STATE OF NEW JERSEY

In the Matter of Stacey Williams, Roselle, Police Department	DECISION OF THE CIVIL SERVICE COMMISSION
CSC Docket Nos. 2025-91 and 2025-92 OAL Docket Nos. CSR 09951-24 and CSR 09957-24 (Consolidated)	

ISSUED: JUNE 11, 2025

The appeals of Stacey Williams, Police Chief, Roselle Police Department, two removals, effective March 14, 2024, on charges, were heard by Administrative Law Judge Thomas R. Betancourt (ALJ), who rendered his initial decision on May 8, 2025. Exceptions were filed on behalf of the appointing authority[1] and a reply was filed on behalf of the appellant.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on June 11, 2025, accepted and adopted the ALJ's Findings of Fact and Conclusions and his recommendations to reverse one removal and modify one removal to a 30 working day suspension.

[1] It is noted that along with the exceptions filed on behalf of the appointing authority, both the Mayor of Roselle, and the President of the Roselle PBA submitted their "objections" to the ALJ's decision. However, as the Roselle PBA is not a party to the appeals filed by the appellant, that submission cannot be considered as "exceptions" to the consolidated initial decision pursuant to *N.J.A.C.* 1:1-18.4, which only permits parties to a matter to file exceptions or replies. Moreover, while the Mayor is the appointing authority for Roselle, it is officially represented in this matter by Tyler Newman, Esq., and, thus, the Mayor's *ex parte* submission cannot be substantively considered by the Commission. Only the exceptions properly filed on Roselle's behalf by its representative were considered. Regardless, both the Mayor's and President's submissions have been included as part of the underlying file for informational purposes should this matter be challenged further.

Removal 1

The first removal involved allegations that the appellant improperly ordered officers to work out-of-title overtime duties; and subsequently ceased all "off-duty-jobs" for the department which resulted in additional costs. In this matter, the ALJ found that the appointing authority had not sustained its burden of proof on the underlying charges. In its exceptions, the appointing authority does not challenge the ALJ's determinations in that regard. Upon its *de novo* review, the Commission finds nothing in the record to demonstrate that the ALJ's findings and determinations in that regard were arbitrary, capricious, unreasonable or otherwise not based on the credible evidence in the record. Accordingly, the Commission affirms the reversal of the removal predicated on the charges relating to the alleged performance-related misconduct.

Removal 2

Regarding the removal for the appellant's use of inappropriate language, there does not appear to be any material substantive dispute about the misconduct. Indeed, the appellant essentially admitted to the language alleged.

In its exceptions, the appointing authority argues that the ALJ improperly dismissed the charges of violation under *N.J.A.C.* 4A:7-3.1, which is the State Policy Prohibiting Discrimination in the Workplace (State Policy). Initially, the Commission notes that any such charges were improperly proffered. The State Policy explicitly **only** applies to State employees. Local government employees are not subject to the State Policy. As such, the appellant should have been charged under *N.J.A.C.* 4A:2-2.2(a)9, Discrimination that affects equal employment opportunity (as defined in *N.J.A.C.* 4A:7-1.1), including sexual harassment or under any other similar policy established by the appointing authority. *See N.J.A.C.* 4A:7-1.1(g). Regardless, even if properly charged, it is clear that the appellant's comment, in the context described was not intended to effect equal employment opportunity or otherwise directed toward any specific employee. Moreover, even assuming, *arguendo*, the appellant's comment was found to be discriminatory, it was also found to be conduct unbecoming a public employee. Thus, such a finding would only be germane to the proper penalty to be imposed, which, for the reasons discussed below, the Commission agrees with the 30 working day suspension recommended by the ALJ.

Regarding the penalty, in the initial decision, the ALJ found:

> In the instant matter, appellant has limited prior discipline which is quite remote in time. Indeed, one can infer appellant would not have risen to Chief of Police with any substantial disciplinary background. I so infer.

> Still, discipline is warranted for the use of the offensive term by appellant while on duty and in police headquarters.
>
> * * *
>
> Appellant used the offending word while referring to a personal friend who is gay. It was not used as a pejorative term and was not directed at any individual. It was not used to demean anyone. It was inappropriate for the Chief of Police to use any offensive language, particularly while on duty and in police headquarters.
>
> I **CONCLUDE** that the respondent has proved by a preponderance of the credible evidence that appellant was guilty of the sustained charges as noted above in the "Conduct" Final Notice of Disciplinary Action; and, that the appropriate discipline for the same is a thirty day suspension.

The Commission agrees with the ALJ's assessment. In this regard, 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). Moreover, the Commission emphasizes that a municipal Police Officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied,* 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117 *N.J.* 567 (1990).

In this matter, the Commission finds that, while abhorrent, the appellant's inappropriate and offensive language, given the context, is not so egregious to warrant removal from employment absent an application of progressive discipline. In this matter, as indicated by the ALJ, the appellant had a long career without a significant disciplinary history. Further, while the appellant's actions, as a Police Chief, are clearly inappropriate, the Commission cannot find that, given his long tenure and lack of a significant disciplinary history, removal is warranted, even acknowledging that Police Officers, and in this case, the highest ranking officer, are

held to a higher standing. However, the Commission emphasizes that its modification of the penalty is in no way condoning the appellant's misconduct. Indeed, the 30 working day suspension imposed, a weighty penalty, should serve to impress upon the appellant the gravity of his 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.

Remedies

Since Removal 1 has been reversed and Removal 2 has been modified, the appellant is entitled to be reinstated to his position with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from 30 working days after the first date of disciplinary separation without pay until the date he is reinstated.

Further, since Removal 1 has been reversed, pursuant to *N.J.A.C.* 2-2.12, the appellant's attorney is entitled to reasonable counsel fees. However, the appellant is not entitled to counsel fees for Removal 2. *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in a disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121,128 (App. Div. 1995): *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). Thus, where, as here, a penalty is modified but charges are sustained and major discipline is imposed, counsel fees must be denied since the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12. Accordingly, as this matter involved the appeal of two removals, where only one has been reversed, the Commission finds that the appellant is only entitled to 50% of the total amount of counsel fees expended for both matters.

This decision resolves the merits of the dispute between the parties concerning Removal 1 and the merits of the dispute between the parties concerning Removal 2 and the penalty imposed therein. 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 on Removal 1 will not become final until any outstanding issues concerning counsel fees are finally resolved and on Removal 2 will not become final until any outstanding issues concerning back pay 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 his permanent position.

ORDER

Removal 1

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 Stacey Williams. The Commission further awards reasonable counsel fees as provided for in *N.J.A.C.* 4A:2-2.12. However, as indicated above, this award is to be 50% of the total amount of counsel fees expended for both appealed matters.

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 counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to 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.

Removal 2

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Civil Service Commission therefore modifies Removal 2 to a 30 working day suspension.

Additionally, the Commission orders that the appellant be granted back pay, benefits, and seniority from 30 working days after the first date of disciplinary separation without pay to the date he is reinstated. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved

by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 11TH DAY OF JUNE, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
CONSOLIDATED

OAL DKT. NO. CSR 09951-24

IN THE MATTER OF STACEY WILLIAMS,
ROSELLE POLICE DEPARTMENT.

IN THE MATTER OF STACEY WILLIAMS,
ROSELLE POLICE DEPARTMENT.

OAL DKT. NO. CSR 09957-24

Patrick P. Toscano, Jr., Esq., for appellant (The Toscano Law Firm, LLC, attorneys)

Tyler Newman, Esq., for respondent (Murphy Orlando, LLC, attorneys)

Record Closed: March 10, 2025 Decided: May 8, 2025

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Stacey Williams, appeals two Final Notices of Disciplinary Action (FNDA), both dated June 27, 2024, and both providing for a penalty of removal.

The Civil Service Commission transmitted both contested cases pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative

Law (OAL), bearing OAL Docket Nos. CSR 09951-24 and CSR 09957-24, respectively, which were filed on July 16, 2024.

A prehearing conference was held on August 5, 2024. The undersigned, sua sponte, consolidated the two matters. A Consolidation and Prehearing Order was entered on August 5, 2024.

The hearing was held on January 8 and 9, 2025.

The record remained open for the parties to obtain transcripts of the proceedings and to file closing briefs. Appellant filed his closing brief dated February 7, 2025. Respondent filed their closing brief dated March 10, 2025, whereupon the record closed.

ISSUES

Whether there is sufficient credible evidence to sustain the charges in the two Final Notices of Disciplinary Action; and, if sustained, whether a penalty of removal is warranted.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

Respondent's case is based upon the testimony of the following individuals:

Dennis Donovan, the Investigator from the County Prosecutor's Office; Delmonte Pryor, now a Captain, who overheard Appellant use the offensive term and was offended; Helder Freire, now Police Chief; Carlos Gonzalez, a police officer and PBA president; William Lord, a Captain; and, Michael Sojka, a police officer.

I found Mr. Donovan wholly credible. He related the results of his investigation in a straightforward and professional manner.

Captain Pryor was mostly credible. I thought his amount of discomfort over appellant's use of the offensive term overstated. I also thought his discomfort not relevant. What was, and is, relevant is the appellant's use of the word and in what context it was used.

Chief Freire's testimony seemed to me rehearsed. He has much to gain, and much to lose, depending on the final decision in this matter. He either remains chief or does not.

Mr. Gonzalez testified as the PBA president and I found him not credible in his interpretation of what the appellant did regarding his overtime and off duty job policies.

Captain Lord and Officer Sojka, while credible, offered little to nothing to the substance of respondent's case.

The appellant offered his own testimony and that of Ms. Johnson and Ms. Dansereau.

I found appellant quite credible. He did not hesitate with answers. He was professional and direct. Most telling was he did not deny using the term "faggot". Notably, he did not recall using it, but stated it was certainly possible that he did.

Ms. Johnson was credible, but her testimony was quite short and did not add much to the issues at hand.

Ms. Dansereau was credible. Her testimony regarding the appellant was quite helpful.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Appellant has worked for the Roselle Police Department since January 1993. (T2 72:3-5)[1] Appellant had two minor disciplinary issues prior to the present charges he now challenges. Both are remote in time. Nearly twenty-eight (28) years ago appellant was written up for an improper search which resulted in an inmate possessing and using a lighter in his cell. (T2 73:18-24) About fifteen years ago, he was written up for a failure to report a pursuit which occurred when he was working in the Narcotics Division with Seargent John Weiss, resulting in the loss of three vacation days. Appellant has never faced any major disciplinary action while employed by Roselle Police Department until now. (T2 74:2-22)

Two Preliminary Notices of Disciplinary Action (PNDA) were filed against appellant, both dated March 14, 2024. (R-1 and R-2) R-1 alleged that appellant was in violation of a host of charges based upon his policy of mandatory overtime for record clerk work, and his policy of not permitting off duty jobs. R-2 alleged that appellant was

in violation of a host of additional charges by using the term "faggot" while relating a story about a close friend to other officers. That close friend is gay. R-1 is referred to as the Performance PNDA and R-2 is referred to as the Conduct PNDA.

Both PNDAs suspended Appellant effective immediately and recommended a penalty of removal. (R-1 and R-1)

Appellant was removed as police chief based on both the "Conduct" PNDA and the "Performance" PNDA as set forth in two Final Notices of Disciplinary Action (FNDA) wherein all chargers were sustained against him after the Internal Affairs Investigation was concluded. (R-3 and R-4) R-3 is referred to as the Performance FNDA and R-4 is referred to as the Conduct FNDA.

The Performance PNDA is dated March 14, 2024. The alleged violations or charges occurred on July 17, 2023 and July 28, 2023.

The Conduct PNDA is dated March 14, 2024. The alleged violations or charges occurred on February 2, 2024.

An Internal Affairs Investigation was conducted by Seargent Dennis Donovan of the Union County Prosecutor's Office who sustained a finding that appellant violated Roselle Police Department Regulation 3:7-10(A) by using derogatory or discourteous language on at least one occasion. (R-7 at 3). Seargent Donovan also noted that most of the complaints made about appellant in the Performance PNDA related to labor issues and contract negotiations, matters addressed through collective bargaining and grievance procedures. Seargent Donovan did not investigate these complaints as misconduct. (R-9 at 1.)

The "Performance" PNDA filed on March 14, 2024, alleges that on July 17, 2023, appellant ordered several officers, who were scheduled to be off that day, to work overtime doing out-of-title administrative and clerical tasks. It further states that on July

[1] The hearing was held on two days: January 8 and 9, 2025. The transcript for January 8, 2025 is designated T1, and the transcript for January 9, 2025 is designated T2.

28, 2023, appellant ceased all "off-duty-jobs" for the officers in the Roselle Police Department, resulting in additional costs. (R-1)

The "Performance" FNDA , filed June 27, 2024, sustained the following charges against appellant: N.J.A.C. 4A:2-2.3(a)(1): Incompetency, Inefficiency, of Failure to Perform Duties; N.J.A.C. 4A2-2.3(a)(2): Insubordination; N.J.A.C. 4A:2-2.3(a)(6): Conduct Unbecoming of a Public Employee; N.J.A.C. 4A:2-2.3(a)(7): Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12): Other Sufficient causes; Violations of Borough and RPD Law Enforcement Manual Policies: 8:1.6(A) Neglect of Duty; (K) Conduct Unbecoming an Employee in Public Service; 8:1.22 Conduct Subversive of Good Order and the Discipline of the Department; 3:1.1 Standards of Conduct; 2:1.25 Neglect of Duty; and 3:1.7 Neglect of Duty. (R-4).

The "Conduct" PNDA, filed on March 14, 2024, states that appellant, while on duty, used derogatory and offensive language to a subordinate officer in front of other employees. (R-2). The subsequent "Conduct" FNDA, field on June 27, 2024, sustained the following charges against Appellant: N.J.A.C. 4A:2-2.3(a)(6): Conduct Unbecoming of a Public Employee; N.J.A.C. 4A:2-2.3(a)(7): Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12): Other Sufficient causes; Violations of Borough and RPD Law Enforcement Manual Policies: 3:7.10(A) Use of Derogatory Terms; 8:1.6(A) Neglect of Duty; (G) Disorderly or Immoral Conduct (K) Conduct Unbecoming an Employee in Public Service; 8:1.22 Conduct Subversive of Good Order and the Discipline of the Department; 3:1.11 Standards of Conduct Towards Superior and Subordinate Officers and Associates; 3:1.12 Obedience to Laws and Regulations; and N.J.A.C. 4A:7-3.1 et. seq.: Prohibiting Discrimination in the Workplace. (R-3)

Based on the preponderance of the relevant, credible evidence, I find that appellant used the derogatory term "faggot" on or around October 22, 2022, when referring to a friend while telling a story to subordinate officers which Lieutenant Pryor, an openly gay officer, overheard. (R-14 at 4:1-25; Transcript dated 1/9/25 Stacey Williams Direct Examination at 80:1-25.)

Despite the use of this derogatory term, appellant's track record does not demonstrate any homophobic tendencies or discriminatory intent, in fact, appellant expressed having no issue with anyone who identifies as gay, lesbian, or homosexual, and expressed he takes no issue with Lieutenant Pryor being gay just as he takes no issue with his Nephew being a married gay man. (T2 95:8-21).

Appellant's use of the word was neither discriminatory nor targeted toward another officer or other specific individual in such a manner exhibiting homophobia or disapproval of those who identify as homosexual. (T2 97:9-13). Appellant admits, and I find as fact, that about ten (10) years ago, he used the word "faggot" jokingly toward another officer who was sensitive to a decomposing body at the scene. (T2 81:6-13)

It is worth stating that the underlying political tension between appellant and the Mayor was palpable during the hearing. (T2 65:14-21; 66:1-7; 66:19-25; 67:1-7; 68:8-15; 69:10-24; 71:1-16) I list these to demonstrate the tension. The political tension can also be found in the testimony of Councilwoman Cynthia Johnson (T2 39: 2-25; 40: 1-22); and former Mayor Christine Dansereau. (T2 51: 2-25; 52: 1-25; 53: 1-25; 54: 1-24; 55: 1-22)

I do not find any of the statements attributed by appellant to the Mayor and others as fact, as they are hearsay statements without residuum of other relevant credible evidence. See N.J.A.C. 1:1-15.5. The same is true as to Councilwoman Johnson's testimony.

Former Mayor Dansereau stated she is a gay woman and does not find appellant to be homophobic. I find this as fact.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv.

Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The

respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, supra, 37 N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

An appeal to the Merit System Board[i] requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

There is no constitutional or statutory right to a government job. State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, which should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the City of Newark bears the burden of proving the charges against appellants by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The "Conduct" FNDA (R-2) in this matter, contained in the transmittal for CSR 09951-24, sustained the following charges;

N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee;

N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty;

N.J.A.C. 4A:2-2.3(a)(9) Discrimination that affect equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment.

N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause – Violations of various Borough and RPD Law Enforcement Manual Policies: 3:7.10(A) Use of Derogatory Terms; 8:1.6(A) Neglect of Duty; (G) Disorderly or Immoral Conduct; (K) Conduct Unbecoming an Employee in Public Service; 8:1.17 Using Rude or Insulting Language or Conduct Offensive to the Public; 8:1.22 Conduct Subversive of Good Order and the Discipline of the

Department; 3:1.1 Standards of Conduct; 3.1.11 Standards of Conduct Towards Superior and Subordinate Officers and Associates; 3:1.12 Obedience to Law and Regulations; and

N.J.A.C. 4A:7-3.1 et. seq.: Prohibiting Discrimination in the Workplace.

The evidence relating to all sustained charges in the FNDA are attributable to appellant's use of the word "faggot" when referring to a personal friend while relating a story about this friend to other officers. The word was not directed at any individual, nor used to demean any individual. It most certainly was inappropriate.

"Conduct unbecoming a public employee" encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect for government employees and confidence in the operation of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Id. at 555 (citation omitted). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (citation omitted).

Use of the word "faggot", even in the context used when relating a story about a friend in front of other officers rises to conduct unbecoming. This charge is sustained.

The FNDA has a sustained charge of Neglect of Duty, N.J.A.C. 4A:3(a)(7). Appellant is charged with "neglect of duty," N.J.A.C. 4A:2-2.3(a)(7). "Neglect of duty" has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), http://njlaw.rutgers.edu/collections/oal/. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the

light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the instant matter use of the word "faggot" when referring to a personal friend cannot constitute neglect of duty. While certainly the use of the offensive term is inappropriate, it does not rise to neglect of duty.

The FNDA also has a sustained charge of N.J.A.C. 4A:2-2.3(a)(9) Discrimination that affect equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment. This charge is not sustained. Nothing was presented by respondent to support the same.

The FNDA also have a sustained charge of Other Sufficient Cause, N.J.A.C. 4A:3(a)(12). There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against respondent as all other offense caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>.

In the instant case the charge of Other Sufficient Cause is sustained as it relates to appellant's use of the term "faggot" in referring to his friend, as this constitutes a violation of the Rochelle Police Department Rules and Regulations, 3:7.10(A) Use of Derogatory Terms. This charge is sustained.

The remaining charges listed under "other sufficient cause" are not sustained. Respondent appears to overreach in charging appellant. The use of the word "faggot"

in one single instance does not rise to the level of the charges sustained in the FNDA. Context regarding the use of the offensive word is important in the instant matter.

Respondent introduced testimony that appellant used the same term some twenty years ago, apparently in an attempt to show respondent was in the habit of using the offensive term. I do not attribute any weight to this testimony as it is remote in time and does not relate to the use of the offensive term in the present matter.

The "Performance" FNDA (R-4) in this matter, contained in the transmittal for CSR 09957-24, sustained the following charges:

> N.J.A.C. 4A:2-2.3(a)(1): Incompetency, Inefficiency, or Failure to Perform Duties;
> N.J.A.C. 4A:2-2.3(a)(2): Insubordination;
> N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee;
> N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty;
> N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause – Violations of Borough and RPD Law Enforcement Manual Policies: 8:1.6(A) Neglect of Duty; (K) Conduct Unbecoming an Employee in Public Service; 8:1.22 Conduct Subversive of Good Order and the Discipline of the Department; 3:1.1 Standards of Conduct: 2:1.25 Neglect of Duty; and 3:1.7 Neglect of Duty.

It is impossible to understand the sustained charges in the "Performance" FNDA. The only evidence presented of any value were two Union Grievances filed about appellant's use of mandatory overtime and cancellation regarding off duty jobs. While one can certainly take an opposite policy position regarding these matters, they are merely the exercise of executive authority by a police chief. There was no evidence of any kind to base the charges set forth in the "Performance" PNDA (R-1), let alone to sustain them. All of the charges set forth in the "Performance" FNDA are not sustained.

Appellant, in ordering the mandatory overtime and cancelling off duty jobs, was merely exercising his authority as set forth in N.J.S.A. 40A:14-118, which states in pertinent part:

> ...that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority:
>
> **a.** Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;
>
> **b.** Have, exercise, and discharge the functions, powers and duties of the force;
>
> **c.** Prescribe the duties and assignments of all subordinates and other personnel;

The Performance FNDA had sustained charges under "other sufficient cause" which cite various violations of the Rochelle Police Department rules and regulations. Those charges must be brought in accordance with the '45 Day Rule", N.J.S.A. 40A:-14-147, which states in pertinent part:

> A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.

The Performance PNDA was brought more than six months after the alleged violations of the rules and regulations occurred. The charges based upon alleged violations of RPD rules and regulations must be dismissed for this reason as well as those stated above.

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of

promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, supra, 38 N.J. 523–24.

The concept of progressive discipline has been used to reduce the penalty of removal in other cases involving a law-enforcement officer who used racist language in public but who otherwise had a largely unblemished employment record. In In re Roberts, CSR 4388-13, Initial Decision (December 10, 2013) adopted, Comm'n (February 12, 2014), <http://njlaw.rutgers.edu/collections/oal/>, for example, an on-duty police officer who, while arresting an uncooperative black suspect, shouted to his K-9 police dog, "Zero, bite that nigger," had his penalty modified from removal to a six-month suspension. The ALJ had found that his misconduct was "plainly aberrational," as his past record only included an oral reprimand for a motor-vehicle accident over the course of seven years of service and several of his minority co-workers credibly testified that he had otherwise treated citizens in an impartial and respectful manner. While the ALJ found that, due to mitigating circumstances, "termination is too severe a penalty," he nonetheless concluded that, despite a past record that included only an oral reprimand, the "fitting" penalty "is the longest suspension which the law allows: six months."

While concept of progressive discipline in determining the level and propriety of penalties imposed requires a review of an individuals prior disciplinary history a "clean" record may be out-weighed if the infraction had issued a serious in nature. Henry v. Rahway State Prison, 81 N.J. 571 (1980); Carter v. Bordentown, 191 N.J. 474 (2007). Further some disciplinary infractions are so serious that removal is appropriate. Destruction of public property is such an infraction. Kindervatter v. Dep't of Envt'l Protection, CSV 3380-98, Initial Decision (June 7, 1999), http://lawlibrary.rutgers.edu/collections/oal/search.html.

In determining the penalty to be imposed, the court noted that none of the factors justifying mitigation of removal were present. Namely mistake, negligence, or remorse. The Court was compelled to hold that whatever the employee's motive, and regardless

of the worth of the computer, she had to be subject to major discipline. While the goal of discipline is to either remove an employee unsuitable for public service or to impose some lesser sanction when the employee may be rehabilitated, the Court held that the extraordinary serious offense in this case could not be mitigated by a prior good-service record as that mitigation is reserved only for lesser offenses.

In the instant matter, appellant has limited prior discipline which is quite remote in time. Indeed, one can infer appellant would not have risen to Chief of Police with any substantial disciplinary background. I so infer.

Still, discipline is warranted for the use of the offensive term by appellant while on duty and in police headquarters.

In In the Matter of William R. Hendricksen, Jr, 235 N.J. 145 (2018), the New Jersey Supreme Court reversed the Appellant Division, which had reversed an ALJ decision sustaining the charges in FNDA, but reducing the penalty from removal to a six month suspension. The charges included the use of the "C" word when speaking about a female supervisor who had assigned him a job he apparently did not like. He did not sue the word towards the female supervisor, but rather just called her the "C" word to himself. In that case the ALJ decision was "deemed" adopted as the Civil Service Commission did not have a quorum to address the AJL's decision. The appointing authority, in this case the Department of Community Affairs, appealed. The Court noted that the ALJ's decision found that the use of the "C" word was an "isolated incident" and that Hendrickson had an "otherwise unblemished disciplinary record."

The Supreme Court, in reversing the Appellate Division in Hendricksen, noted that the Appellate Division did a de novo review of the ALJ's decision, and did not give said decision any deference as a final agency decision. The Supreme Court reinstated the final agency decision (the ALJ's decision).

See also James Karins v. City of Atlantic City, 152 N.J. 532 (1988), use of racial epithet resulting in a suspension of forty-eight days; and the unpublished, but

persuasive, opinion in Matter of Ruggiero, 2022 WL 2062575, use of the word "nigga" resulting in a thirty day suspension.

The three cases noted above all entail much more egregious use of inappropriate language that exists in the present matter.

The three cases noted above all found that a penalty less than removal was warranted. All considered the context in which the offensive language was used. Context in the present matter is important. Appellant used the offending word while referring to a personal friend who is gay. It was not used as a pejorative term and was not directed at any individual. It was not used to demean anyone. It was inappropriate for the Chief of Police to use any offensive language, particularly while on duty and in police headquarters.

I **CONCLUDE** that the respondent has proved by a preponderance of the credible evidence that appellant was guilty of the sustained charges as noted above in the "Conduct" Final Notice of Disciplinary Action; and, that the appropriate discipline for the same is a thirty day suspension.

ORDER

It is hereby **ORDERED** as follows:

The charges set forth in the "Performance" FNDA transmitted with CSR 09957-24 are **not sustained**, and said FNDA is **DISMISSED**; and,

The following charges set forth in the "Conduct" FNDA transmitted with CSR 09951-24 are **sustained**:

N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee;

N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause – 10(A) Use of Derogatory Terms;

The following charges set forth in the "Conduct" FNDA transmitted with CSR 09951-24 are **not sustained**:

N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty;

N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause: Violations of various Borough and RPD Law Enforcement Manual Policies: 8:1.17 Using Rude or Insulting Language or Conduct Offensive to the Public: 3:7. 8:1.6(A) Neglect of Duty; (G) Disorderly or Immoral Conduct; (K) Conduct Unbecoming an Employee in Public Service; 8:1.17 Using Rude or Insulting Language or Conduct Offensive to the Public; 8:1.22 Conduct Subversive of Good Order and the Discipline of the Department; 3:1.1 Standards of Conduct; 3.1.11 Standards of Conduct Towards Superior and Subordinate Officers and Associates; 3:1.12 Obedience to Law and Regulations; and

N.J.A.C. 4A:7-3.1 et. seq.: Prohibiting Discrimination in the Workplace.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

May 8, 2025
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Appellant:

Cynthia Johnson, Councilwoman

Christine Dansereau, former Mayor

Stacey Willaims, Appellant

For Respondent:

Dennis Donovan, Investigator

Delmonte Pryor, Lieutenant

Helder Freire, Chief of Police

Carlos Gonzalez, Police Officer and PBA President

William Lord, Captain

Michael Sojka, Police Officer

List of Exhibits

For Appellant:

A-1 Photograph of Delmonte Pryor

For Respondent:

R-1 Performance PNDA, dated 3/14/24

R-2 Conduct PNDA, dated 3/14/24

R-3 Conduct FNDA, dated 3/27/24

R-4 Performance FNDA, dated 3/27/24

R-5 Statement of Stacey Williams (Transcript)

R-6 Union County Prosecutor's Office Supplemental Internal Affairs Report, dated 2/2/24

R-7 State of Lt. Delmonte Pryor (Transcript)

R-8 Statement of then Capt. Helder Freire (Transcript)

R-9 Union County Prosecutor's Office Internal Affairs Report, dated 2/2/24

R-10 Union Count Prosecutor's Office Complaint Receipt Report, dated 9/14/23

R-11 Roselle Police Department Law Enforcement Manual/Rules and Regulations

R-12 Statement of Capt. Michael Sojka (Transcript)

R-13 Statement of Capt. William Lord (Transcript)

R-14 Statement of Stacey Williams (Transcript)

R-15 Statement of Sgt. Na'Zeek Hurling (Transcript)

R-16 Grievance to Roselle Police Department regarding off-duty Job Cancellation, dated 7/31/23

R-17 Grievance to Roselle Police Department regarding Officer's mandatory overtime as records clerks, dated 7/31/23

[i] Now the Civil Service Commission.