

B-29



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S.M., Department of
Corrections

Discrimination Appeal

CSC Docket No. 2015-1304

ISSUED: **OCT 22 2015** (SLD)

S.M., a Senior Correction Officer with the Department of Corrections (DOC), appeals the attached determination of the Commissioner, DOC, which found that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On August 7, 2014, the appellant filed a complaint with the Equal Employment Division (EED) alleging that he and other African-American officers had been subjected to discrimination and/or harassment as a result of discriminatory policies at Mountainview Youth Correctional Facility (MYCF). Specifically, he alleged that: the majority of Caucasian personnel are assigned to work in the Main Building, while the majority of African-American personnel are assigned to work in the Full Minimum Unit (FMU) which he claimed was an inferior work environment; the FMU is referred to as "the zoo," which he alleged was a racist reference; the African-American officers assigned to the FMU were "prohibited" from taking their meal breaks in the Main Officers Dining Room (ODR) and are instead forced to eat substandard food in an unsanitary trailer located in the FMU, while the Caucasian officers working in the Main Building have access to clean sanitary conditions and fresh food in the ODR; Caucasian employees regularly use the "N" word; witnesses who could attest to the use of racial slurs were "coerced" and "strong-armed" into recanting their statements; he was threatened with suspension or termination when he attempted to file an EED complaint; he had previously complained to the EED about anonymous telephone calls he received in which he was referred to by the "N" word and "snitch," yet no meaningful action

was taken against anyone; and that a late Correction Officer, who had offered to attest to the racial discrimination and harassment to which the appellant had been subjected, became a target for harassment and ultimately committed suicide as a result.¹ He also alleged that L.W., a Caucasian male Senior Correction Officer had discriminated and harassed him based on his race. Specifically, he asserted that although L.W. regularly used the "N" word, no action was taken by the appointing authority or the EED. The appellant also asserted that he had been harassed by W.K., an Institutional Trade Instructor based on his affectional or sexual orientation. Specifically, he asserted that although W.K. had previously been found to have violated the State Policy, based on an earlier complaint made by the appellant, no "meaningful action" was taken against him.

In response to the complaint, the EED conducted an investigation and determined that, with regard to the appellant's new allegations, there was an insufficient basis to find that he had been discriminated against or harassed on the basis of his race. With regard to the appellant's allegations concerning the FMU it noted that officers are not assigned to the Main Building or the FMU. Rather, the officers engage in a bidding process for each post, during which the officer submits his or her interest in a particular post in writing, the award of the bid is determined by seniority, and the appointing authority does not have the discretion to assign an officer to a particular post. The investigation revealed that the appellant, and all other African-American officers permanently assigned to the FMU, were assigned there because he or she voluntarily submitted a winning bid for a specific post. The EED noted that if an officer was unsatisfied with his or her post, he or she is able to submit a bid for a different post, should one become available. The EED also noted that a witness had indicated that many of the African-American officers had submitted bids for the FMU because a well-like African-American Corrections Lieutenant had been the supervisor in the FMU, prior to his retirement. The investigation also revealed that, despite the appellant's assertion to the contrary, the majority of the African-American officers at MYCF do not work in the FMU. Rather, that the racial breakdown of the officers on all three shifts at the FMU is as follows, 23 Caucasian officers, 8 African-American officers and 1 Hispanic officer. Further, witnesses indicated that the FMU was not an inferior work environment. Rather, it was a more "relaxed" environment, which was preferred by some officers.

Additionally, the investigation did not confirm the appellant's allegation that African-American officers assigned to the FMU were "prohibited" from taking their meal breaks in the Main ODR. Rather, the policy provided, in part, that all officers assigned to the FMU "shall not be permitted to utilize the Main Compound staff dining room without the express authorization of the shift commander." The EED noted that officers are entitled to a 30 minute meal break, and that officers assigned to the FMU would use most of that time simply traveling to the ODR. Therefore, all

¹ The EED determined that the appellant's allegations concerning his locker being broken into did not implicate the State Policy and were therefore not investigated.

officers assigned to the FMU are required to secure express authorization of the shift commander. The investigation also revealed that officers assigned to the FMU may eat the food provided in the staff dining trailer at the FMU, they may bring food from home, or they may order food for delivery to the FMU. However, officers assigned to the Main building may only utilize the ODR. Furthermore, the EED indicated that there was no evidence to support the appellant's allegation that the food in the FMU dining trailer is substandard or unconsumed food from the inmates. With regard to the appellant assertion that Caucasian officers refer to the FMU as the "zoo," although the witnesses confirmed that this occurred, none of the witnesses were able to provide the name of any specific individual who had used the term. Therefore, the EED referred the matter to the appointing authority for remedial action.

The EED also asserted that despite the appellant's arguments to the contrary, appropriate remedial action was taken with regard to his prior complaints. Specifically, the EED noted that although it investigated his complaint that L.W. had used the "N" word, no evidence was found to corroborate the allegation. Moreover, with regard to his allegations concerning W.K., the EED notes that appropriate disciplinary action was taken against him. Finally, the EED indicated that although it could not confirm who made the anonymous telephone calls, appropriate action was taken as a directive was disseminated advising that action would be taken against staff who engaged in inappropriate use of the telephone system and one-on-one training was scheduled for L.W. and another officer.

Finally, the EED asserted that the investigation found no basis to substantiate the appellant's allegations that he and others experienced threats and intimidation tactics in an attempt to dissuade them from participating in the EED process. Specifically, it noted that although the appellant claimed that a supervisor refused to accept his Special Report concerning the "zoo" allegation, the supervisor denied the same, and the report submitted by the appellant as being the report that was refused, did not reference the "zoo" comment or any other allegation of discrimination or harassment. Additionally, the EED noted that although the appellant asserted that a particular Correction Sergeant was coerced and strong-armed into recanting his statement in support of the appellant's allegations, the Correction Sergeant denied the allegations. Finally, with regard to the appellant's claim that a Senior Correction Officer had committed suicide due to harassment as a result of supporting the appellant, the EED indicated that the investigation into the officer's suicide found no evidence that attributed his suicide to the appellant's allegations.

On appeal, the appellant reiterates all of his allegations. The appellant also argues that an EED investigator was a "liar" and that she had found a report that

former Correction Major M.J.,² a Caucasian male, had hidden. He also alleged that a second EED investigator played “political games” with the questions she asked him, as the questions “didn’t make any sense.” The appellant maintains that the investigator told him that although she believed him, her boss gave her specific questions to ask him, and she just had to follow orders. The appellant also questions how the EED could find that there was no evidence to support his allegation that L.W. had used the “N” word, when one of the witnesses, Senior Correction Officer E.V., testified at the Office of Administrative Law, that L.W. had used the “N” word.³ See *In the Matter of Dana S. Register* (CSC, decided May 7, 2014) (Commission upheld Register’s removal as a Senior Correction Officer, on the charge of undue familiarity, of a romantic nature, with an inmate). The appellant also claims that E.V. has a reputation of lying and covering for incidents that he was either involved in or covering up and was recently suspended. In support, the appellant also submits his “notes” from 2013, the EED policy, an August 2014 determination letter, a 2013 special custody report concerning Register’s involvement with the inmate and L.W.’s statement that he was going to find out if she was involved with the inmate, two EED Complaints and Special Custody Reports dated November 4, 2014 and November 5, 2014 concerning alleged harassing behavior due to a lawsuit he filed,⁴ a May 28, 2014 Special Custody Report concerning the anonymous harassing phone calls.

Additionally, the appellant maintains that all of the respondents are “liars” as the respondents all know his allegations are the truth. For example, he maintains that M.J. did refuse to accept his special report that referred to individuals calling the FMU the “zoo.” Moreover, he maintains that he is a 23 year employee, and that he has provided proof of the problems he has had with disrespect and racism since his reassignment to MYCF.⁵ However, nothing is done about his complaints, instead an investigation “supposedly” happens and none of the allegations are substantiated. The appellant asserts that MYCF is “cancerous, toxic” and someone needs to step in and stop the corruption instead of allowing employees to lie and hide documentation and reports, and that as a result, he has been under the care of a psychiatrist. Finally, the appellant requests compensation for monies for lost overtime due to stress and depression, and monetary compensation for emotional distress and to resolve his marriage that has been affected.

² Agency records indicate that M.J. retired, effective January 1, 2015.

³ In his initial decision, the Administrative Law Judge (ALJ), noted that E.V. testified that L.W. had referred to African-American officers as “N’s.” Moreover, although the ALJ found E.V. “completely believable,” he noted that it was only “hearsay” and the appellant had failed to offer any competent proofs in support.

⁴ Although the appellant submits two EED complaints he filed on November 4, 2014 and November 5, 2014, the substance of those complaints will not be addressed in this matter since they were not part of this investigation. If the appellant disagrees with the resulting determinations, he may appeal those determinations.

⁵ Agency records he was reassigned to MYCF, effective August 13, 2011.

In response, the EED reiterates that its investigation did not substantiate the appellant's allegations and it notes that the appellant has failed to provide a specific basis for his appeal, other than to simply state that several individuals lied and his complaints have been overlooked. However, the EED argues that its decision was not unreasonable and was supported by the evidence. Additionally, the EED asserts that other than the appellant's mere statement that several individuals lied during the EED investigation, he offered no evidence in support. Moreover, the EED reiterates that it could not substantiate the appellant's allegation that L.W. used the "N" word, despite the appellant's assertion that could not be true since E.V. had testified at the OAL that L.W. did use the word. However, the EED maintains that E.V. "has been consistent in the information he has provided to the EED." Further, the EED maintains that there was no evidence to substantiate the appellant's allegation that M.J. refused to take his report. However, it notes that since 2005, the appellant has filed numerous EED complaints, including five in 2014, and as such, he is fully aware that each facility has an EED Liaison whom he may speak with and that he may file directly with the EED, as he has done in the past. The EED also submits that with regard to the anonymous telephone calls the appellant received, it had thoroughly investigated the matter. In this regard, it notes that a tracking device was placed on the appellant's telephone line in an attempt to identify the caller, but the calls stopped. However, in an abundance of caution, it issued a directive reminding staff that they were not permitted to engage in horseplay on the State telephone system.

Additionally, with regard to the appellant's allegations concerning the EED investigators, the EED notes that the first investigator denied the appellant's allegations that she was liar. In support, the EED submits a memorandum from the Investigator denying all of the appellant's allegations. For example, she noted that she had only interviewed the appellant once, with regard to his allegations concerning L.W.; she had only met M.J. one time, and it was not in relation to the appellant, and there was no secret file that she found. Moreover, the EED notes that although the second investigator is currently unavailable, all EED investigators handle their assigned investigations with integrity and would never discuss their personal opinions of the allegations with any participant of the investigation.

Further, despite the appellant's allegation that it ignored his complaints, the EED notes that since 2005, the appellant has filed six complaints with it that were opened for investigation and another two which were processed with an intake interview. The EED also asserts that although it could not substantiate the appellant's allegation that the FMU was referred to as the "zoo," in an abundance of caution, it took remedial action in the form of a directive, reminding staff that name calling which implicates the State Policy will not be tolerated in the workplace. Additionally, it notes that in support of the appellant's appeal he submits "notes"

from 2013 that concerned allegations that it had previously investigated and/or he indicated to it were resolved.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *See N.J.A.C. 4A:7-3.1(a)*. *N.J.A.C. 4A:7-3.1(b)* provides that:

It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category . . . A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

N.J.A.C. 4A:7-3.1(b)3iv further provides that calling another by an unwanted nickname which refers to his or her membership in a protected class constitutes a violation of the State Policy. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.1(m)3*.

The Commission has reviewed this matter and finds that it is necessary to remand an allegation to the appointing authority for further investigation. The appellant argues that the ALJ noted in *In the Matter of Dana S. Register, supra*, that E.V. testified that L.W. had frequently referred to others with the "N" word, and he questions how the EED could not substantiate that allegation on appeal. The Commission agrees that it is troubling that the EED merely states that E.V. "has been consistent in the information he has provided to the EED" in support of its determination that that specific allegation was not substantiated. Without more information as to what E.V. specifically stated during the investigation with regard to the allegation against L.W., the Commission is unable to determine whether a violation has occurred.

However, with the remainder of the appellant's allegations, the Commission has conducted a review of the record and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was discriminated against or harassed due to his race in violation of the State Policy. The EED appropriately

analyzed the available documents and interviewed numerous witnesses in investigating the appellant's complaint and concluded that there was no violation of the State Policy based on the appellant's race. Although the appellant asserts that all of the witnesses and investigators lied during the investigation, other than his mere statements, he submits no evidence in support. Moreover, with regard to the allegations concerning the FMU, the EED presents that the majority of officers assigned to the FMU were not African-American, as alleged by the appellant, and it noted that all of the officers had bid for that post. Finally, with regard to the appellant's remaining allegations, he merely reiterates his allegations and provides no further evidence or witnesses in support. Thus, pursuant to *N.J.A.C. 4A:7-3.2(m)4*, the appellant has not satisfied his burden of proof.

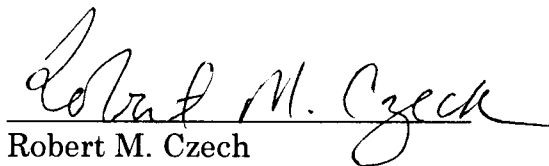
Therefore, while the appellant's appeal is denied, the issue of E.V.'s statements concerning L.W.'s use of the "N" word is remanded for further investigation. As for the appellant's remaining allegations, no basis exists to find a violation of the State Policy.

ORDER

Therefore, it is ordered that this appeal be denied, but the matter be remanded to the EED for further investigation consistent with this decision.

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 21ST DAY OF OCTOBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
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Attachment

**c: S. M.
Leila Lawrence
Mamta Patel
Joseph Gambino**



State of New Jersey
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

October 20, 2014

S [REDACTED] M [REDACTED]
[Mailed to Home Address]

Dear Mr. M [REDACTED]

The Equal Employment Division (hereinafter "EED") has completed its investigation into allegations set forth in correspondence from your attorney Robert S. Popescu. Said correspondence was mailed to the Department's Special Legal Advisor Melinda Haley, and received by the EED on August 7, 2014. The correspondence provided that you and other African American officers have been subjected to discrimination/harassment as a result of discriminatory policies at Mountaiview Youth Correctional Facility (hereinafter "MYCF"). The correspondence also provided that you have been subjected to discrimination/harassment based on race by Senior Corrections Officer L [REDACTED] W [REDACTED] (hereinafter "SCO W [REDACTED]"), and sexual harassment by Institutional Trade Instructor W [REDACTED] K [REDACTED] (hereinafter "Mr. K [REDACTED]"). Please be advised that upon receipt of the correspondence from your attorney, the EED opened an investigation and addressed all of the allegations which touched the *Policy Prohibiting Discrimination in the Workplace*. However, the EED did not substantiate a violation of the *Policy*. Please find below, the findings from the investigation.

PROCEDURAL HISTORY

Please be further advised that you provided that you are a first shift officer assigned to the Full Minimum Unit (hereinafter "FMU") at MYCF. EED records indicate that you have filed four prior complaints with this office. Specifically, on January 27, 2014, you filed an EED complaint alleging that SCO W [REDACTED] referred to an inmate by the "N" word. Following a thorough investigation, the EED did not substantiate a violation of the *Policy*. Further, on April 22, 2014, you filed an EED complaint alleging that Mr. Kranich subjected you to sexual harassment and harassment based on affectional/sexual orientation when he commented, "If you eat a Hershey bar and go home and tell your wife to blow you, your dick would taste like chocolate in her mouth." An EED investigation was promptly opened and concluded that Mr. K [REDACTED] did engage

in behavior which violated the *Policy*. Accordingly, prompt remedial action was taken against Mr. K [REDACTED] in the form of discipline. Thereafter, on May 29, 2014, the EED received a Special Report from you alleging that you were subjected to retaliation in that you received telephone calls at your post during which an anonymous caller referred to you as a "snitch," "rat," and by the "N" word. Very shortly thereafter, on June 4, 2014, the EED received a formal complaint from you alleging that the aforementioned telephone calls were made by SCO W [REDACTED] and Senior Corrections Officer C [REDACTED] P [REDACTED] (hereinafter "SCO P [REDACTED]") in retaliation for your EED complaint against Mr. K [REDACTED]. As the May 29 and June 4, 2014 complaints contained the same allegations, the matters were combined and addressed in one investigation. In an attempt to identify the caller(s), a tracing device was placed on the telephone at your post. However, as the calls had ceased, the investigation was unable to ascertain the identity of the caller(s). Nevertheless, in an abundance of caution, remedial action was taken and SCOs W [REDACTED] and P [REDACTED] were scheduled for one-on-one EED training. Additionally, a directive which advised that the inappropriate use of the Department's telephone system would not be tolerated was posted throughout MYCF.

Moreover, in this current matter, you have made the following allegations: (1) the majority of the Caucasian personnel at MYCF are assigned to work in the Main Building (hereinafter "Main"), while the majority of African American personnel are assigned to work in the FMU, which you contend is an "inferior" work environment; (2) the FMU is referred to as "the Zoo," which you allege is a racist reference; (3) the African American officers assigned to the FMU are "*prohibited*" from taking their meal break in the Main's Officers Dining Room ("hereinafter "ODR"), and are instead forced to eat substandard food in an unsanitary trailer located in the FMU, while the Caucasian officers working in the Main have access to clean sanitary conditions and the fresh food offered in the ODR; (4) on two prior occasions, you have filed reports alleging that Caucasian employees, in general, and SCO W [REDACTED], specifically, regularly use the "N" word, however, no action was taken by the Department or the EED; (5) witnesses who can attest to the use of racial slurs at MYCF were "coerced" and "strong-armed" into recanting their statements; (6) you filed a complaint of sexual harassment against Mr. K [REDACTED], however, no "meaningful" action was taken against him; (7) you reported that you received several anonymous telephone calls during which you were referred to by the "N" word and a "snitch," however, no "meaningful" action was taken against anyone; (8) you were threatened with suspension or termination when you attempted to file an EED complaint; and (9) late Senior Corrections Officer M [REDACTED] P [REDACTED] (hereinafter "SCO P [REDACTED]") witnessed and offered to attest to the racial discrimination and harassment to which you have been subjected, however, by doing so he became a target for harassment, and ultimately committed suicide as a result of the harassment he experienced. Finally, it is noted that you also alleged that your locker was broken into and its contents stolen, and that you were denied requests for a reasonable accommodation for your disability. However, as these allegations do not touch the *Policy* they were properly referred to the Department's Special Investigations Division (hereinafter "SID") and Americans With Disabilities Act Coordinator, respectively.

FACTUAL BACKGROUND AND FINDINGS

Please be advised that the Department of Corrections takes all allegations of discrimination and harassment seriously, and such conduct will not be tolerated by the

Department. Based on the foregoing the EED opened an investigation. The investigation included interviews with the witnesses named by you, as well as a review of reports and policies pertinent to the investigation. However, the investigation did not substantiate a violation of the *Policy*.

Full Minimum Unit Issues:

Moreover, in your correspondence, you allege that MYCF has implemented policies which target African American personnel for disparate treatment. Specifically, you allege that the majority of Caucasian officers are assigned to the Main, while the majority of African American officers are assigned to the FMU. You contend that the discriminatory impact of these assignments is that African American officers are forced to work in substandard conditions. You claim that the ODR is located in the Main, and that since the majority of the Caucasian officers work in the Main they have the ability to eat in the ODR. It is your contention that the ODR is maintained in a clean and sanitary condition, and that the food is fresh and prepared daily. Conversely, you claim that the eating conditions at the FMU are unsanitary. You allege that African American officers in the FMU are forced to eat in a trailer that is dirty, and that they are served the unconsumed meals of the inmates. You also allege that this is their only option, as they are *prohibited* from eating in the ODR in the Main.

Please be advised that the investigation did not reveal any evidence to support these allegations. With regard to the assignments, the evidence revealed that officers are not "*assigned*" to the Main or the FMU at the discretion of the MYCF administration. Rather, officers engage in a bidding process for their posts. When a post becomes available, officers submit their interest in writing. The award of the bid is determined by seniority, only, and is not within the discretion of the administration at MYCF. Consequently, any officer permanently located in the FMU - including you and other African American officers - is working in that area because he/she *voluntarily submitted* a winning bid for a specific post. Race *is not* considered in awarding a bid. Therefore, if an officer is not satisfied with working in the FMU, he/she has the ability to submit a bid for a post in the Main, should one become available. Additionally, a witness advised that many of the African American officers submitted bids for the FMU because a well-liked (now retired) African American Lieutenant was the supervisor in the FMU. Further, contrary to your assertions, records revealed that the majority of African American officers at MYCF *do not* work in the FMU. In fact, the racial breakdown of the officers, on all three shifts, at the FMU is as follows: 23 Caucasian; 8 African Americans; and 1 Hispanic. Further, witnesses advised that the FMU is not an "inferior" work environment. They advised that as the inmates housed at the FMU are classified as full minimum status, it is a more "*relaxed*" environment, which is preferred by some officers because the inmates have the ability to move freely within the unit and are not confined to a tier, unlike the inmates with maximum or medium status.

Additionally, with regard to the allegation that African American officers assigned to the FMU are "*prohibited*" from taking their meal breaks in the Main ODR, the investigation did not reveal any evidence to support this allegation. The procedures governing meal breaks provides the following for FMU officers,

Officers assigned to the FMU shall be permitted to utilize the staff dining trailer located in the parking lot of the FMU. Officers shall not be permitted to utilize the Main Compound staff dining room without the express authorization of the Shift Commander. This shall apply to the work detail officers assigned to the FMU as well.

The investigation revealed that officers are entitled to a 30 minute meal break. As the FMU is not in close proximity to the Main, an officer would use most of his/her allotted break time traveling to the Main ODR, and would not be able to eat and return to his/her post within the allotted 30 minutes. For this reason, FMU officers, while not "prohibited" from eating in the ODR, must secure the express authorization of the Shift Commander to utilize the ODR. This procedure applies to *all* officers working in the FMU, Caucasian and African American. Further, witnesses advised that in addition to the food provided in the trailer, FMU officers have the option of bringing their lunch from home or ordering take-out meals for delivery to the FMU. Conversely, officers, Caucasian and African American, working in the Main do not have these options and can only utilize the ODR. Also, the investigation did not reveal any evidence to support the allegation that the food in the FMU is substandard or is the unconsumed food from the inmates. Further, it is noted that *all* officers in the FMU have the above options for their meal break.

Lastly, you allege that the FMU is referred to as "The Zoo" by Caucasian officers. It is your contention that this is a racially derogatory reference to the African American officers and inmates located within the unit. Please be advised that while witnesses confirmed that they have "heard" the FMU referenced as "The Zoo," no one was able to provide the name of any specific individuals who have used this term. However, as the Department takes name calling seriously, this specific issue will be returned to the administration at MYCF for remedial action.

Prior EED Complaints:

In your correspondence, you allege that you have previously filed complaints with the EED, and while the complaints have been investigated, the Department did not take any meaningful action against the respondents. Kindly be advised that the investigation revealed that all of the complaints were taken seriously, and in instances where it was warranted appropriate remedial action was taken. Specifically, you claim that no action was taken by the Department with regard to your complaint of the use of the "N" word by SCO W [REDACTED]. The investigation revealed that this matter was thoroughly investigated. However, there was no evidence to corroborate the allegation. Additionally, with regard to your complaint of sexual harassment by Mr. K [REDACTED], as discussed above, the EED investigation did result in a finding that he had violated the *Policy*. Contrary to your assertions, appropriate disciplinary action was taken against Mr. K [REDACTED]. Finally, with regard to your complaints regarding the anonymous telephone calls you received, the EED took appropriate remedial action despite the fact that it was unable to confirm the identity of the caller(s). As detailed above, a directive was disseminated advising that action would be taken against staff engaging in the inappropriate use of the telephone

system. Also, the EED scheduled one-on-one EED training for SCO W [REDACTED] and SCO P [REDACTED] to ensure that they understand the provisions of the *Policy* and the consequences for violating same.

Intimidation Issues:

Moreover, you allege that you and others have experienced threats and intimidation tactics in an attempt to dissuade all of you from participating in your EED claims. In particular, you contend that sometime in August 2013, you attempted to file a Special Report with Major M [REDACTED] J [REDACTED] (hereinafter "Major J [REDACTED]"), which contained the allegation that the FMU is referred to as "The Zoo." However, he refused to accept same. Please be advised that the EED investigation did not reveal any evidence to support this allegation. During your interview with the EED Investigator, you provided her with a Special Report which you purported was the report refused by Major J [REDACTED]. A review of the report for this investigation revealed that it did not contain information regarding "The Zoo" or any other allegation of discrimination or harassment. Further, Major J [REDACTED] was interviewed for this investigation. He denies engaging in behavior which violates the *Policy* and specifically denies the allegation against him.

Additionally, during your interview with the EED Investigator, you provided the name of Sergeant E [REDACTED] V [REDACTED] (hereinafter "Sgt. V [REDACTED]") as the witness who was "coerced" and "strong-armed" into recanting his statement in support of your allegations. Sgt. V [REDACTED] was interviewed for this investigation. He vehemently denied the allegation that he has been "coerced" or "strong-armed" into recanting or changing the information he has provided for the EED investigations.

Finally, you allege that SCO P [REDACTED] personally witnessed the discrimination and harassment to which you were subjected. You contend that he offered to attest to this conduct on your behalf. However, you claim that once it became known that he sympathized with and supported you in your efforts to file an EED complaint, he, too, was subjected to harassment. You allege that he received death threats and was referred to as an "N-Lover." You claim that this caused him to suffer an emotional breakdown which ultimately led to his suicide. Please be advised that the EED investigation included an interview with the SID Investigator assigned to handle SCO P [REDACTED] suicide. There was no evidence presented that attributed his suicide to the allegations. Thus, your allegations and his support thereof had ***no bearing*** on SCO P [REDACTED]'s decision to end his life.

Based on the above, the EED did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace*. However, this matter is being returned to the administration at MYCF for review of the issue of the Full Minimum Unit being referenced as "The Zoo."

If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices & Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312, postmarked or delivered within twenty (20) days of your receipt of this determination. The burden of proof is on the Appellant. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Please be

advised that pursuant to P.L. 2010, c. 26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

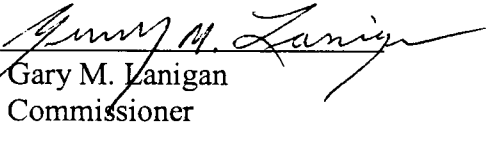
At this time, the EED also reminds you that the *Policy Prohibiting Discrimination in the Workplace* prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation must not be discussed with others.

Sincerely,



Leila Lawrence, Esq., Assistant Director
Equal Employment Division
Office of Legal & Regulatory Affairs

APPROVED:



Gary M. Lanigan
Commissioner

c: Robert S. Popescu, Esq.

Al Kandell, Administrator, MYCF

William Anderson, Associate Administrator/ASL, MYCF

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