



B-60

STATE OF NEW JERSEY

In the Matter of Raymond Paul,  
County Correction Sergeant  
(PC2081R), Monmouth County

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1622

Reconsideration Request

ISSUED: **DEC 17 2015** (JH)

Raymond Paul requests reconsideration of the final administrative determination in *In the Matter of Stephanie Grant, et al., County Correction Sergeant* (CSC, decided November 19, 2014). A copy of that decision is attached hereto and incorporated herein.

As provided in the original decision, the subject examination was administered on June 11, 2014 and consisted of 80 multiple choice questions.

Question 32 indicated that you do not agree with an order that your supervisor, Lieutenant Kovalev, has directed you to issue to your officers. While the order is not immoral, you feel it is unnecessary and think it will damage morale within your team. The question asks how you should handle this situation. The keyed response is option a, "Discuss your concerns with Lt. Kovalev, emphasizing the potential impact on morale." Mr. Paul who selected option c, "Issue the order immediately and without complaint," argued that the keyed response was incorrect. In this regard, Mr. Paul asserted that "because of the chain of command, orders from any superior ranking official shall be carried out immediately and effectively subject to insubordination." The Commission noted that the keyed response did not indicate that the Correction Sergeant was refusing to follow the order but rather, the Correction Sergeant was raising a concern. The Correction Sergeant is obligated to raise the concern so that the Correction Lieutenant is aware of the issue before the order is carried out. In this regard, upon further review of this issue, the Lieutenant may discover a way to execute the order without damaging morale. The Commission determined that option a was the best response.

Question 44 indicated that you and an officer have been assigned to escort Inmate Rodriguez, who is on suicide watch and in protective custody at his own request, to the visiting room. When the officer orders Inmate Rodriguez to get dressed for his visit, the inmate does not respond and just stares at the wall. After being told two more times to get ready for his visit, Inmate Rodriguez slowly begins to get dressed. Inmate Rodriguez stops getting dressed before putting on his pants and socks. The question asks what you should do in this situation. The keyed response is option c, "Call medical staff to assist with Inmate Rodriguez." Mr. Paul argued that option b, "ask Inmate Rodriguez why he is refusing to get dressed," is the best response. Specifically, Mr. Paul argues that calling medical staff in this situation is irrelevant. Rather, he contends that asking the inmate questions and gathering information would be the best course of action. It is noted that Selection Services contacted an SME on this matter who indicated that since the question indicates that the inmate is on suicide watch, it is critical to have medical staff involved. In this regard, the SME noted that because custody staff do not know the circumstances underlying the suicide watch, it would be inappropriate for custody staff to begin a discussion with Inmate Rodriguez given that such a discussion may agitate the inmate to the point of doing himself harm. The SME concluded that it is best for trained medical staff to address this issue. As such, the question is correct as keyed.

Question 47 indicates that Correction Officer Velasquez has just come from commissary duty and explains that she inadvertently gave a commissary item (a candy bar) to Inmate Ryback, who was not supposed to receive commissary. By the time she noticed the error, Inmate Ryback was already placed back into his unit. The question asks what you should do in this situation. The keyed response is option b, "Allow Inmate Ryback to keep the candy bar and counsel Correction Officer Velasquez." Mr. Paul maintained that option a, "Have CO Velasquez get the candy bar back from Inmate Ryback," is the best response. Specifically, he averred that since the candy bar is individually wrapped, this keeps it from becoming "unsanitized" and thus, could be retrieved. It is noted that Selection Services contacted an SME on this matter who indicated that given the risk to staff in retrieving a candy bar that may or may not be found is a waste of resources. The SME also emphasized that it was staff error that the inmate received the candy bar. Thus, the SME determined that disciplining the inmate due to staff error would not be supportable in a disciplinary hearing. Accordingly, the question is correct as keyed.

Question 60 indicated that while making a routine security check of your area, you observe Correction Officer Hauer at his security desk with his eyes closed for several seconds. When you immediately confront Correction Officer Hauer, he tells you, "I was thinking about something - I wasn't sleeping!" Correction Officer Hauer's eyes are bloodshot and you smell an unusual odor coming from him. The

question asks, as Correction Officer Hauer's supervisor, for the action you should take. The keyed response is option a, "Remove CO Hauer from his post and have him checked by medical staff." Mr. Paul argued that option d, "Contact your supervisor and advise him of the situation," is the best response. Specifically, he presented that the Sergeant does not have the authority to remove the officer from his post pursuant to *N.J.A.C. 10A:31-8.12(d)*, which provides that custody staff shall not leave their assigned posts without being properly relieved unless authorized by the Administrator or designee and *N.J.A.C. 10A:31-8.12(e)*, *supra*. The SME noted that a Sergeant has the authority to relieve an officer. This item was based on a Critical Incident report in which it was determined that the appropriate course of action was to remove the officer from his post and have him assessed by medical staff. In addition, the SME indicated that this type of situation occurs frequently, and thus, more extreme measures, such as a fitness for duty evaluation, should not be taken. Thus, the question is correct as keyed.

In his request, Mr. Paul argues that for question 32, the Commission "did not address the under minding [*sic*] of the Lieutenant, and raises the question that the [S]ergeant is obligated to carry out the order, not concern [*sic*] about morale." He contends that "the question clearly states that morale might or might not be affected. The Civil Service keyed response factors in the Sergeant[']s opinion and placing his team's morale over a[n] executive order. This leads to the question becoming opinionated, which is why it should be omitted from the exam." For question 44, he contends that "standard operating procedures for medical services do not include dressing a[n] inmate for a non-essential visit . . . [N]owhere in the question does it reference that there might be a medical emergency or any medical conditions or references; medical is irrelevant. The Civil Service SME references that since custody staff do not know the circumstances, it would be appropriate for medical staff to address this issue. Medical staff are not part of the custody staff and the question clearly refers to 'You a[s] a Officer' need to escort the Inmate to a visit. Unless [C]ivil [S]ervice agrees that the medical staff assumes the escorting role of the visit." For question 47, he asserts that the Commission did not address his "appeal about theft 2[C]:20-4 statute of New Jersey . . ." He argues that the SME is "allowing theft and blatant disregard for the question at hand. [The] SME also suggest[s] that retrieving he candy bar might heighten the risk of staff. Staff are employed to prevent crime and uphold the rules and regulations of the institution." For question 60, Mr. Paul maintains that "the answer states that you are removing an officer from his security post without replacing him . . . I am questioning the SME explanation of fitness for duty, while the question states 'strange smell.' The critical incident report mentioned should be presented . . . [A]nswer D, contacting your supervisor will help recover manpower and additional resources to handle the situation."



## CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case and the reasons that such evidence was not presented during the original proceeding.

In the present matter, the appellant has failed to meet the standard for reconsideration. The appellant does not present new evidence or additional information which was not presented at the original proceeding which would change the outcome of the original decision, nor has the appellant proven that a clear material error has occurred in the original decision. Accordingly, based on the record presented, the appellant has failed to support his burden of proof in this matter.

With respect to question 32, Donald J. Schroeder and Frank Lombardo, in *Management and Supervision of Law Enforcement Personnel* (4th ed. 2006), state that "if a supervisor strongly believes that a certain order emanating from a higher level in the agency is inappropriate, the supervisor should bring his/her legitimate concerns about the order to his/her supervisor. However, if after raising such concerns and being advised that the order is still to be issued, the supervisor must now fully support and issue such order." Thus, discussing a concern is not equivalent to undermining a superior. In this regard, option a indicates that you are sharing a concern regarding the order with the Lieutenant. Option a does not indicate that you are not going to implement the order.

Regarding question 44, Mr. Paul contends that the question does not indicate that "there might be a medical emergency or any medical conditions or references; medical is irrelevant." However, the question clearly indicates that the inmate is on suicide watch. In addition, the inmate is nonresponsive and staring at the wall when initially ordered to get dressed. Although the question indicates that you and another officer have been assigned to escort the inmate, Mr. Paul ignores the immediate situation occurring in the cell that needs to be addressed. Furthermore, as indicated in the original decision, the SME indicated that since custody staff do not know the circumstances underlying the suicide watch, it would be inappropriate for custody staff to begin a discussion with Inmate Rodriguez given that such a discussion may agitate the inmate to the point of doing himself harm.

Regarding question 47, although Mr. Paul claims that his argument regarding theft, pursuant to *N.J.S.A.* 2C:20-4, was not addressed in the original decision, it is noted that the SME clearly indicated that since the inmate received



the candy bar due to staff error, disciplining the inmate would not be supportable in a disciplinary hearing. Moreover, *N.J.S.A. 2C:20-4*<sup>1</sup> indicates, in pertinent part, that a person is guilty of theft if he purposely obtains property of another *by deception*. The question does not indicate that there was any deception by the inmate. Rather, the question states that the Correction Officer confesses that she inadvertently gave a commissary item (a candy bar) to Inmate Ryback, who was not supposed to receive commissary. Accordingly, *N.J.S.A. 2C:20-4* is not applicable in this situation.

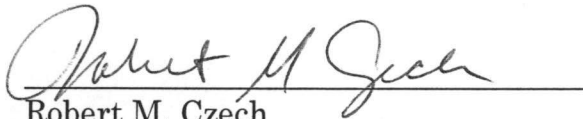
Regarding question 60, option a does not indicate that you remove Officer Hauer from his security post "without replacing him." In addition, as noted in the original decision, Selection Services contacted an SME who indicated that a Sergeant has the authority to relieve an officer. Moreover, Mr. Paul does not provide any further support for his arguments than his opinion.

### ORDER

Therefore, it is ordered that this request 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 ON  
THE 16TH DAY OF DECEMBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

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<sup>1</sup> *N.J.S.A. 2C:20-4* (Theft by deception) provides that a person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

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Attachment

c: Raymond Paul  
Dan Hill  
Joseph Gambino



STATE OF NEW JERSEY

In the Matter of Stephanie Grant, *et al.*, County Correction Sergeant, various jurisdictions

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2015-70

Examination Appeal

ISSUED: NOV 21 2014 (JH)

Stephanie Grant and Jose Leon (PC2073R), Atlantic County; Chancey Skipper (PC2077R), Essex County; Anthony Corcione and William Ferring (PC2080R) Middlesex County; and Francis Antonowicz, Dana Gallo, Jonathan Gaul, Daniel Hudak, William Nagy, Raymond Paul, James Robertson, Julio Santiago, Jonathan Scotto Di Frega, David Smith and Michael Storcks (PC2081R), Monmouth County; appeal the promotional examination for County Correction Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on June 11, 2014 and consisted of 80 multiple choice questions.

The appellants argue that candidates were only provided with 30 minutes for review. In addition, they contend that their ability to take notes on exam items was severely curtailed. Further, they request that any appealed item in which they selected the correct response be disregarded and that if they misidentified an item number in his appeal, his arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. It is noted that the review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory



reading. Second, the review procedure is not designed to facilitate perfection of a candidate's test score, but rather to facilitate perfection of the scoring key.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

In addressing challenges to the scoring key, only arguments and contentions as they relate to disputed issues will be reviewed herein. An independent review of the issues presented under appeal has resulted in the following findings:

For question 14, since Mr. Skipper selected the keyed response, his appeal of this item is moot.

Question 19 indicates that during the admission process, an inmate, who has just been admitted to your facility, was provided with certain personal hygiene items. The question asks, pursuant to *N.J.A.C. 10A:31-12.7*,<sup>1</sup> for the true statement regarding personal hygiene products. The keyed response is option b, "Inmates' personal hygiene needs may not be denied for punitive reasons." Mr. Nagy contends that "Personal hygiene products are afforded to all inmates upon admission," which was not provided as an answer choice, is the best response.<sup>2</sup> It is noted that "Personal hygiene products are afforded to all inmates upon admission" was not provided as an answer choice in the test booklet. As such, his appeal of this item is moot.

Question 23 indicates that an inmate is working on his legal defense while confined in the adult county correctional facility. He has approached you to request

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<sup>1</sup> *N.J.A.C. 10A:31-12.7* (Personal hygiene products) provides:

- (a) As part of the admission process, each inmate shall be provided with the following articles necessary for maintaining proper personal hygiene:
1. Soap;
  2. Toothbrush;
  3. Toothpaste or powder;
  4. A comb;
  5. Toilet paper;
  6. Shaving, equipment, upon request; and
  7. Products for the special hygiene needs of female inmates.
- (b) Indigent inmates shall be provided basic items for personal hygiene set forth in (a) above on a continuing basis.
- (c) Personal hygiene needs of inmates shall not be denied for punitive reasons.

<sup>2</sup> Mr. Nagy misremembered this statement as option a. It is noted that Mr. Nagy selected option c, "Basic items for personal hygiene shall be provided to all inmates on a continuing basis." Pursuant to *N.J.A.C. 10A:31-12.7(b)*, only indigent inmates are provided with basic items for personal hygiene on a continuing basis. As such, option c is incorrect.

supplies such as writing paper, pens, and large mailing envelopes. The question asks, pursuant to *N.J.A.C. 10A:31-15.3* (Access to supplies and services), for the true statement. The keyed response is option a, "Inmates are responsible for the costs of these supplies, unless they are indigent." Mr. Corcione presents that the facility provides "pens, writing paper, reproduction equipment, mailing envelopes (large or small) whether the inmate is indigent or not. The inmate is responsible for anything above and beyond that whether he or she is indigent or not. Certified mail, registered mail, insured mail, etc.[,] is above and beyond what [Title] 10A requires and is the responsibility of the inmate." He argues that option d, "Inmates must purchase all supplies beyond what is provided by the facility," is the best response. *N.J.A.C. 10A:31-15.3* provides:

- (a) Inmates shall have access to legal supplies and services for preparing legal papers, such as:
  - 1. Writing paper;
  - 2. Pens;
  - 3. Reproduction equipment; and
  - 4. Large mailing envelopes.
  
- (b) The cost of the legal supplies noted in (a) above shall be borne by the inmate unless the inmate is indigent.

Thus, the question is correct as keyed.

Questions 31 through 60 refer to an organizational chart provided in the test booklet which indicates that the candidate is one of three sergeants who supervises the Correction Officers in Dormitory B. The candidate reports to Lieutenant Kovalev and supervises eight Correction Officers who have various levels of experience.

Question 32 indicates that you do not agree with an order that your supervisor, Lieutenant Kovalev, has directed you to issue to your officers. While the order is not immoral, you feel it is unnecessary and think it will damage morale within your team. The question asks how you should handle this situation. The keyed response is option a, "Discuss your concerns with Lt. Kovalev, emphasizing the potential impact on morale." Messrs. Antonowicz, Corcione and Paul who selected option c, "Issue the order immediately and without complaint," argue that the keyed response is incorrect.<sup>3</sup> In this regard, Mr. Corcione maintains that

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<sup>3</sup> Mr. Antonowicz indicates that he selected the answer choice that provided, "Strictly enforce the new policy." It is noted that none of the answer choices provided to candidates indicated, "Strictly enforce the new policy."

"questioning a superior's orders when the question clearly states that the orders were not immoral is the definition of insubordination . . . If a Sergeant wishes to discuss the order after they are carried out then that's his decision." Mr. Paul asserts that "because of the chain of command, orders from any superior ranking official shall be carried out immediately and effectively subject to insubordination." The keyed response does not indicate that the Correction Sergeant is refusing to follow the order but rather, the Correction Sergeant is raising a concern. The Correction Sergeant is obligated to raise the concern so that the Correction Lieutenant is aware of the issue before the order is carried out. In this regard, upon further review of this issue, the Lieutenant may discover a way to execute the order without damaging morale. As such, option a is the best response.

Question 34 provides candidates with a diagram and indicates that a Correction Officer is going to lock Inmate Baker in a cell. All other inmates in the dormitory area are locked into their cells. As the Correction Officer, who is positioned behind Inmate Baker, opens the cell door, the inmate's cellmate, Inmate Sykes, walks to the cell door opening and punches Inmate Baker. The question asks for the action the Correction Officer should take. The keyed response is option d, "Move to a secure area and call for additional officers." Ms. Grant maintains that the best response would be to "move Inmate [Baker] out of the way and secure the door" since this would alleviate the threat to Inmate Baker. It is noted that this was not provided as one of the answer choices. Rather, Ms. Grant selected option c, "Pull Inmate Baker out of the way and order Inmate Sykes to lie on the ground." It is not clear whether there is an actual disagreement between the inmates or whether this may be a diversion which may put the officer at risk of harm. Thus, by moving to a secure area, the Correction Officer disengages at a point where the responding officers can regain control and preserves officer safety. As such, the question is correct as keyed.

Question 35 indicates that you have been authorized to plan a new inmate transportation method. The new method requires on- and off-site surveys, which require no special skills, that will take time away from performing regular duties. Once all of the survey data is collected, it will need to be analyzed and then compiled into a report that will be submitted to Lieutenant Kovalev. The question asks for the best way to plan the work for the new transportation survey. The keyed response is option b, "Delegate the data collection for each survey to CO Dawkins, analyze and compile the data personally, and submit the report to Lieutenant Kovalev." Ms. Gallo and Messrs. Leon, Paul, Scotto Di Frega and Smith maintain that option a, "Schedule each survey so that you can personally oversee how the data is collected, analyze and compile the data to use in the survey, and submit the report to Lt. Kovalev," is the best response. Ms. Gallo asserts that option a "will ensure accuracy pertaining to the date information being collected. Removing an officer from their normal detail may cause this officer to reject the task, and also[,] he or she may make up the information that is needed for



analy[sis].” Mr. Leon argues that the question indicates that Lieutenant Kovalev has determined that “you were the one to complete that task” and he has not “instruct[ed] you to delegate to your subordinates.” Mr. Paul presents that “delegating the task to C/O Dawkins takes him away from his assigned task, yet causing overtime and manpower shortage . . . C/O Dawkins was not given authorization to collect and gather data.” Mr. Scotto Di Frega contends that even though the question indicates that no special skills are required, “the task appears to be much more detailed and important th[a]n the question leads you to believe based on certain requirements and criteria.” In this regard, he indicates that the transportation post is considered a special instruction post and refers to *N.J.A.C.* 10A:31-8.12(a) and *N.J.A.C.* 10A:31-8.14(a) and (b). Mr. Smith avers that delegating all of the surveys to one officer may overburden the officer “and could be completed more expeditiously by scheduling multiple officers to complete the different tasks, performing a more efficient task.”<sup>4</sup> At the outset, it is noted that option a does not state that you personally collect data. In addition, it is noted that the appellants incorrectly assume that Lieutenant Kovalev has relieved you of all of your other duties so that you may dedicate your time solely to this project. It is implicit in any given assignment that a Sergeant has the ability to delegate duties but not the responsibility. In this regard, option b allows the Sergeant to delegate those duties that do not require any special skills but retain those duties which do, *i.e.*, analyzing and compiling the data personally, and submitting the report to the Lieutenant. As such, the question is correct as keyed.

Question 36 indicates that Officer Wallace returned late from his allotted one-hour lunch time. As a result, you must administer minor disciplinary action<sup>5</sup> for this violation of the rules. The question asks when you should administer the appropriate discipline. The keyed response is option a, immediately. Mr. Storcks maintains that option b, “At the end of CO Wallace’s current shift,” is the best response. He argues that as a supervisor, “you can start a verbal reprimand but you cannot stop what you are doing to immediately start violation paperwork on an officer.” It is noted that Selection Services contacted an SME on this matter who indicated that Officer Wallace’s behavior must stop immediately and the issue needs to be addressed as soon as possible. In this regard, the SME indicated that the question does not state that the Sergeant is doing anything that would prevent the Sergeant from starting a formal write-up. Thus, the SME concluded that the best time to begin the formal write-up process is immediately. Accordingly, the question is correct as keyed.

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<sup>4</sup> It is noted that this was not provided as one of the answer choices.

<sup>5</sup> Minor discipline is defined as a formal written reprimand or a suspension or fine of five working days or less. See *N.J.A.C.* 4A:2-3.1.

Question 37 indicates that Correction Officer Kauffman tells you that she feels she is being harassed by Correction Officer Hauer, a male. She indicates that Correction Officer Hauer makes comments about her body and is frequently asking her to go out to lunch with him. Correction Officer Kauffman feels this is a minor issue and she doesn't feel that she is in any danger. She simply wants Correction Officer Hauer to stop saying suggestive things to her and stop asking her to lunch. The question presents candidates with three statements and asks for the acceptable actions in response to Correction Officer Kauffman's complaint. The keyed response is option a, III, "Report the complaint to Lt. Kovalev and discuss with him how to resolve the situation," only. Ms. Gallo argues that the keyed response should have included statement I, "Have Kauffman and Hauer come into your office together and have a face-to-face discussion about the matter." It is noted that none of the answer choices provided to candidates included "I and III only." In addition, Donald J. Schroeder and Frank Lombardo, *Management and Supervision of Law Enforcement Personnel* (4th ed. 2006), indicate that "it is a mistake to bring the complainant and accused officer together in a face to face confrontation to try to determine the truth of the matter." As such, option a is the best response.

Question 38 indicates that you are meeting with Correction Officer Franco to discuss his performance evaluation. You have given Correction Officer Franco a medium performance score, as he is a competent officer but could still improve in some areas. The question asks for the best way to begin the meeting. The keyed response is option b, "Ask, 'Officer Franco, how do you feel you've been performing since your last evaluation?'" Since Ms. Gallo selected the keyed response, her appeal of this item is moot. Ms. Grant contends that option a, "Say, 'Officer Franco, here is your latest performance evaluation. Do you have any questions?',"<sup>6</sup> is the best response. She presents that if the Sergeant starts the meeting with option b, "this could and most likely would lead to the officer straying from the areas indicated on the evaluation, in which I may not be prepared to address. It may also agitate the officer after reading his evaluation if he felt his job performance is nothing less than perfect." In order to support her claims, she provides copies of USAID Center for Development Information and Evaluation, *Performance Monitoring and Evaluation* (1996); Office of Human Resource Management, *Supervisory Guide to Conducting Performance Appraisals* (March 2014); *Conducting Interviews* (<https://www.utexas.edu/academic/ctl/assessment/iar/programs/gather/method/interview-conduct.php>) (accessed June 26, 2014); and Jacksonville University, *Performance Appraisal Interview Guide* (2010). Messrs. Antonowicz, Leon, Robertson, Scotto Di Frega, Smith and Storcks maintain that option c, "Say, 'Officer Franco, you've been doing okay over the past few months but you're going to need some improvement. Here's how I want you to fix your deficiencies,'" is the best

<sup>6</sup> It is noted that Ms. Grant misidentified option a as option c.

response. Specifically, Mr. Antonowicz contends that while *N.J.A.C. 10A:31-4.5* (Employee Performance Evaluation)<sup>7</sup> requires that an evaluation be done annually, it does not state how it should be conducted. In addition, Messrs. Antonowicz and Smith claim that Sergeants are not responsible for employee evaluations. Mr. Leon emphasizes that keyed response allows the Correction Officer to lead the interview and the Correction Officer may raise issues that the Sergeant is not prepared to address. Mr. Leon also refers to *Performance Monitoring and Evaluation, supra*. Mr. Robertson refers to the Performance Assessment Review (PAR) handbook which states "focus on future outcomes rather than on negative past circumstances or occurrences" and argues that "asking an officer who you know is a mediocre officer to tell you how he thinks he did puts an immediate focus on his past mediocre performance and is a direct contradiction to the Civil Service PAR policies." Mr. Scotto Di Frega also refers to the PAR handbook and argues that option c is "recognizing and acknowledging the employee for their work but they need improvement in some areas is having the officer understand the mission and goals of the department and in their future performance." Mr. Storcks maintains that since the officer's job performance has already been documented, "the Supervisor would not change this document based on the biased opinion of the Officer on his own job performance." It is noted that this item is sourced to Schroeder and Lombardo, *Management and Supervision of Law Enforcement Personnel, supra*, which provide that "the rater should make an effort to get the ratee talking." In this regard, Schroeder and Lombardo note that the least successful interviews are the ones in which the supervisor dominates the conversation. The authors further state that the rater should, if possible, begin the evaluation with some positive comments about the ratee's performance before any negative comments on the part of the rater are made. Moreover, the authors emphasize that if there are any negative comments, they should be short, to the point and assertive. Regarding performance evaluations, the job definition for County Correction Sergeant states, "Under direction during an assigned tour of duty, supervises a squad of officers, **reviews their work performance**, and assists them with the more difficult assignments or inmates; does other related duties as required." (emphasis added).

Question 39 indicates that an inmate who has a history of violence against staff is brought into your facility by the local police department. The inmate's behavior is erratic and he is screaming phrases such as, "I am a prince amongst peasants!" and "I'm passive aggressive - if you pass near me, I'll aggress on you!" The question presents candidates with three statements and asks for the resources that should be brought in to assist in booking the inmate. The keyed response is option c, I, "Additional officers," and III, "Medical/mental health staff," only. Since

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<sup>7</sup> *N.J.A.C. 10A:31-4.5* provides, in pertinent part, that each employee shall have an annual written performance evaluation based upon defined job criteria and performance standards. The results of the performance evaluation shall be discussed with the employee.



Ms. Grant and Mr. Leon selected the keyed response, their appeals of this item are moot. Ms. Gallo and Mr. Smith argue that statement II, "additional administrative staff to assist with intake," is equally correct. Specifically, Ms. Gallo maintains that for safety and security reasons, having more administration staff respond is essential along with the added officers as well as medical staff. She asserts that administration is "always key in these situations . . ." since they decide what actions should be taken if an inmate does become violent. Mr. Smith argues that administrative staff "include[s] Supervisory Officers, who also manage the affairs of the institution . . . Having Additional Supervisors (Administrative Staff) available [to] assist with the Intake Process . . . would be beneficial in the event of a problem with could include the use of force." It is noted that Ms. Gallo does not make clear how "additional administrative staff to assist with intake" will resolve the immediate issue. Furthermore, *N.J.A.C. 10A:31-1.3* provides that "custody staff" means Custody Supervisors, Senior Correction Officers and Correction Officer Recruits who have been sworn as peace officers. Thus, it is not clear why Mr. Smith concluded that administrative staff includes Supervisory Officers. Moreover, this item is based on a Critical Incident report in which it was determined that additional officers and medical/mental health staff were needed but not administrative staff. Thus, the question is correct as keyed.

Question 40 indicates that you have been called to Dormitory B to take control of an inmate disturbance. When you arrive, you observe four inmates standing outside of their cells with their t-shirts pulled up over their faces. The officer responsible for locking in the inmates, Correction Officer Hauer, tells you that the inmates refuse to go into their cells. When Correction Officer Hauer commanded the inmates to lock in a second time, they pulled their t-shirts over their faces and refused to move. The question asks for the action you should, as the ranking supervisor in the dormitory, take at this point. The keyed response is option d, "Tell the inmates that you will use non-lethal force if they do not comply with the order to lock in." Since Ms. Gallo and Mr. Storcks selected the keyed response, their appeals of this item are moot. Messrs. Antonowicz, Fenning, Leon, Paul and Robertson argue that option b, "Ask one of the inmates why they are refusing to lock in," is the best response. Specifically, Mr. Antonowicz argues that the Attorney General Guidelines on Use of Force indicates that law enforcement officers should exhaust all other reasonable means before resorting to the use of force. Mr. Fenning argues that officers are taught to try to de-escalate a situation and they would need to know the facts involved in the situation before taking action. Mr. Leon presents that it would only take a small amount of time to simply ascertain the reason for the refusal. Mr. Paul maintains that the inmates may not have heard the first or second warning for lock in since their shirts were pulled over their heads and the keyed response is "a direct violation of 10A Use of Force Policy." Mr. Robertson refers to *N.J.A.C. 10A:31-7.1* (Meeting emergencies) and argues that this could be passive resistance. He adds that the inmates could have legitimate safety or health based issues about locking in, e.g., overflowing toilets in their cells

and thus, you need to ascertain this information before using force. It is noted that Selection Services contacted a Subject Matter Expert (SME) on this matter who indicated that since the inmates could be potentially preparing themselves for pepper spray by pulling their shirts over their heads and they are not responding to orders, this could become a potential riot situation. Thus, the SME noted that it would not be appropriate to enter into a discussion with the inmates at this point. The SME indicated that once the inmates are locked in, a dialogue could begin. However, the SME determined that for safety reasons, it is important for the inmates to comply with the directives of the custody staff and lock in. Accordingly, the question is correct as keyed.

For question 42, since Mr. Leon selected the keyed response, his appeal of this item is moot.

Question 44 indicates that you and an officer have been assigned to escort Inmate Rodriguez, who is on suicide watch and in protective custody at his own request, to the visiting room. When the officer orders Inmate Rodriguez to get dressed for his visit, the inmate does not respond and just stares at the wall. After being told two more times to get ready for his visit, Inmate Rodriguez slowly begins to get dressed. Inmate Rodriguez stops getting dressed before putting on his pants and socks. The question asks what you should do in this situation. The keyed response is option c, "Call medical staff to assist with Inmate Rodriguez." Since Mr. Gaul selected the keyed response, his appeal of this item is moot. Messrs. Antonowicz, Corcione, Fenning and Paul and Meses. Gallo and Grant argue that option b, "ask Inmate Rodriguez why he is refusing to get dressed," is the best response. Specifically, Mr. Antonowicz contends that the job descriptions for Staff Nurse, Physician and Physician Assistant do not indicate that they are responsible for dressing a patient. In addition, the standard operating procedures for medical, *N.J.A.C. 10A:31-13.4*, do not list dressing inmates for visits. He adds that visits are not mandatory pursuant to *N.J.A.C. 10A:31-20.1 et seq.* He further argues that the question does not state that the inmate has a medical issue to stop him from getting dressed. He concludes that this is a custodial staff issue and not a medical situation. Mr. Corcione asserts that the keyed response unnecessarily ties up medical staff which could have been avoided if the Sergeant just asked a simple question. Mr. Fenning presents that "it seems unreasonable to circumvent an option which does not pose a risk to the officer or supervisor, does not take a long time to try, and may be all that is necessary to come to a solution. It is possible that the visitor was not someone the inmate wished to visit with . . . These issues could potentially be resolved through a brief communication between the inmate and officer or supervisor . . ." Ms. Gallo avers that it is "always important to ascertain facts before taking action in any situation. The inmate may not want to see whoever he believes has come to visit . . . I don't feel it is necessary to contact medical because medical is already aware that this particular inmate has some kind of medical and or mental health issue and that is why he/she was placed on



constant watch." Ms. Grant<sup>8</sup> maintains that "although medical staff may have to be called ultimately, you would not contact medical without asking the inmate any questions . . . Having medical staff respond to assist an inmate before some or all the facts and circumstances are known, would be premature . . ." Mr. Paul argues that calling medical staff in this situation is irrelevant. Rather, he contends that asking the inmate questions and gathering information would be the best course of action. It is noted that Selection Services contacted an SME on this matter who indicated that since the question indicates that the inmate is on suicide watch, it is critical to have medical staff involved. In this regard, the SME noted that because custody staff do not know the circumstances underlying the suicide watch, it would be inappropriate for custody staff to begin a discussion with Inmate Rodriguez given that such a discussion may agitate the inmate to the point of doing himself harm. The SME concluded that it is best for trained medical staff to address this issue. As such, the question is correct as keyed.

Question 45 indicates that you have been called to Inmate Carter's cell by Correction Officer Egan. He explains that he witnessed Inmate Carter writing on his cell wall and ordered him to clean off the writing from the wall. Inmate Carter refused to clean up the wall and Correction Officer Egan called you for assistance. When you order Inmate Carter to clean the writing off of the wall, he refuses, stating, "I'll clean it up when I'm good and ready." The question asks what you should do in this situation. The keyed response is option d, "Order CO Egan to remove Inmate Carter from his cell." Messrs. Antonowicz,<sup>9</sup> Gaul,<sup>10</sup> Hudak, Robertson, Scotto Di Frega and Smith and Ms. Gallo maintain that option c, "notify Lt. Kovalev of the situation and ask for guidance," is the best response. They argue that option d could lead to an unnecessary and unjustifiable use of force. Ms. Gallo adds that removing the inmate directly violates the Attorney General Guidelines on Use of Force. She argues that the question did not state that the inmate was violent or aggressive and thus, he not posing a threat to anyone. Mr. Gaul contends that the situation does not justify employing a use of force and refers to *N.J.A.C. 10A:31-8.18* (Use of non-deadly force; when justified). He adds that "having an officer remove the inmate from his cell without first having additional officers to assist would create an unnecessary risk to the officer and myself in a situation where there is no immediate threat to the security or operation of the facility." Mr. Robertson asserts that the Sergeant is "bypassing other reasonable means of getting the inmate out of the cell, such as asking the inmate to come out of the cell . . ." Mr. Scotto Di Frega avers that by contacting the Lieutenant, "you will be avoiding

<sup>8</sup> Ms. Grant misidentified option b as option c.

<sup>9</sup> It is noted that Mr. Antonowicz misremembered the keyed response as stating, "Have the officer forcibly remove the inmate from his cell."

<sup>10</sup> It is noted that Mr. Gaul misidentified option a as option c, option d as option a, and option c as option d.

inappropriate or excessive force for the current situation by using constructive authority . . . [and] allowing the [Lieutenant] to offer you a different solution . . .” Mr. Smith contends that “the only option authorized within [N.J.S.A.] 10A:31-8.17(b) would be the use [of] Constructive Authority prior to removing the inmate . . . [which] was not an option within the answers.” Mr. Storcks asserts that option a, “leave the area for now, allowing Inmate Carter some time to cool off, and come back later,” is the best response. He argues that writing on a cell wall is a minor violation and initiating physical contact in this situation is unwarranted. It is noted that Selection Services contacted an SME on this matter who indicated that since this is simply a matter of an inmate refusing to obey orders, it would be expected for the Sergeant to take command of this situation. In addition, this matter is based on a Critical Incident report in which it was determined that the appropriate course of action was to remove the inmate from the cell. As such, the question is correct as keyed.

Question 46 indicates that you and Correction Officer Franco are escorting eight inmates to Dormitory B. Inmate Gladstone suddenly punches Correction Officer Franco in the face as the other seven inmates look on. Correction Officer Franco is able to take Inmate Gladstone to the ground while you call for additional officers. The question asks what you should do in this situation. The keyed response is option a, “Order the seven inmates to face the wall and assist CO Franco in restraining Inmate Gladstone.” Messrs. Corcione, Gaul,<sup>11</sup> Leon, Nagy,<sup>12</sup> Paul, Scotto Di Frega, Skipper, Smith and Ms. Gallo, who selected option d, “Allow CO Franco to restrain Inmate Gladstone while you keep watch on the seven inmates,” and Ms. Grant, who selected option c, “Allow CO Franco to restrain Inmate Gladstone while you escort the seven inmates out of the area,” present that by not securing the inmates, it creates a security risk to you and Officer Franco. It is noted that Selection Services contacted an SME on this matter who indicated that the scenario takes place in an area where the inmates cannot be locked in. Thus, the SME determined that under these circumstances, the best option is to have the inmates face the wall. In this regard, the SME indicated that it was not practical to escort the inmates back to their cells while an officer and an inmate are struggling on the floor. The SME also indicated that while Officer Franco was able to take the inmate to the ground, the officer does not have control of Inmate Gladstone. As such, the SME concluded that it would not be appropriate to watch the other inmates while there is a struggle on the floor between Officer Franco and Inmate Gladstone. Thus, the question is correct as keyed.

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<sup>11</sup> It is noted that Mr. Gaul misidentified option a as option b, option b as option d, and option c as option a, and indicated option c as a statement which was not provided as an answer choice.

<sup>12</sup> It is noted that that Mr. Nagy misidentified option a as option b, a portion of option b as option a and option d as option c.



Question 47 indicates that Correction Officer Velasquez has just come from commissary duty and explains that she inadvertently gave a commissary item (a candy bar) to Inmate Ryback, who was not supposed to receive commissary. By the time she noticed the error, Inmate Ryback was already placed back into his unit. The question asks what you should do in this situation. The keyed response is option b, "Allow Inmate Ryback to keep the candy bar and counsel Correction Officer Velasquez." Messrs. Corcione, Paul, Robertson, Scotto, Skipper and Smith and Ms. Gallo maintain that option a, "Have CO Velasquez get the candy bar back from Inmate Ryback," is the best response. Specifically, Mr. Paul avers that the since the candy bar is individually wrapped, this keeps it from becoming "unsanitized" and thus, could be retrieved. Messrs. Robertson, Scotto DiFrega and Smith and Ms. Gallo argue that the candy bar is now contraband pursuant to *N.J.A.C. 10A:31-1.3*. Mr. Robertson adds that "granted the inmate might have eaten the candy already by the time you get to his unit to find him [b]ut this is irrelevant, as he might not have eaten it yet, and it is in the interests of the facility to not allow inmates to keep contraband." Further, Messrs. Corcione, Robertson and Scotto DiFrega and Ms. Gallo argue that the inmate may have food allergies or may be diabetic or on a special diet. Mr. Scotto DiFrega maintains that by allowing the inmate to keep the candy, this might financially impact the Commissary and refers to *N.J.A.C. 10A:31-29.1*. Messrs. Robertson and Scotto Di Frega assert that since the candy bar may have been intended for another inmate, this may create an issue with that inmate. They also assert that option b may lead to the appearance of favoritism or that the inmate is an informant. Ms. Grant and Mr. Leon, who misremembered the question as indicating that the inmate was in disciplinary detention, argue that option d, "Call for all available officers to get the candy bar back from Inmate Ryback, and discipline him and CO Velasquez," is the best response. They contend that although the inmate may have already eaten the candy bar, allowing him to keep it is not the best choice. It is noted that Selection Services contacted an SME on this matter who indicated that given the risk to staff in retrieving a candy bar that may or may not be found is a waste of resources. The SME also emphasized that it was staff error that the inmate received the candy bar. Thus, the SME determined that disciplining the inmate due to staff error would not be supportable in a disciplinary hearing. Accordingly, the question is correct as keyed.

Question 48 provides candidates with a diagram of Dormitory B and indicates that you are about to search for contraband in the dormitory. The question asks for the location where you should begin your search. The keyed response is option d, "The Cells." Messrs. Antonowicz, Corcione, Hudak, Smith and Storcks argue that option a, "The Entrance," is the best response. Messrs. Antonowicz and Hudak note that the question does not indicate if you are alone or with other officers or whether inmates are present. Mr. Antonowicz adds that that *N.J.A.C. 10A:31-8.8* (Search of Facilities and Inmates) does not state how to conduct a search but rather, it indicates that each facility shall develop a plan. Mr.

Corcione maintains that the search should begin at the entrance "because you can disturb where contraband was located by going to the cells first." Mr. Smith adds that "when performing an investigation, officers are trained to start at the beginning of a location (entrance) and work around in a clockwise manner to avoid missing any evidence." Mr. Storcks presents that "to walk pas[t] the entrance without searching it would be detrimental to the purpose of the search." Mr. Fenning argues that option b, "The Common Area," is the best response since it could be used as a staging area for any contraband that would be removed from the cells. He argues that since *N.J.A.C. 10A:31-8.8* (Search of facilities) does not provide a clear answer in this situation, he "posed this question to the subject matter experts at my facility, and found that none of them could agree on an answer . . ." Ms. Grant and Mr. Robertson argue that option c, "The Showers," is the best response. They indicate that the showers are located at the opposite end of the dormitory from the entrance. Mr. Robertson notes that officers would be required to walk through the wing and ensure that no areas were missed. He adds that if inmates are hiding contraband on their persons, the showers would also be an area where strip searches could be conducted. He also contends that there is no specific policy and thus, the correct answer is based "solely on the judgment or personal opinion of the person who is in charge of conducting the search." Mr. Nagy asserts that where you begin a search is not important "since locating contraband is the main objective of a search." He adds that sufficient information was not provided, *e.g.*, whether you were alone or part of a search team, to answer the question. It is noted that Selection Services contacted an SME on this matter who indicated that a search would never be conducted by a single officer. The SME also indicated that based on the information contained in the question, it would be appropriate to search the cells first since searching any other area would provide the inmates with time to hide any contraband. Thus, the question is correct as keyed.

Question 49 indicates that you and Correction Officer Wallace are conducting a random search of Inmate Ryback's cell. Most of the inmates are in the common area watching television and playing card games while Inmate Ryback is standing outside of his cell. You order Correction Officer Wallace to watch over the inmates in the common area of the dormitory while you conduct the search of Inmate Ryback's cell. During the search of Inmate Ryback's cell, he becomes agitated with you and uses abusive and threatening language. The question asks what you should do immediately in this situation. The keyed response is option a, "Stop the search of Inmate Ryback's cell and order the inmates located in the common area to lock in." Ms. Grant and Mr. Leon, who selected option d, "Call in additional officers to restrain Inmate Ryback and continue the search," argue that having two officers attempt to lock in the area would be a safety and security issue. However, they contend that calling additional staff isolates the problem to Inmate Ryback and allows you to continue the search without punishing the other inmates. Mr. Hudak, who also selected option d, adds that the keyed response provides the inmates with an opportunity to destroy or hide contraband. Mr. Storcks, who



selected option b, "Stop the search of Inmate Ryback's cell and call over CO Wallace for assistance with Inmate Ryback," maintains that while Inmate Ryback was becoming unruly, the rest of the inmates were not an issue. He argues the keyed response is a violation of *N.J.A.C. 10A:31-26.4* (Recreation and Leisure Time Activities Program) and "punishes the entire unit of inmates due to one inmate being disruptive but not violent. This is an incorrect and an overly-aggressive response to a non-violent inmate." It is noted that Selection Services contacted an SME on this matter who indicated that the proper course of action in this scenario is to lock the other inmates in their cells which would secure any possible threats. The SME emphasized that locking the inmates into their cells is not punishment but a means of maintaining order and control in a situation that has the potential to become violent. Thus, the question is correct as keyed.

Question 51 indicates that you observe Correction Officer Hauer directing Inmate Walker to pick up some garbage on his cell floor. Inmate Walker makes a half-hearted attempt at cleaning his cell but Correction Officer Hauer seems satisfied with the inmate's effort. The keyed response is option b, "Nothing initially, but speak to CO Hauer about the matter in private." Ms. Gallo argues that option d, "Immediately tell Inmate Walker that his effort is unacceptable and order him to finish cleaning his cell," is the best response. She refers to *N.J.A.C. 10A:31-11.4* (Floors)<sup>13</sup> and contends that "as a supervisor, it is unacceptable to do nothing and allow the inmate to think it is acceptable to violate facility policy as well as [Title] 10A." Mr. Santiago asserts that option c, "Immediately tell CO Hauer that Inmate Walker's effort is unacceptable and should be corrected," is the best response. He argues that the task still must be completed and the issue should be addressed immediately and not later. In this scenario, it is the failure of the Correction Officer to properly oversee the inmate that is at issue. Furthermore, given that a security issue or emergent situation is not involved, Correction Officer Hauer's behavior is of primary concern. Option d is not the best response as it does not address Correction Officer Hauer's behavior. Option c is not the best response as reprimanding the officer in front of the inmate would undermine the officer's authority. As such, the question is correct as keyed.

For question 53, candidates are presented with four statements and must determine which actions they should take if they are taken hostage by inmates. The keyed response is option c, III, "discard items of authority, such as your badge," and IV, "attempt to engage your captors in casual conversation," only. Mr. Gaul argues that "there is no appropriate choice to go with."<sup>14</sup> Mr. Hudak maintains that

<sup>13</sup> *N.J.A.C. 10A:31-11.4* provides that the floors of each adult county correctional facility shall be kept clean, dry and free from hazardous substances.

<sup>14</sup> It is noted that Mr. Gaul misremembered option d as including all four statements.



statement I, "negotiate with the inmates for your release," is the best response.<sup>15</sup> Messrs. Gaul and Hudak contend that the badge could be used as weapon. Mr. Storcks maintains that the best response would depend "on the situation at hand." He refers to Crisis Systems Management, *Hostage Survival for Corrections* ([www.crisisnegotiation.us/assets/HostageSurvivalCorrections.pptx](http://www.crisisnegotiation.us/assets/HostageSurvivalCorrections.pptx)) and argues that "negotiation is key prior to having trained hostage negotiators on hand."<sup>16</sup> It is noted that Selection Services contacted an SME on this matter who indicated that discarding symbols of authority is a standard practice that is covered by training for hostage situations. The SME further indicated that if an officer is able to discard these items, he or she should do so. Thus, the question is correct as keyed.

Question 54 indicates that while you are working intake duty, the local police arrive at your facility with a prisoner to drop off for incarceration. The prisoner has several cuts and bruises to his face and walks with a noticeable limp. You ask the local police officer if he has a medical clearance form for this prisoner and he tells you, "We don't need one for this guy. He looks worse than he actually is." The question asks for the action you should take at this point. The keyed response is option d, "Call medical personnel to intake to assess the prisoner's condition." Messrs. Scotto Di Frega and Skipper contend that option c, "Tell the local police representative to leave with the prisoner until he can produce a medical clearance form," is the best response. They maintain without clearance from a hospital or medical department, the facility would be accepting responsibility and liability for the prisoner. In addition, without clearance, it would not be possible to determine any other injuries that the prisoner may have sustained or the severity of those injuries. Option d does not indicate that the facility is accepting the prisoner but rather, medical staff is being called in to assess the prisoner's condition. Furthermore, this item is based on a Critical Incident report in which it was determined that the appropriate course of action was to have facility medical staff assess the prisoner's condition. Thus, the question is correct as keyed.

Question 55 indicates that you and several Correction Officers are in the administrative office of your facility when Correction Officer Velasquez walks into the room to ask you a question about her upcoming shift. Immediately after she leaves the room, you overhear Correction Officer Dawkins tell other officers, "I like how that body fits into that uniform." Correction Officers Wallace and Hauer laugh at the statement while Correction Officer Nivens shakes her head and rolls her eyes. You do not think Correction Officer Velasquez overheard Correction Officer Dawkins' statement. The question asks how you should respond to this situation. The keyed response is option b, "Immediately tell CO Dawkins that his comment is

<sup>15</sup> It is noted that Mr. Hudak misidentified option c as option b.

<sup>16</sup> Upon accessing [www.crisisnegotiation.us](http://www.crisisnegotiation.us), it is noted that *Hostage Survival for Corrections* is a downloadable document that can only be accessed by password. Mr. Storcks did not provide a copy of this material or a password to access the document.

inappropriate and tell him you are going to report the statement to Lt. Kovalev." Mr. Antonowicz, who selected option a, "Immediately tell CO Dawkins that his comment is inappropriate and tell him not to make any further comments about CO Velasquez," presents that the question did not state that the officer was reprimanded in the past for this conduct, and a Sergeant can take the necessary action without going to the Lieutenant. He refers to the "definition of sexual harassment per the U.S. EEOC" and the New Jersey State Policy Prohibiting Discrimination in the Workplace. Mr. Smith, who selected option c, "Ignore the comment for now but later tell CO Dawkins in private that his statement was unacceptable and warn him not to do it again," asserts that "while the comments the officer made were inappropriate, unless the comments were unwelcome by those in the room, or reported by someone in the room, this would not constitute sexual harassment. This would not be an example of a hostile work environment as the male officers simply laughed and the female officer rolled her eyes . . ." It is the responsibility of management to maintain a work environment that is free from hostile behavior. Thus, this issue must be reported to the Lieutenant whether or not a complaint is filed. Furthermore, although the question indicates that two male officers laughed and a female officer shook her head and rolled her eyes, this is not conclusive as to whether the comment was unwelcome. Moreover, the question does not indicate that they are the only officers present. Thus, any of the officers who overheard the comment may file a complaint or may relay the incident to Officer Velasquez. Furthermore, this item is based on a Critical Incident report in which it was determined that the appropriate course of action was to reprimand the officer and report the matter to the Lieutenant.

Question 57 indicates that you are summoned to the control area of Dormitory B by Correction Officer Kauffman. She tells you that she has been observing Inmates Sykes and Carter communicating to each other from different sides of the Dormitory B Common Area using sign language. You know that Correction Officer Wallace uses sign language at home and may be able to interpret what the inmates are communicating to each other. The question asks what you should do first in this situation. The keyed response is option a, "Call CO Wallace over to interpret the conversation between Inmates Sykes and Carter." Mr. Storcks argues that the inmates "being in the common area, have a right to communicate with each other. The Supervisor should report to the area and start an investigation by asking the inmates what they are doing! Their 'sign language' may not actually be sign language." He emphasizes that by calling Correction Officer Wallace over you would be violating *N.J.S.A. 10A:31-8.12(e)* which provides that under no circumstances shall a custody staff member be removed from his or her post to perform another function if such removal results in the post becoming unstaffed unless authorized by the Administrator or designee. With respect to the sign language used by the inmates, Correction Officer Wallace will, at a minimum, be able to tell you whether the inmates are using a sign language he recognizes. With regard to the argument that the Sergeant cannot remove Correction Officer Wallace

from his post, it is noted that Selection Services contacted an SME on this matter who indicated that a Sergeant has the authority to relieve an officer. However, the SME added that the question does not state that Correction Officer Wallace is abandoning his post but rather, he is being summoned from one area of the dormitory to another. Furthermore, the question does not indicate that Correction Officer Wallace is covering a post at the time. Moreover, the question does not indicate that you are preventing the inmates from communicating with each other. The SME determined that the appropriate action to take in this situation was to ascertain whether what was being communicated between the inmates was appropriate. As such, the question is correct as keyed.

Question 59 indicates that Correction Officer Nivens approaches you and explains that Inmate Baker has told her there is a weapon in the housing unit. Inmate Baker is currently waiting in his cell. The question asks for the action you should take at this point. The keyed response is option a, "Order the housing unit to go on lockdown and call for additional officers." Mr. Storcks asserts that option c, "Go to Inmate Baker's cell and question him about the weapons," is the best response. He argues that you would be locking down the unit based on the hearsay of an inmate. He presents that "prior to locking the unit in, the officer or supervisor should conduct an investigation to gather more information. To do this, you would have to go to the inmate[']s cell and question him for more information." If the Sergeant questions Inmate Baker in his cell, the Sergeant may alert other inmates that Inmate Baker is an informer which may create a dangerous situation for Inmate Baker and jeopardize a source of information. Furthermore, the SME indicated that when there is even a suggestion that a weapon is present, the area should be searched immediately. As such, the question is correct as keyed.

Question 60 indicates that while making a routine security check of your area, you observe Correction Officer Hauer at his security desk with his eyes closed for several seconds. When you immediately confront Correction Officer Hauer, he tells you, "I was thinking about something - I wasn't sleeping!" Correction Officer Hauer's eyes are bloodshot and you smell an unusual odor coming from him. The question asks, as Correction Officer Hauer's supervisor, for the action you should take. The keyed response is option a, "Remove CO Hauer from his post and have him checked by medical staff." Messrs. Gaul,<sup>17</sup> Nagy, Paul, Robertson, Scotto Di Frega and Smith argue that option d, "Contact your supervisor and advise him of the situation," is the best response. Specifically, they contend that the Sergeant does not have the authority to remove the officer from his post pursuant to *N.J.A.C. 10A:31-8.12(d)*, which provides that custody staff shall not leave their assigned

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<sup>17</sup> It is noted that Mr. Gaul misidentified option a as option b, option b as option a, option c as option d and option d as option c.



posts without being properly relieved unless authorized by the Administrator or designee and *N.J.A.C. 10A:31-8.12(e)*, *supra*. In this regard, Mr. Nagy adds that the Sergeant would need to get authorization from the Administrator or designee "using chain of command, which would start by contacting [the Lieutenant]." Messrs. Robertson and Scotto Di Frega also refer to Department of Corrections policy and procedure regarding reasonable suspicion of substance abuse to emphasize that the chain of command must be followed. As indicated previously, the SME noted that a Sergeant has the authority to relieve an officer. This item was based on a Critical Incident report in which it was determined that the appropriate course of action was to remove the officer from his post and have him assessed by medical staff. In addition, the SME indicated that this type of situation occurs frequently, and thus, more extreme measures, such as a fitness for duty evaluation, should not be taken. Thus, the question is correct as keyed.

Question 70 refers to the "Transfer Types" reading passage provided to candidates in the test booklet.<sup>18</sup> The question indicates that an inmate has made comments to custody staff members that no matter what housing unit he is placed in, he will "take out" any other inmate who does not show him respect. The inmate has no history of violent incidents, but staff members are concerned that he will cause problems. Candidates are required to complete the following sentence, "According to the policy, this inmate fits the criteria for . . ." The keyed response is option d, "a Disciplinary Transfer." Mr. Antonowicz argues that the best response is

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<sup>18</sup> The passage provides, in pertinent part:

**II. ROUTINE TRANSFER**

- (1) When facility staff becomes aware an inmate's current placement may no longer meet his custodial/program needs or may be contrary to existing policy, the case shall be considered for transfer to another correctional facility.
- ...

**III. ADMINISTRATIVE TRANSFER**

- (1) All administrative transfers will be documented through the use of an Administrative Transfer Request form (ATR-714). A copy of this form will be forwarded to the Facility Transfer Committee (FTC) and placed in the inmate's central file.

**IV. DISCIPLINARY TRANSFER**

- (1) It is the facility's policy that an inmate will not be transferred for routine disciplinary reasons. To warrant a disciplinary transfer, an inmate's classification score must increase to a level higher than allowed at the current facility. In these instances, a hearing officer shall review the inmate's disciplinary history and recommend, if appropriate, a disciplinary transfer to the FTC.
- ...

- (4) When an inmate commits a rule violation without increasing their classification score to the next custody level, but is determined to be a threat to the security/safety of the facility, the inmate will be referred to the CTD for transfer.

option c, "a Routine Transfer," since the inmate does not meet the requirements for a disciplinary transfer, *i.e.*, he has not been written up and his classification score has not increased. Mr. Gaul<sup>19</sup> maintains that option b, "an Administrative Transfer," is the best response. Specifically, Mr. Gaul argues that the paragraph (1) of the Disciplinary Transfer section indicates that an inmate's classification score must increase and did not "give exemptions" but paragraph (4) "directly contradicted this statement." Mr. Storcks asserts that "administrative move' would better fit this type of inmate movement. 'Administrative move[s]' are for moves that the 'facility' feels is necessary based on 'the needs' of the inmate and the facility. The recent change in behavior and the lack of discipline score would fall into the criteria for this type of move."<sup>20</sup> The inmate is making a serious threat of violence by announcing that he will "take out" any other inmate who does not show him respect. Thus, this situation involves a disciplinary issue rather than a routine issue. Furthermore, the passage does not provide any criteria for an Administrative Transfer and thus, option d is not an appropriate answer choice. Accordingly, the question is correct as keyed.

Question 76 refers to the "Investigations and Confidential Informants" passage provided to candidates in the test booklet. The question indicates that the Lead Investigator receives a disciplinary report on Monday, April 3 at 11:00 a.m. and immediately begins the investigation. The question asks for the deadline for completing the investigation. The keyed response is option c, "Wednesday April 5, 5:00pm." The passage provides:

1.1 Investigation of Charges - The Lead Investigator shall gather evidence and shall initiate an objective investigation of the charge within 24 hours of receipt of the disciplinary report, which shall be completed by 5:00pm on the third working day.

It is not clear from the above provision as to when the time period to complete the report begins to run, *i.e.*, upon receipt of the disciplinary report or upon initiating the investigation. It is also not clear as to whether the "third working day" includes the day the disciplinary report is received (or the investigation begins). Given this, the Division of Selection Services determined to double key this item to option c and option d, "Thursday, April 6, 5:00pm."

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<sup>19</sup> It is noted that Mr. Gaul misidentified option c as option a, option d as option c, and misremembered option d as a "Family Request Transfer" which was not provided as one of the answer choices.

<sup>20</sup> Although Mr. Storcks uses the term "Administrative move," he appears to be referring to the definition of "Routine Transfer" (option c). In this regard, it is noted that Mr. Storcks selected option c.

Question 79 refers to the "Investigations and Confidential Informants" passage provided to candidates in the test booklet. The question presents candidates with three statements regarding information found in a Confidential Information Reliability Assessment Questionnaire (CIRAQ).<sup>21</sup> The question asks for the statement which does not conform to the guidelines set forth by the policy. The keyed response is option b, III, "The confidential informant overheard Inmate Willis telling Inmate Brown about a cache of prescription drugs hidden away in Dormitory B," only. Messrs. Robertson, Scotto Di Frega and Smith contend that section 1.3.1.3 indicated that the report should contain "factuary statements" and given that "factuary" is not an actual word, it made it difficult, if not impossible, to answer the question. It is noted that a review of a test booklet provided on the test date states, "factual" rather than "factuary." Mr. Robertson adds that since the word "quotes" appears within parentheses in section 1.3.1.3, it is de-emphasized and "the reader being told that it is not a necessity that the statement be put in quotes . . . [Statement III] contains a paraphrase of a statement that was made by an inmate, and is not a conclusionary statement. It is a statement that is laying out for the reader the facts of what was said by the inmate, just without giving a direct quotation of the inmate[']s words." It is noted that the word "quotes" appears within parentheses in order to clarify to the reader that language enclosed in quotes would be considered factual.<sup>22</sup> Mr. Scotto Di Frega also argues that statement III "is not considered a conclusionary statement due to the statement not drawing any conclusions[;] the statement the inmate made is simply stating the facts of what the inmate said[; and] the statement is a paraphrase of what the inmate said." The statement is conclusionary since it does not indicate what was actually reported by the confidential informant. Messrs. Robertson and Scotto Di Frega assert that option a, statement I, "Source: CI 0012, an inmate housed in Dormitory B," only, is the best response. Specifically, Mr. Robertson asserts that statement I does not indicate "in any way how this inmate is related to the department . . ." as required by section 1.3.1.2. Mr. Scotto Di Frega argues that "the policy did not require the inmate[']s living or housing area simply the name and number/code that followed."

<sup>21</sup> The passage provides, in pertinent part:

1.3 Assessing Reliability of the CIRAQ.

1.3.1 The CIRAQ shall contain the following information:

1.3.1.1 The identity of the staff member conducting the investigation.

1.3.1.2 A description of the source as it relates to the Department. (Example: CI #001 is an inmate assigned to the Department. Or, Exhibit A is a transcription of a recorded telephone conversation, which occurred on (date).)

1.3.1.3 The specific information each source gave in language which is factual (quotes) rather than conclusionary.

<sup>22</sup> "Parentheses ( ) are used to say something that is important to the main message you are writing but is not an immediate part of it, something that would interrupt the flow of your writing if you didn't keep it separate from everything else." See <https://owl.english.purdue.edu/engagement/3/7/97/>. "Use parentheses to enclose information that clarifies or is used as an aside." See <http://www.grammarbook.com/punctuation/parens.asp>.



"Department" must be applied generically and thus, in this case, the identification of the housing unit is consistent with 1.3.1.2. Thus, the item is correct as keyed.

CONCLUSION

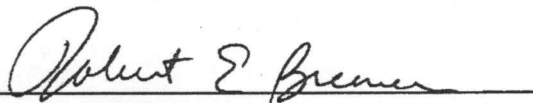
A thorough review of the appellants' submissions and the test materials reveals that, other than the scoring change noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burdens of proof in this matter.

ORDER

Therefore, it is ordered that these appeals 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 19TH DAY OF NOVEMBER, 2014



Robert E. Brenner  
Member  
Civil Service Commission

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