failed to Perform her duties. Therefore, this charge is **not sustained**, and discipline as to this allegation is **not warranted**.

With regard to the charge of insubordination, the Township emphasizes the incident at the window involving the individual who blocked her driveway and came to court to pay the ticket. The Township says she should be disciplined because they counted twenty-two (22) seconds before she motioned for another co-worker to handle the transaction, and says she engaged with the person for another minute. Without the audio, I am unable to hear if she said anything inappropriate to this person, or acted in a manner that was inappropriate. The key thing here for me is that Ms. Montalvo did not know when she went to the window that this was the person who blocked her driveway. It was only after she saw the location described on the ticket that she realized this was the same person who resulted in her calling the police. Once she discovered it was the same person, **I CONCLUDE** 22 seconds is not an unreasonable period of time to call someone else to help, since Ms. Montalvo knew she could not process this transaction since it involved her property. Further, there was no testimony that she refused to carry out orders from her superiors on a regular basis. Therefore, as it relates to this particular charge, **I CONCLUDE** the Township did not sustain its burden. The charge of Insubordination is also **not sustained**, and discipline as it relates to the window incident is **not warranted**.

As to the alleged knife incident between Ms. Montalvo and Ms. Washington, which seems to be the most serious allegation, the Township charged Ms. Montalvo with

Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A: 2-2.3 (a)(6). Again here, the Township presented a video recording with no audio. The Township relied on the statement to the effect that "the knife could be used as a weapon", as Ms. Montalvo picked up the knife and returned it to the kitchen area, which is out of sight of the video. Ms. Washington, whose head was down, said she asked if the comment was directed at her, but did nothing else. She didn't get up and walk away or shout out that the comment was inappropriate and out of place. The Township said the statements Ms. Montalvo made about the knife were enough to cause concern among fellow employees. While Ms. Montalvo's knife comments seemed somewhat unusual, there is no accusation that she stood over Ms. Washington's desk or anyone else for that matter holding the knife while she was speaking. She picked the knife up, walked it across the room and placed it back in the kitchen. Therefore, **I do not CONCLUDE** that the Township has met its burden as to Conduct Unbecoming.

I THEREFORE CONCLUDE that the knife incident, when cumulatively considered with all the other conflicts between Ms. Montalvo and others, does fit the charge of Conduct Unbecoming, and as such, the Township has met its burden as to this allegation.

In a setting where it has already been established that co-workers are "on pins and needles" working with Ms. Montalvo, the knife comments do seem somewhat strange. **I THEREFORE CONCLUDE** the Township did meet its burden and the charges of Conduct Unbecoming and Other Sufficient Cause are both hereby **sustained**.

As to both these charges, there was testimony from multiple witnesses that simply put, Ms. Montalvo "was hard to get along with, thereby creating additional stress in the workplace." For example, there was testimony corroborated by more than one witness that she "slammed down phones, slammed doors, at times spoke inappropriately to members of the public about some of the people working in the clerk's office. There was testimony about loud conversations and screaming to her children. One other witness testified that Ms. Montalvo "went into a rage" about the cleaning supplies being used upon the staff's return to the office during the pandemic. Selectively bringing back lunch for only certain co-workers was another complaint, as well as pointing out errors made by certain co-workers acting as if she was a supervisor was also another problem Ms.

Montalvo was accused of. While not providing a corn muffin to Chief Judge Benitez who politely asked is not a crime, it does contribute the existence of a, in other words an atmosphere hostile work environment to which Ms. Montalvo was not helping, in other words contributing to a tense and unnecessary working climate, where she was not "part of the team."

Though none of these individual actions by themselves are fatal to the point of requiring disciplinary action, **I DO CONCLUDE** that the cumulative effect of all of these actions by Ms. Montalvo, which were corroborated by several co-workers, as well as the "knife incident" which one could see why it would create additional and unnecessary tension in the workplace, does constitute what the Legislature intended by creating the Conduct Unbecoming and "Other Sufficient Cause" categories of discipline. **I FURTHER CONCLUDE** township officials acted with great restraint prior to the formal filing of charges, whereas officials in other municipalities would have acted sooner and with harsher consequences. Though it is unclear why after three requests the Township did not work harder or more creatively to accommodate Ms. Montalvo's transfer requests, **I THEREFORE CONCLUDE** as to the charges of Conduct Unbecoming and "Other Sufficient Cause," which the knife incident should have been incorporated, the Township of Bloomfield has met its burden that discipline should be assessed against Ms. Montalvo. In the form of a ninety (90) day suspension.

Having **CONCLUDED** that the cumulative effect of Ms. Montalvo's actions and behavior in the workplace over time warrants discipline under the charges of Conduct Unbecoming and Other Sufficient Cause, the next question in this case involves degree of the offense, and whether there were any mitigating circumstances or alternative forms of penalty that the Township could have imposed against Ms. Montalvo, short of a ninety-day suspension. Bloomfield says Montalvo has no defense to her misconduct, which was inexcusable. But the case law itself suggests that the determination of an appropriate disciplinary infraction cannot be decided in a vacuum. See: Moorestown v. Armstrong, 89 N.J. Super 560 (App. Div. 1965) cert. denied 47 N.J. 80 (1966).

I CONCLUDE that while in a perfect world, Ms. Montalvo could have and should have handled herself in a different manner. It is undisputed that she was difficult to get

along with, often created a climate of tension in the workplace, yelled and screamed especially while on personal calls, gave orders to co-workers she wasn't supervising, and basically made things uncomfortable for the people she was working with. For these cumulative offenses, which occurred after she had received verbal and written warnings, the Township determined that a ninety-day suspension was warranted. The question before me is, was a ninety (90) day suspension too harsh, as other than a two-day suspension before, she did not have a record of previous suspension of a lesser amount. And, do a person's personality traits and quirks including difficulty getting along with others, warrant such a long term suspension, especially when the Chief Judge and Court Administrator identify her as a "good worker."

The problem here for Ms. Montalvo is, while each of these incidents and others cited as well, taken by themselves are not overly serious, she repeatedly ignored warnings and counseling sessions with Ms. Santos, Ms. Duva and the Chief Judge where they tried to explain and identify for Ms. Montalvo, why her behavior was so disruptive. Though she acknowledged in her testimony being an aggressive and assertive individual, she never really made a good faith effort to understand the impact of her behavior on others, whose sole collective goals was to timely process almost 10,000 cases, collect fines and other responsibilities of the municipal court.

As Civil Service cases go, this matter is somewhat unusual in that we are not reviewing an individual who broke the rules, showed up late on a regular basis, called in sick too often or most of the things associated with disciplinary cases that are more clearcut.

However, I can see where Bloomfield officials, who were finally pushed to an extreme by several other employees whose comfort level at work was being impacted, felt they had to act in a more severe manner, resulting in the imposition of a ninety (90) day suspension. Ms. Montalvo's behavior never changed. She expected her co-workers to adjust to her pattern of conduct and ignored prior warning from the Chief Judge and Court Administrator. Under the totality of the circumstances, taking all the factors into account, some minor, some major, **I CONCLUDE** that a ninety-day suspension under the first FNDA was appropriate and justified, and **I THEREFORE CONCLUDE** the ninety-day

suspension was warranted under the circumstances and is hereby **sustained**.

Turning to the second FNDA, resulting in termination of Ms. Montalvo for certain workplace recording in violation of the Township's no recording in the workplace policy, I reach a different conclusion, and **CONCLUDE** that the penalty should be **MODIFIED** from termination to a separate forty-five (45) day suspension which is assessed **Consecutive** to the ninety days suspension under the first FNDA, as it is a separate offense.

There is no dispute that there was a no-recording policy in existence. Feeling threatened and like she was a "target" Ms. Montalvo said she felt compelled to record some conversations to protect herself should she be faced with discipline. (The existence of her recording only came out through her testimony at the first proceeding). The Township's policy has no exceptions and is considered 'zero tolerance' resulting in termination for anyone who violates the policy. Recording conversations in a municipal court clerk's office setting is not ideal, especially in a court office where there are confidential police, driver's license, and domestic violence records.

Nonetheless, Ms. Montalvo had a sense that should discipline be forthcoming, none of her co-workers would back her up. Thus, she explained that she resorted to recording selective conversations, so there would be a record should she need it. There is no indication that sensitive information was shared with third parties. She essentially admitted that she violated the policy, but felt she had a valid basis for doing so, in order to protect herself.

Under the circumstances, while **I CONCLUDE** there was a basis to discipline her for violating the Township's no recording policy, **I ALSO CONCLUDE** that termination was too harsh of a penalty, especially since there was no Last Chance Agreement in place prior to this severe and final action by the Township. As such, **I CONCLUDE** the termination should be converted to a **45-day** suspension, which is assessed against her as a standalone penalty in lieu of termination, **CONSECUTIVE** to the ninety day suspension which was assessed in connection with the first FNDA.

Finally, having served and been out of work for well more than that time, I

CONCLUDE Ms. Montalvo should be reinstated to her position with backpay and with corresponding pension credits.¹

Finally, as to Ms. Montalvo's Unfair Labor Practice charge, I hereby **DISMISS** Ms. Montalvo's Unfair Labor Practice charge, which was brought on her behalf by her union, Local 68.

With the limited information presented to me on this issue and without expert testimony, I cannot find whether or not the Bloomfield no recording policy is or is not valid from a constitutional or other perspective. There is also a question of timeliness as to challenging the entire policy as a whole. Having already **CONCLUDED** that the termination penalty for violating the no recording policy was excessive and was too harsh under the standards of progressive, I see no reason to address this aspect of the matter any further, especially where there is a question as to whether Ms. Montalvo brought this claim within the necessary six-month timeframe for filing. Accordingly, I **CONCLUDE** the Unfair Labor Practice charge cannot be sustained and is hereby **DISMISSED**.

Ms. Montalvo's decision to record certain conversations contrary to municipal policy only came about after she had just received a "major" ninety-day suspension for another offense which she had vigorously contested. It was obvious throughout the proceedings that there was a lack of trust between Montalvo, her co-workers and her supervisors, including but not limited to the Township Administrator. Whether or not that created sufficient justification to violate the recording policy, and/or whether the policy is valid on its face is unknown, but there is no basis at this time to examine those questions any further.

ORDER

IT IS HEREBY ORDERED that the ninety-day suspension all of which comes under the doctrine of "Other Sufficient Cause" under the first FNDA is hereby **Sustained**.

IT IS FURTHER ORDERED that the determination that Ms. Montalvo should be terminated under the second FNDA is hereby **MODIFIED** and converted to a separate forty-five (45) day suspension, which is **CONSECUTIVE** to the first ninety-day suspension as it constitutes a separate offense.

IT IS FURTHER ORDERED that Ms. Montalvo is reinstated to her position with back pay and corresponding pension credit, however, in recognition of the potential impact of this development on the court, the parties should meet to discuss potential employment alternatives.

IT IS FURTHER ORDERED that the Unfair Labor Practice charge is hereby **Dismissed**, as there is a question of timeliness concerning the filing of the challenge to the recording policy as a whole, as well as due to lack of evidence on the subject of whether or not the Bloomfield no recording policy was appropriately adopted and is consistent with the language and intent of similar policies adopted throughout the State.

I hereby **FILE** this Initial Decision with the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **PUBLIC EMPLOYMENT RELATIONS COMMISSION**, who/which by law is authorized to make the final decision on all issues within the scope of its predominant interest. If the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision on all of the issues within the scope of predominant interest 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 **CHAIR OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

Upon transmitting the record, the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

March 7, 2024

DATE

ANDREW M. BARON, ALJ

Date E-Mailed to Agency:

PUBLIC EMPLOYMENT RELATIONS COMMISSION: March 7, 2024

CIVIL SERVICE COMMISSION:

March 7, 2024

Date E-Mailed to Parties:

March 7, 2024

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APPENDIX

LIST OF WITNESSES

For Petitioner:

Yessenia Montalvo

Dahlia Vertrese

For Respondent:

Tiyanna Barnes

Judesca Correa

Leona Carribon-Baptiste

Claudia Santos

Kimberly Duva

Chief Judge Wilfredo Benitez

Deborah Washington

LIST OF EXHIBITS IN EVIDENCE

Petitioner

P-1 Montalvo and Santos emails 5/11-5/14/18

P-2 Montalvo and Duva emails 7/30/19

P-3 Written warning 9/4/19 Montalvo Grievance 9/26/19

P-4 Montalvo and Washington emails

P-5 Montalvo and Duva emails 5/19/20

Respondent:

R-1 PNDA 10/6/21

R-2 Report of Hearing Officer

R-3 FNDA 90 days suspension 12/10/21

- R-4 PNDA 4/1/22 Recordings
- R-5 FNDA 6/6/22 Termination
- R-6 Transcript of recorded telephone conversation
- R-7 Township letter 5/25/18
- R-8 First written warning 9/4/19
- R-9 9/21/21 Notice of Minor Disciplinary Action
- R-10 Training acknowledgment form 11/27/18
- R-11 9/24/21 Police incident report
- R-12 11/21/18 email request for clarification re: travel expenses
- R-13 5/14/18 email
- R-13A Washington emails
- R-13B Correa to Santos email
- R-13C- Santos/Montalvo emails
- R-13D-Correa to Santos email
- R-14 Bloomfield employee handbook
- R-15 Bloomfield no recording policy
- R-16 Petitioner's answers to interrogatories
- R-17 Audio file
- R-18 Audio file
- R-19 Video file
- R-20 Video file
- R-21 Bloomfield employee handbook 2010 edition
- R-22 New Jersey EPL Ethics training
- R-23 2018 Court employee training
- R-24 Court personnel meeting sign-in sheet 4/27/18
- R-25 Request for lateral transfer-2019

¹ By reinstating Ms. Montalvo, instead of sustaining the termination, I recognize it may cause a period of disarray in the court. However, I cannot consider the potential consequences of what may or may not occur, and I leave it to the officials in Bloomfield working together with Ms. Montalvo's union representatives to find a suitable solution that is in everyone's best interest.