A-5

STATE OF NEW JERSEY

In the Matter of Randy Diakunczak
Kean University,
Department of Human Services

CSC DKT. NO. 2015-1587 & 2015-1646

OAL DKT. NO. CSR 16538-14 & 16540-14 (Consolidated)

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: DECEMBER 18, 2015 BW

The appeals of Randy Diakunczak, Campus Police Officer, Kean University, of his two removals effective November 23, 2014, on charges, were heard by Administrative Law Judge Michael Antoniewicz, who rendered his initial decision on October 30, 2015. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on December 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeals of Randy Diakunczak.

Re: Randy Diakunczak

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 ON
DECEMBER 16, 2015

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
CONSOLIDATED
OAL DKT. NO. CSR 16538-14
and
OAL DKT. NO. CSR 16540-14

CSC 2015-1646
2015-1587

IN THE MATTER OF RANDY DIAKUNCZAK,
KEAN UNIVERSITY.

Nancy A. Valentino, Esq., for appellant Randy Diakunczak (Alterman & Associates, attorneys)

Angela L. Velez, Deputy Attorney General, for respondent Kean University (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: September 21, 2015 Decided: October 30, 2015

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Randy Diakunczak (appellant) appeals from the decision of Kean University (Kean/KU) to remove him from his position as a police officer on charges of violating 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)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, which included violations of

Kean University Police Department Rules and Regulations including 3.1.3, abiding by all Rules and Regulations; 3.1.6, officers should conduct themselves in accordance with high ethical standards; 3.1.9, performing duties promptly, faithfully and diligently; 3.1.10, performing all related work as required and abiding by General Order 55.1.3 regarding protecting the victim witness, Special Order 13-006 regarding on-scene investigation and Special Order 13-007 regarding making every effort to meet with a caller from Residence Life. Appellant denies the charges and also asserts that Kean has failed to meet its burden of proving those charges.

On July 17, 2014, a Preliminary Notice of Disciplinary Action (PNDA) was issued and served upon the appellant seeking his removal, charging him with insubordination, conduct unbecoming a public employee and other sufficient cause, including Rule and Regulation violations, abiding by all rules and regulations, officers shall be accountable to their superiors, courtesy when dealing with the public and regarding victim/witness cooperation.

Thereafter, a Final Notice of Disciplinary Action (FNDA) was issued on November 11, 2014, sustaining the disciplinary charges and removing appellant from his position with the Kean University Police Department (KUPD), effective November 23, 2014. The appellant appealed that removal action from the decisions rendered in the local hearings as a result of FNDA issued to the appellant for PNDAs dated March 24, 2014, and July 17, 2014. The July 17, 2014, charges also sought removal as appellant was already involved in a termination hearing.

The matters were filed with the Office of Administrative Law (OAL) on December 1, 2014, as to OAL Dkt. No. CSR 16538-14 and on December 8, 2014, as to OAL Dkt. No. CSR 16540-14, for hearing as contested cases pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.[1]

The matters were assigned to the undersigned on December 29, 2014, and a prehearing conference was held on January 23, 2015, and scheduled for hearing on

[1] An Order of Consolidation was entered on May 1, 2015.

April 30, 2015, and May 1, 2015. The hearings were conducted and continued on June 4, 5, and 22, 2015. At the close of the plenary hearings, I permitted counsel to present concise written closing statements. At the requests of counsel for extension of written submissions, the record closed on September 21, 2015, after receipt of closing summations by both parties.

FACTUAL DISCUSSION

Based upon due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

The respondent, Kean University, carries the burden of proof herein and proceeded first with its case. Up until appellant's removal on disciplinary charges, appellant has been employed by the KUPD for approximately ten years. From 2004 through 2006, appellant worked as a security guard and then became a police officer until his termination on November 23, 2014.

On January 9, 2014, Alexis Terrell (Terrell) was working as a desk assistant (DA) at Bartlett Hall at Kean University. The job required her to sit at a desk behind a glass window and control the flow of visitors and who could go beyond the entryway of Bartlett Hall into the rest of the dorm for security purposes. Terrell had to check the identification of any person entering the building, admit them if they were a resident, retain their identification if they were a guest visiting a resident, or refuse entry to a person not allowed to enter the building. On the wall to the right of the window, looking out on the entryway to Bartlett Hall, very close to Terrell, was a single picture labeled with Joshua Heath's (Heath) name, which was on a no-trespass list for Kean residence halls.

On January 9, 2014, Terrell saw Heath enter the entryway of Bartlett Hall. Heath was about three feet away from her and Terrell had a clear view of Heath. Terrell phoned security and reported that Heath was attempting to enter the Hall while he was presently on the no-trespass list. Terrell stated that she knew this person was Heath

because he looked like the person in the picture on the no-trespass list. Terrell further stated that his face looked exactly the same as the person on the list. In response, Terrell called Residence Hall Director Antwan Reuben at that time to ask him what she should do. Reuben advised her to call the campus police, which she did.

The recording of the call from Terrell to the KUPD was played at the hearing. In that call Terrell identified Heath by name as the person attempting to enter Bartlett Hall. It is clear to me that Terrell was sure that Heath was the person entering the building. In fact thereafter, Terrell spelled Heath's name to the dispatcher. No Kean University Police Officers responded to Terrell in person on that date.

On January 9, 2014, at 2:08 p.m., KUPD Officer Diakunczak responded to Terrell's call. As Diakunczak was the first officer responding to the call, he was the "primary officer" for this call. Diakunczak and other officers went to the area of the subject call and searched the surrounding area. The size of the search was a significant area. None of the officers were able to locate Heath. Lieutenant Lopez, the supervisor for the patrol on duty, who also responded to the call, heard the statements from Diakunczak saying "all clear" on his radio within a few minutes of receiving the call.

Diakunczak worked on January 9, 2014, until 7:00 p.m. and did not speak to the residence hall staff regarding this incident. By custom known to all officers, the primary officer was the officer required to meet with a reporting party from Residence Life on a call for service prior to commencing an investigation. However, appellant did not speak with Terrell on this date and made no effort to seek out Terrell and speak with her.

In addition, Diakunczak did not complete a report before leaving his shift on this date. Diakunczak did prepare a report on January 13, 2014, after Kearney made an inquiry to Diakunczak, Lopez, and Gorman regarding a lack of the report. The report stated that Diakunczak spoke with Terrell on January 10, 2014. It is clear that Diakunczak was not on duty on January 10, 2014, and he did not sign in using Kean's employee-timekeeping system. In addition, Diakunczak did not submit a voucher for overtime pay for that date. It was the appellant's position that he spoke with Terrell on January 10, 2014, without signing in or putting in for overtime. Appellant was not

credible in this testimony. This report was approved by Lieutenant Lopez and Lieutenant Kearney voided the report because it had deficiencies due to the fact that he believed that the elements of defiant trespass had not been met. Appellant then prepared a second report and a supplemental report on January 19, 2014. Kearney found that the report stating that the witness only believed the alleged trespasser was Heath to be strange and then referred the matter to Detective Cole to conduct an Internal Affairs investigation.

On January 19, 2014, Terrell called Diakunczak at the KUPD. The call was recorded on a taped line. On the call Diakunczak told Terrell that "you're gonna have to be subpoenaed to court and act as a witness . . . . I don't know if you want to do that." Terrell stated that he (Heath) looked like the guy in the photo. Diakunczak then leapt to the conclusion that Terrell was not absolutely sure that it was him and advised "her to write a statement to that effect . . . that will free her up from having to go to court and testifying against him." In addition, Diakunczak asked Terrell if she had written an incident report and then advised her not to do so. It was clear from hearing the recorded call that Diakunczak was attempting to dissuade Terrell from identifying Heath and discouraging her from cooperating with the charging of Heath with trespass.

In Diakunczak's report regarding his call with Terrell on January 19, 2014, he states that when he asked Terrell again if she can positively identify Heath, she stated that she was not positive Heath was the actor. Diakunczak also stated in his report that Terrell did not want to file a complaint if she would be subpoenaed to court because she cannot positively identify Heath.

Kearney told Lieutenant Gorman to have the Investigations Bureau do an investigation into the incident as Diakunczak's report and the recordings of the calls did not line up. In doing his investigation, Gorman found that Terrell identified Heath as the actor in her phone call. Gorman then completed an interview of Terrell on January 29, 2014. Terrell confirmed that the actor was no more than three feet from her in Bartlett Hall and that she got a pretty good look at him. Terrell was "pretty sure" that the actor was Heath, but placed her confidence level at four out of ten, which was contradictory. This was explained by Terrell that she was told by Diakunczak that she would have to

go to court but she was afraid to go to court and thus she shaded her level of confidence regarding her identification of Heath. This version told by Terrell is contrary to the version told by Diakunczak in his report.

Based on Gorman's report, Kearney referred this matter to Sergeant Coll on February 7, 2014, in order to determine whether Diakunczak had committed infractions of the Police Department's Rules and Regulations. On February 7, 2014, Diakunczak was issued a target letter by Internal Affairs. On February 14, 2014, Coll sent an email to Diakunczak requesting a statement from him regarding the incident.

On February 19, 2014, Diakunczak provided a response to Coll regarding the IA complaint notification. His response was for all intents and purposes the information contained in the Diakunczak reports of January 13 and 19, 2014. Coll listened to the recorded conversation between Terrell and Diakunczak, which took place on January 19, 2014, and then made additional inquiries of Diakunczak. Included in Coll's additional questions was "Why did you tell Ms. Terrell to not write an incident report with Bartlett?" to which appellant responded that "I never told Ms. Terrell to not write an incident report with Bartlett on this incident." This is clearly contrary to the recording of the conversation between Diakunczak and Terrell.

On March 20, 2014, Coll completed her IA Investigation Report of Diakunczak's conduct regarding the January 9, 2014, incident. Coll found Diakunczak to be untruthful; that Diakunczak's claim of a conversation between Terrell and him on January 10, 2014, was false. Coll found that Diakunczak was not on duty on that date as there was no record of him working and that Terrell told Gorman that she did not speak with Diakunczak until several days after January 9, 2014. Coll also found that Diakunczak violated Special Order 13-007 by not speaking to Terrell on January 9, 2014 (which states that an officer is to make every effort to meet with a reporting party from Residence Life on a call for service prior to commencing an investigation to obtain relevant information).

Coll also found that the appellant directly led Terrell to agree to come in to sign a statement saying that she was not positive that Heath was the actor trespassing on

January 9, 2014. Coll found that Diakunczak convinced Terrell that she would have to go to court and testify against Heath and Diakunczak added that "I don't know if you want to do that." Coll concluded, and I agree, that Diakunczak led Terrell toward doubting what she saw. Diakunczak also misrepresented in his IA response when he stated that he never told Terrell not to write an incident report, which he clearly did.

A disciplinary hearing took place over several days in April, May, and June 2015. During the hearing, Diakunczak was told not to speak to the witness during a break in the proceeding. Diakunczak spoke with the witness (Terrell) and then was instructed once again not to speak with her. After being so instructed by the hearing officer, Diakunczak began to yell and reacted with anger and acted inappropriately (by cursing and making unprofessional comments). For this behavior, Diakunczak was issued another PNDA on July 17, 2014, and charged with insubordination, conduct unbecoming a public employee, and other sufficient causes (including failure to abide by all rules and regulations, officer being accountable to their superiors, and courtesy when dealing with the public). A FNDA was issued to Diakunczak on December 1, 2014, on these charges.

On November 11, 2014, a FNDA was issued and the hearing officer sustained all charges from the March 24, 2014, PNDA. Diakunczak's termination was effective as of November 23, 2014. The FNDA and decision were rendered on the July 17, 2014, PNDA wherein the charges of insubordination and officers being accountable to their superiors were not sustained. However, all other charges were sustained.

CREDIBILITY

There are several aspects of this incident, brought out during the hearings, which pose fact-based or credibility-based determinations by the undersigned. Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness's testimony. A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence.

Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963), cert. denied, Palermo v. United States, 377 U.S. 953, 84 S. Ct. 1625, 12 L. Ed. 2d 498 (1964).

Based upon these principles, the testimony of appellant was not credible. He was inconsistent and vague at times in his testimony concerning the events that occurred. In fact, he clearly misrepresented certain facts including the basis of his phone call with Terrell and the content of same as well as his response to the questions presented to him by Coll. Terrell and Gorman, on the other hand, were specific in their testimony and their story hung together as clear facts that made sense.

FINDINGS OF FACT

I **FIND** as a matter of fact based upon the preponderance of the credible evidence and testimony that appellant did not accurately portray his conversation with Terrell. It was clear that Terrell identified the trespasser as Heath and it was only the direct result of Diakunczak's persuasion that she began to doubt herself. It was Diakunczak's attempt to use Terrell's fear of going to court that caused her to hedge her statement.

Most important to my fact-finding is the fact that Diakunczak's efforts in working with Terrell were contrary to the interests of justice and improper. I have no doubt that if Diakunczak was more supportive of Terrell in his conversation, charges could have been brought against Heath and she may or may not have been made to appear in court.

I also **FIND** that the charges against Diakunczak regarding his report not containing sufficient information for a charge of trespass are supported by the evidence. It appears that Diakunczak was writing his report, predisposed to show that Terrell could not identify Heath, although that is not the case. Diakunczak's report was both misleading and inaccurate.

I further **FIND** that the factual basis presented by Diakunczak regarding his failure to interview Terrell on the date of the reported defiant trespass supports the fact

that he did interview Terrell on that date and prior to further investigation. I **FIND** that the time spent and the urgency of the situation, made his actions (and the other officers responding) better suited to searching a large area of the campus in order to find that trespasser. By the time the search was completed, it was reasonable to believe that Terrell was not on campus and that he could speak with her at a later date.

In addition, I **FIND** that appellant acted in a manner unbecoming of a police officer on June 3, 2014, at his disciplinary hearing. The hearing officer directed Diakunczak to cease talking to the witness (during a break in her testimony) while she was seated in the witness stand. One can quibble as to the basis of such a directive; however, it was incumbent upon Diakunczak not to act out in such an inappropriate manner by yelling curses and banging his phone on the desk. It would have been far more professional to wait a few moments and seek guidance from his legal counsel, who had just stepped outside, rather than to carry on in such an unprofessional manner in display of the hearing officer and the witness. Even with the cover of his good intentions, i.e., trying to calm a nervous witness, his subsequent actions clearly had the opposite effect by causing the witness to be further upset and nervous. Any attempt by the appellant's counsel to compare the conversations between the Kean University Police Officers and Terrell when transporting her to the OAL hearing is without basis.

I **FIND** that the appellant's behavior was of such a nature that progressive discipline is not applicable in this case. Diakunczak's actions rise to a level that makes his continuation as a Kean Police Officer inappropriate. "When the misconduct is severe, when it is unbecoming to the employee's position; renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest," then the principle of incremental or progressive discipline need not be applied. In re Herrmann, 192 N.J. 19, 33 (2007).

Lastly, I **FIND** such is the case here where the honesty of the police officer comes into question and where the police officer then openly attempts to frustrate the investigation process and then acts far outside the expected level of professionalism for a police officer. Such conduct undermines the public confidence in the police

department and shows that Diakunczak does not have the character and skills necessary to perform such work.

ANALYSIS AND CONCLUSIONS OF LAW

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. 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 DOC Park Comm'n, 46 N.J. 138, 147 (1965). Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

"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 or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. 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, that 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, Kean bears the burden of proving the charges against appellant 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 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, I 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. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the

evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). 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). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

In this case, Kean primarily relies upon its charge that appellant falsified a police report, frustrated the Internal Affairs investigation of his acts, failed to follow procedures after a report of defiant trespass by not properly responding to the Residence Life staff witness (which I found was not supported by the evidence), wrote an improper report, improperly coached a witness to doubt herself regarding her recollection, and acted unprofessionally at a disciplinary hearing—thus irreparably damaged his credibility to be a police officer whose duties include being able to testify in court.

As set forth in my findings above, I **CONCLUDE** that there can be no genuine dispute that appellant acted improperly when talking to the witness Terrell and, in fact, purposely guided her to doubt what she saw when she was fully aware of the identification of Heath when she first called in and later when questioned by Gorman. Diakunczak also misrepresented his actions, i.e., that he did not tell Terrell not to write a report when he clearly did. In defense, there was an attempt by Diakunczak's counsel to coach his responses to the investigation as simply a failure to remember. Stating that he could not remember would have been more accurate and thus better response, but he chose to answer differently. This cannot simply be written off as a failure to remember his actions correctly, as the appellant had the option to respond that he could not recall what he said, rather than taking the position which served his interests.

I further **CONCLUDE** that appellant did not fail to follow the rules and regulations regarding speaking to the reporter of an incident after calling in about a possible crime.

For all the reasons set forth above and on the basis of the preponderance of the credible and competent proofs, I **CONCLUDE** that respondent has met its burden on the charges supporting termination and that the disciplinary charges, save for the charge of failing to speak with a reporter from Residence Life as soon as possible after the report, against appellant must be upheld.

Appropriateness of Penalty

If sufficient cause is established, then a determination must be made on what is a reasonable penalty. In attempting to determine a reasonable penalty, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense(s).

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. See Bock, supra, 38 N.J. at 523-24. The concept of progressive discipline is related to an employee's past record. The core of this concept is the nature, number and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

In addition to considering an employee's prior disciplinary history (which has four discipline notices including a verbal warning and a written warning) when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

The severity of the infractions must also be balanced against "whether removal or something less is appropriate under the circumstances." In re Figueroa, CSV 3819-01, Initial Decision (October 10, 2003), http://njlaw.rutgers.edu/collections/oal/; see Henry, supra, 81 N.J. at 580. Progressive discipline may be "bypassed when an employee engages in severe misconduct", especially where the offense involves 'public safety' and risks "harm to person or property." Herman, supra, 192 N.J. at 33-34. In assessing penalties, "[t]he overriding concern" is the "public good." George v. N. Princeton Developmental Ctr., 49 N.J.A.R.2d (CSV) 463, 465. Also, "where the underlying conduct is of an egregious nature" an individual may be removed regardless of disciplinary history. In re Glenn, CSV 5051-03, Initial Decision (May 23, 2005), http://njlaw.rutgers.edu/collections/oal/; see Henry, supra, 81 N.J. at 571.

Regarding the penalty of termination, respondent contends that the penalty imposed is proper due to the serious nature of the offenses. I agree. Although the appellant has only received four minor prior disciplinary actions (none of which were of any consequence), major discipline is warranted. Appellant has demonstrated serious infractions, including a refusal to cooperate in a serious investigation, refusal to obey a direct and reasonable order as well as providing false information in reports and in an investigation, and clearly conducting a telephone interview with a witness and convincing her to, in essence, change her recollection of the events of the incident. Some infractions are so serious that termination is warranted. In re Carter, 191 N.J. 474, 484 (2007) (citing Rawling v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993).

On balance and based upon the entirety of the factual record, I **CONCLUDE** that termination is the appropriate penalty for the charges of failing to write a proper report, improperly coaching a potential witness, and misrepresenting his actions regarding same, his failure to properly cooperate with an internal affairs investigation, and lastly acting in an unprofessional manner at a disciplinary hearing brought against appellant.

ORDER

Accordingly, it is **ORDERED** that Randy Diakunczak's termination, effective November 23, 2014, is hereby **AFFIRMED** as set forth above.

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, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 30, 2015
DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: October 30 2015

Mailed to Parties: NOV - 4 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

jb

APPENDIX

LIST OF WITNESSES

For Appellant:

Randy Diakunczak
David Lopez
Carlos Gonzalez

For Respondent:

Vincent Kearney
Alexis Terrell
Michael J. Gorman III
Annie Coll
Pamela Mosely Gresham

LIST OF EXHIBITS IN EVIDENCE

Joint Exhibits:

J-1	Preliminary Notice of Disciplinary Action dated September 11, 2012
J-2	Final Notice of Disciplinary Action dated October 9, 2012

For Appellant:

P-1	IA 14-08 (1006)
P-2	IA 14-09 (1007)
P-3	Certificates
P-4	Student Transcript
P-5	Field Training Certificates
P-6	Record of Departmental Trainings
P-7	Awards and Commendations
P-8	Newspaper, Magazine Articles

For Respondent:

R-1	Gorman Supplemental Report dated January 25, 2014
R-2	Investigation Report dated January 13, 2014
R-3	I-2014-000540 Report
R-4	Supplemental Investigation Report dated January 19, 2014
R-5	Supplemental Investigation Report dated February 10, 2014
R-6	Interview Statement of Alexus Terrell dated January 29, 2014
R-7	Incident Report
R-8	Incident Reporting Form of January 21, 2014
R-9	Internal Affairs Report from Detective Coll to Lieutenant Kearney dated March 20, 2014
R-10	Special Order 13-006
R-11	Special Order 13-007
R-12	Rules and Regulations
R-13	Coll Question and Answer Statement of Diakunczak dated February 19, 2014
R-14	Coll E-mails and Question and Answer Statement of Diakunczak
R-15	Policy Manual Chapter 55.1.3
R-16	Memorandum from Lieutenant Kearny to Director Adam Shubsda dated June 9, 2014
R-17	Not admitted in evidence
R-18	E-mail
R-19 to R-27	Not admitted in evidence
R-28	E-mail dated January 11, 2014
R-29	E-mail dated January 11, 2014
R-30 to R-38	Not admitted in evidence
R-39	CD (three recordings)