



B-35

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Rene Roa Jr.,
Deputy Police Chief (PM0300T),
Weehawken

Examination Appeal

CSC Docket No. 2016-904

ISSUED: **OCT 13 2015**

(RE)

Rene Roa Jr. appeals his oral score on the promotional examination for Deputy Police Chief (PM0300T), Weehawken. It is noted that the appellant received a final average of 84.130 and ranks third on the resultant eligible list.

The subject promotional examination was held on June 10, 2015. It is noted for the record that this was an oral examination consisting of four questions, relating to Police Administration, Police Management, Criminal Law, and Community Policing. The examination content was based on a comprehensive job analysis. Senior command personnel from police departments, called Subject Matter Experts (SMEs), helped determine acceptable responses based upon the stimulus material presented to the candidates, and they scored the performances. In each question, candidates were presented questions, or with a scenario and had to respond to a series of questions about the scenario.

Performances were taped and scored by SMEs. Each question, and overall oral communication, was rated on a five-point scale, with 5 as the optimal response, 4 as a more than acceptable passing response, 3 as a minimally acceptable passing response, 2 as a less than acceptable response, and 1 as a much less than acceptable response. The appellant received a score of 4 for Police Administration, 3 for Police Management, 3 for Criminal Law, 5 for Community Policing, and 5 for oral communication questions 1 and 2, and 5 for oral communication questions 3 and 4. On appeal, the appellant disagrees with his scores for the Police Administration, Police Management, and Criminal Law questions.

CONCLUSION

The Police Administration question referred to the New Jersey Attorney General Guidelines for Mandatory In-Service Training. There were three parts. Part C asked for examples of voluntary in-service training specifically cited in the guideline. The assessors noted that the appellant did not mention the Internal Affairs Policy and Procedures. On appeal, the appellant argues that the 2015 New Jersey Law Enforcement Handbook Volume 3, by Larry Holtz, states that the Internal Affairs Guideline was last revised in July 2014, the Internal Affairs Policy and Procedures is codified in *N.J.S.A. 40A:14-181*, each agency shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice, and that basic and in-service training for law enforcement officers should emphasize the sworn obligation of those officers to uphold the law and provide for the public safety of the citizenry, and there must also be a process to advise veteran officers of any new statutory requirements or significant procedural changes. He argues that the question referred to the Attorney General Guideline pertaining to Mandatory In-Service Training dated 2000, which does not accurately reflect that training on Internal Affairs Policies and Procedures is mandatory, not voluntary. He maintains that as the Internal Affairs Policy and Procedure Employee Orientation (AG Guideline) is available online, it is a readily acceptable means of instruction in order to track employee training. He requests to not have this response count against his score for this question or to have this subsection removed from the grading process.

In reply, the appellant does not state that he identified the Internal Affairs Policy and Procedures as voluntary in-service training. Rather, he argues that it is mandatory. In reply, the New Jersey Attorney General Guidelines for Mandatory In-Service Training states that Internal Affairs Policy and Procedure training is voluntary. That the Internal Affairs Policy and Procedure has changed in 2014 or is codified by statute is irrelevant. The question did not ask for examples of voluntary in-service training pursuant to *Holtz*, and the fact that it is available online has no bearing on this issue. The Attorney General Guidelines specifically state, "There are a limitless number of topics for In-Service training including new laws, court decisions, internal policies and procedures and defensive driving. Although there is merit to this training, there are no mandates identified for requiring this additional training. The agency chief must determine what additional training is appropriate for the department in light of availability of resources." The appellant is simply incorrect, and there is no basis to remove this response from scoring or to remove Part C from scoring. The appellant missed other examples of voluntary in-service training, and his score of 4 for this question will not be changed.

The Police Management question referred to a failure to take action. A short scenario was given to candidates regarding a complaint by one officer regarding another member of his squad who he claims stood by, and did not assist other

officers with suspects who were resisting arrest. This officer claims that the supervisor knows about this behavior but will not do anything. The scenario indicates that, due to the sensitive nature of the situation, this will be handled as an internal affairs matter. Also, it states that the candidate will be required to oversee and address this matter personally.

Part A asks what should be said in response to the officer's request for confidentiality. The SMEs determined that a proper response would be to inform the officer that you could not guarantee that his name will remain confidential as the candidate has a duty to report police misconduct and violations, and cooperate with the investigation. The assessors noted that the appellant did not give this response to Part A. On appeal, the appellant provides some quotations from texts regarding communication and argues that he would complete as much of the Internal Affairs complaint form as was possible while maintaining the officer's anonymity. He maintains that he should not be alienating or subjecting officers to a hostile work environment while using the tools of information at his disposal. He states that having Internal Affairs investigate the matter would maintain the officer's confidence, and he refers to the "grapevine" as an effective informal means of communication. He concludes by saying that the investigating officer should refrain from promising absolute confidentiality, but this would not be the Deputy Police Chief, and that he could maintain the officer's confidence given the facts presented.

In reply, the scenario specifically stated that the candidate, *i.e.*, the Deputy Police Chief, will be required to oversee and address this matter personally. As such, the SMEs determined that a proper response to the officer would be that he could not guarantee confidentiality. In his presentation, the appellant indicated that he would keep his confidence in this manner. He referred to the grapevine as a way in which supervisors learn of day to day operations, and said he would keep the officer's confidence. The SMEs determined that, as the Deputy Police Chief overseeing the matter personally, the candidate could not guarantee confidentiality. Indeed, the appellant responded to part B which asked for actions to be taken to investigate the matter. As such, the appellant's response was incorrect, and his arguments are not persuasive.

Part C indicated that the complaint was valid and that the supervisor was aware of improper behavior and failed to act on it. It asked for actions that should now be taken. The assessors indicated that the appellant failed to monitor the officer's future behavior to ensure that this does not happen again. On appeal, the appellant provides some information from the Attorney General Internal Affairs Policy and Procedures, Prevention of Misconduct guidelines. He states that he ensured retraining was completed, utilized a Field Training Officer (FTO) program, implemented "truth in packaging," regularly conducted future proper staff inspections, and analyzed Use of Force policies and procedures and ensured

individual training by means of Early Warning Systems. He argues that he had many overlapping manners in dealing with the officer's issue and that the assessors did not properly get his intent regarding future behavior.

In reply, this was a formal examination setting and candidates were required to state what they meant to say. Credit could not be given for information that was implied or assumed. The appellant received credit for examining training needs and determining if refresher training was necessary. This was a separate action from monitoring this individual officer's future behavior. It cannot be assumed that the appellant was monitoring this individual's behavior by utilizing a FTO program where an officer works with a senior officer, implementing "truth in packaging" with new employees, training and mentoring supervisors, regularly conducting staff inspections in addition to line inspections, and analyzing policies and procedures to ensure training. The appellant missed the actions noted by the assessors, and a holistic view of his response to all three parts indicates that his score of 3 is correct.

The Criminal Law question referred to a waiver of rights and confessions. It explained that a suspect has a constitutional right to remain silent, or may waive that right, which could lead to a confession. Part C asked for factors to be considered when determining the voluntariness of the suspect's confession. The assessors indicated that the appellant missed the opportunities to mention the suspect's previous encounters with law enforcement, and the suspect's age. On appeal, the appellant provides a number of quotes from Volume 2 of *Holtz*, and argues that courts use a variety of factors and do not reduce their findings to fixed criteria. The appellant provided a summary of his response and compares them to criteria provided in various court cases and *Holtz*. He states that he articulated the understanding of the individual of the questioning being asked, and stated that law enforcement should pay particular attention when dealing with juveniles. He concludes that he mentioned 26 factors a court would consider.

In reply, in response to this question, the appellant referred to the totality of the circumstances, the number of officers involved, the conditions under which they got the waiver, the nature of questioning, environmental factors (the setting), the use of handcuffs, and if the suspect felt free to go or constrained. The appellant then provided information which was superfluous and not directly related to the question. He received credit for mentioning the length of the detention, and whether questioning was repeated and prolonged in nature or involved physical and mental abuse. He did not mention the suspect's age, or the suspect's previous encounters with law enforcement. In his response regarding the nature of questioning, the appellant stated, "Was the questioning accusatory, invasive and hostile or was it understanding? Was it broken down for example, with the nature of questioning, to the understanding of the individual? Particularly with juveniles, using the juvenile rights form and further explaining the circumstances to obtain that knowingly, voluntarily, and intelligent waiver." While the appellant has

mentioned juveniles in this passage, he does not specifically identify the suspect's age as a factor in determining voluntariness of a confession. While courts may use a variety of factors, the candidates were asked for specific factors to be considered. The suspect's age and previous encounters with the law were two factors listed by the appellant in his appeal from page 178 of *Holtz*, which listed seven factors which were included as relevant. Regardless of whether or not there were other relevant factors besides these seven, the appellant did not state these two factors, and others, such as the suspect's education. At the two-minute warning, the assessor asked the appellant to consider other factors in determining the voluntariness of the suspect's confession. The appellant paused and reread his notes. He added a factor of whether the individual was a target of an investigation and if the suspect voluntarily, knowingly and waived his rights. He did not mention the factors noted by the assessors, and his score of 3 for his responses to the Criminal Law questions will not be changed.


A thorough review of appellant's submissions and the test materials indicates that the appellant's test score is amply supported by the record, and appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 7th DAY OF OCTOBER, 2015



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