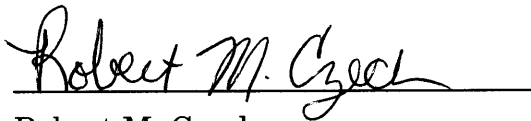


Re: Michael Fedynich

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
JUNE 17, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 12530-14

AGENCY DKT. NO. 2015-815

**IN THE MATTER OF MICHAEL FEDYNICH,
BERGEN COUNTY DEPARTMENT
OF PUBLIC SAFETY.**

Matthew P. Rocco, Esq., for appellant Michael Fedynich (Law Offices of Richard M. Greenspan, P.C., attorneys)

Adam S. Abramson-Schneider, Esq., for respondent, Bergen County Department of Public Safety (Cleary Giacobbe Alfieri Jacobs, attorneys)

Record Closed: March 30, 2015

Decided: June 1, 2015

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Bergen County Department of Public Safety terminated Security Guard Michael Fedynich pursuant to N.J.A.C. 4A:2-2.3(a)(6), for conduct unbecoming a public employee, as a result of an incident that occurred on June 2, 2014, involving Fedynich and two female co-workers.

PROCEDURAL HISTORY

On or about July 17, 2014, and July 28, 2014, Bergen County Department of Public Safety served Michael Fedynich with a Preliminary Notice of Disciplinary Action (PNDA). (R-2A; R-2B.) A departmental hearing was held on August 19, 2014, and the charge of conduct unbecoming a public employee was sustained. (R-1.) On or about September 6, 2014, Bergen County Department of Public Safety served Michael Fedynich with a Final Notice of Disciplinary Action (FNDA), removing him effective September 16, 2014. (R-1.)

Fedynich appealed and the Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law (OAL), where it was filed on September 26, 2014. The hearing was held on January 23, 2015, and the record remained open for post-hearing submissions. The record closed on March 30, 2015.

EVIDENCE AND FINDINGS OF FACT

Bergen County Department of Public Safety presented the testimony of Theresa Consoli, Gwendolyn Scott, and James Mullin. Michael Fedynich testified on his own behalf.

Background

The following material facts are largely undisputed. Accordingly, I **FIND** them to be the **FACTS** of this case:

Fedynich commenced employment as a security guard with the Bergen County Department of Public Safety (Department) on or about September 21, 2013. He was hired directly to work at the Bergen County Housing and Human Services Center (Center), also known as the homeless shelter, at 120 South River Street, Hackensack, New Jersey.

Fedynich generally performed his duties at the main entrance lobby, but at times worked in the security office. Fedynich was the only security guard on duty during his shift. Among Fedynich's duties were checking people with a magnetometer wand upon entry to the Center, making sure guests did not bring items such as food or beverages into the Center, going outside the Center to deal with people who were in their cars, listening to music, or smoking cigarettes near the front of the Center—all of which are against Center policy—and checking the exterior and perimeter of the Center property.

The security office is located in the Center's lobby, immediately to the left of the interior doors. The security office is approximately 8'x8' or 8'x10', and contains an L-shaped desk that takes up substantial space. The desk is located approximately 2.5' to 3' feet into the security office. One can only get behind the desk via the opening to the right side of the desk. The security office was utilized to view the video surveillance cameras and to place telephone calls to emergency services. There are three panels of video screens (security cameras) at least the size of a computer monitor. The door to the security office faces the desk. During his eight-hour shift, Fedynich might spend 90-120 minutes total in the security office.

Consoli has been employed at the Center as a program assistant for approximately four years. Her job consists of data entry and assisting the program staff with programs, and sometimes lunch and dinner. Scott has been employed at the Center as a front-desk receptionist since the Center opened on October 1, 2009.

On June 2, 2014, Consoli and Scott were trying to locate a guest at the Center. The two entered the security office to look at the security cameras. Fedynich was inside the security office, seated at the desk. Consoli looked at the security cameras, and an incident between Fedynich and the two women ensued. All three prepared Internal Incident Reports. (R-3, R-5, R-9.) In the past, Consoli, Scott, Mary Sunden, Julia Orlando, the Center's Director, and her assistant Margaret, the Director of Christ Church, and County law enforcement had entered the security office to look for people. In the past, Fedynich had also helped staff look, if he knew who they were looking for.

Captain James Mullin has been employed by the Bergen County Police Department for nineteen years and has been a captain for just over one year. At the time of the incident, in addition to his duties as captain, Captain Mullin was the Acting Director of the Security Unit. On June 8, 2014, Consoli sent an email about the incident to Captain Mullin and Chief Brian Higgins. (R-4.) An investigation was commenced. On or about June 9, 2014, Fedynich was reassigned temporarily to the main lobby of One Bergen County Plaza, the County Administration Building, pending the outcome of the investigation.

Consoli had never had any problems with Fedynich prior to the incident. Scott had previously written two Internal Reports to complain about Fedynich, on April 5, 2014, and April 10, 2014. The April 5, 2014, Internal Report, reviewed by Mullin, complained about Fedynich's treatment of the guests and his attitude toward the guests.

Depending upon the time of year, County security guard assignments may be at the County parks, in the schools, at the Center, or at the County Administration Building. At any assignment, the general duties of a security guard are to be a uniformed presence to act as the eyes and ears of the County Police Department at County facilities. Security guards are provided for the general security of the residents, patrons, visitors, and guests. Security guards perform various functions in that role, which include operating metal detectors and screening or wandng people entering facilities. Additionally, at specific facilities like the Center or schools, there are other post-specific functions. Security guards are not armed.

Fedynich was also employed as a security guard by the New Jersey Sports and Exposition Authority (NJSEA) in East Rutherford from September 2003 until his resignation at the end of 2014.

Testimony

Theresa Consoli

Consoli personally interacts with the guests at the Center and often has to look for guests. Typically, looking for a guest begins by checking the dining room, which is where a guest often is during meal times or a program. If the guest is not found in the dining room, sometimes the restroom is checked, or outside the Center is checked, where the guest might be smoking or hanging out. Consoli "almost always" goes to the security office to look for a guest as her final effort because there are security cameras with the security points. The staff has almost always had a practice of going to the security office to view the cameras. There was never any policy prohibiting the staff from doing so prior to the incident with Fedynich on June 2, 2014.

On June 2, 2014, Consoli was looking for a guest for whom she had an important piece of mail. She went to her back office to retrieve the mail, but when she returned the guest was no longer in the lobby. The guest's bags were still in the lobby, which is not normal practice, so she wondered where he had gone without his bags. She checked the dining room, but he was not there. She and Scott asked a male guest to check the restroom, but he was not in the restroom. Thereafter, Consoli went into the security office to try to locate the guest. Fedynich was seated at the security desk. As she was stepping toward the desk and going to lean in toward the cameras and say "I'm looking for a guest," or "can I look at the cameras?" Fedynich banged on the desk really hard, stood up and said "get the f*** out of here. What are you f***ing doing in this office." Consoli tried to explain that she was just looking for a guest, but Fedynich said "You shouldn't be in here. Get the f*** out." Fedynich then pushed into Consoli with his arms and pushed her toward a wall with metal boxes and a fan. It was all she could do not to fall into the wall, and then he pushed past her to push Scott out of the office. Consoli was not certain of how Fedynich touched Scott.

Immediately after the incident, Consoli prepared an incident report to document what had happened. The incident report states

I usually walk into Security and tell them I'm looking for a guest and whoever is there says OK [sic] and let's [sic] me look - and usually S.O. [Fedynich] does too. I should not assume to go look at the screen but that does NOT give anyone the right to put their hands on me.

[R-3.]

Consoli had no warning that Fedynich was going to jump up and scream very loudly at her. The incident made her feel very nervous and shaken. Four days later, she sent an email to the Bergen County Police Chief and Captain, copying Orlando and Sunden, to document the incident. An investigation was being conducted, and Consoli wanted the chief and captain to hear from her about how she was feeling. In the email, Consoli stated that the incident was the first time in three years that she was not permitted to view the security cameras. Consoli also stated that she could no longer work there knowing what Fedynich did to her and wondering if Fedynich would come to her assistance down the road, if she ever needed help with an unruly guest. She would not feel safe knowing that if she needed someone to react quickly and help; he might have angry feelings toward her.

Consoli denied that Fedynich's back was to her. She testified that he was sitting at the desk and the door is in front of the desk, facing the desk. She testified that she did not lean over to view the cameras, and was not in front of him, but edged a little at the corner of the desk to look. Consoli denied that her arm was obstructing Fedynich or that it was in front of the cameras or in any manner in his way. Her arm was resting on the corner of the desk. Fedynich saw her looking at the cameras. He pushed her arm out of his way and pushed her entire body with his full weight toward the wall. At the time she thought he might be joking because she could not believe that he was acting that way. She asked him if he was joking, but did not know if she believed he was joking.

Security scans in the guests when they arrive at the Center and ensures that no incidents occur and protects the staff from any altercations with the guests, the majority of whom are homeless or down-on-their-luck, requiring some help, resources, and food.

Gwendolyn Scott

The security office is located in the front of the Center, to the left of where she sits. She sometimes helps staff find guests. Typically, she will call "Nextel," a program in the cafeteria. If the program is closed, and they are looking for someone who might be in the smoking section, they usually check the security cameras to see if they are outside. Scott testified that they use to just walk into the security office, and say that they needed to check the security cameras to look for someone. There was never any rule or policy prohibiting her from going to the security office to check the cameras. The practice has changed since the incident. Before anyone walks into the security office, they must knock on the door.

June 2, 2014, was a slow, calm day. She and Consoli were looking for a guest that had been in the building but went outside to the smoking section. They decided to check the security cameras. They both walked in and Fedynich was sitting behind the desk. The security desk is like a square table, and there is only one way to get around it – around the side. Consoli was around the desk on the same side as Fedynich. Only the backs of the cameras were visible from the side where Scott was standing.

Scott testified that Fedynich "looks at us directly in the eye as we're walking through the door. Not a problem, not anything." Scott was standing in front of the desk, at the corner. Consoli walked around the desk and was standing at the other corner. Consoli put her hands up on the desk to look at the camera. Fedynich jumped out of the chair like a raging bull, nudged Theresa, and she almost fell. Fedynich said "Both of you get the f*** out of my office. I don't care what you're looking for, just get the f*** out of my office." Then Fedynich came around the desk and was pushing. Consoli got nudged and Fedynich pushed Scott, two hands to the chest. Scott took a step back because her balance was kind of good, and then it exploded from there. When

Fedynich stood up and pushed Consoli, Scott was right there and could have caught Consoli because she is small.

Scott did not want to go back to work knowing that Fedynich was there. She did not feel comfortable working with him. She did not know what to do and was so shaken up that she left early on June 2, 2014.

Michael Fedynich

On June 2, 2014, Fedynich arrived at the Center prior to 7:00 a.m. His shift was scheduled to end at 3:30 p.m. At approximately 1:00 p.m., he was seated in the security office monitoring the exterior and interior surveillance cameras. He believed there may have been a breach in the exterior of the building where people were congregating and perhaps smoking cigarettes, and he could see it through the security cameras. He became engrossed as to what was going on. In intently viewing the security cameras to keep watch, because people are not supposed to be seated on those steps or walking around the back of the building, Fedynich was very much startled when Consoli and Scott came into the security office. Consoli put her hands on/and leaned on the desk over Fedynich's shoulder for the purpose of viewing the security cameras. He was startled and his space was so encroached that as he stood up "incidental contact" was made with his arm and Consoli's arm that had been leaning on his desk.

Scott stayed at the front of the desk, but Consoli came around the desk on his side. She never went beyond his right side. The computers were on his left. Consoli was on his right. Fedynich denied shoving Scott in the chest.

It was an aberration of his professional character that he raised his voice and exclaimed expletives when the respect for the security office and the preservation of the security of the security cameras was breached by somebody leaning over his shoulder. He further testified that it is not in anyone's best interest to use profanity at any time.

When I was – my space was crowded, and the computer monitors for the purpose of viewing comu – computer monitors that the employees don't have access to, I – I became startled. And while I was monitoring perhaps what could have been a breach in the exterior of the building security, I – as my statement reflects, I – it was unprofessional of me to address the unauthorized entering of the office.

[Tr. of January 23, 2015 at 77.]

Guests of the shelter are not permitted inside the security office. Fedynich testified that there was a written policy that Center staff was not permitted to enter the security office. In this regard, on March 9, 2014, he received from his sergeant, Bruce Serak, signage to the effect that only security personnel and police personnel are supposed to be in the security office. He was instructed to attach it to the door so it was easily read. Fedynich attached a printed sign to the door. The sign was not on County letterhead. Fedynich testified that Serak was unfamiliar with the day-to-day operations of the Center, and did not know that Julia Orlando, Mary Sunden, a jail/facility nurse, at times need access to the security office for business purposes. As such, Fedynich asked Serak to confirm, name-by-name, who was permitted in the security office. Fedynich listed it in the log ledger book, in which he memorializes any police activity or items of note at the Center.

Fedynich admitted that non-security personnel had been permitted in the security office, noting that Julia Orlando and her assistant, Mary Sunden, the Director for Christ Church, medical personnel and law enforcement had been allowed in the security office. Additionally, administration had previously brought residents or community guests into the security office for disciplinary reasons or to question their behavior at the facility, but they always asked Fedynich for permission to use his office first.

When asked to describe his day-to-day job functions and responsibilities at the Center, he testified that it is an extremely complicated and unsafe environment dealing with that cross-section of the public. There are residents and there are community guests. The residents live there and are allowed to partake in breakfast, lunch, and

dinner. Community guests can come and go throughout the day. He further testified that it is a quasi-public facility. He also testified that his training had been insufficient and denied any prior discipline.

Captain James Mullin

The Memorandum dated July 3, 2014, to Chief Higgins, Mullin's supervisor, was essentially a determination and a recommendation. The written statements reviewed by Mullin were the incident reports prepared by Consoli, Scott, and Fedynich. Mullin prepared the Memorandum based upon the incident reports. The Memorandum also refers to the April 5, 2014, Internal Report from Scott.

On completion of the Memorandum, Captain Mullin's recommendation was termination because he was concerned for a number of reasons. One reason was the nature of the position Fedynich was holding—a security guard. Captain Mullin's expectation was that having a uniformed security presence would make the employees feel safer at County facilities, yet he had information that not only was that not the case, but it was to the contrary. This was the first time Mullin was aware of a County employee assaulting another County employee. Mullin determined that Fedynich was a liability to the County because the Department has a duty to provide security for the County facilities and to make the employees feel safe. Mullin was now on written notice of an incident where the County employees not only were less safe, but had been assaulted. It would be unsafe for Fedynich to interact with County employees. Mullin determined that security guard is a unique position where you get one shot, and that is it. A security guard cannot have a second shot, where it would end up a lawsuit with the County liable for the action of an employee.

Mullin had been provided with a copy of the April 5, 2014, Internal Report of Scott by lower supervisor that had handled the complaint. Mullin did not speak to Scott about the Internal Report. The only two incidents with Fedynich that Mullin was aware of were the incidents of April 5 and June 4. The only prior discipline he was aware of was with respect to the April 5, 2014, incident, where it had been determined that Supervisor DeRosa would counsel Fedynich, but Fedynich would remain assigned to his post.

The decision to reassign Fedynich to the County Administration Building pending the investigation was made because there was additional supervision at that location and other security guards present.

When a security guard is hired by the Department, formal training is provided, including field training and classroom training, which deals with what is expected of security guards and their roles and responsibilities. Security guards are bound by the same laws as everybody with respect to use of force, so they would not be authorized to use force unless authorized by law.

Factual Discussion

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). “The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

The testimony and incident reports of Consoli, Scott, and Fedynich differed as to what actually occurred on June 2, 2014. For the reasons hereinafter detailed, I credit the testimony of Consoli to establish what occurred on June 2, 2014, rather than the testimony of Scott or Fedynich.

Consoli’s testimony and report were consistent, credible and corroborated by other evidence. Conversely, Scott’s testimony was not consistent with her incident report, and her demeanor demonstrated considerable animosity toward Fedynich that

was not demonstrated by Consoli. Scott also had previous problems with Fedynich, while Consoli did not. At times Scott provided non-responsive answers, offering additional information and comments. Additionally, she testified that Fedynich pushed her with “two hands to her chest,” but her incident report states only that “I stood in front of the desk and [Consoli] went around the desk. [Fedynich] pushed her and she bumped me.” (R-5.)

Fedynich testified extensively regarding his training and work conditions, specifically that he had received very limited training, that the Center was an extremely complicated and unsafe environment, and that he was the only security guard and was never afforded a break. However, while there may be some duties specific to the Center, the general duties of a security guard are arguably universal. Further, he also served as a security guard for the NJSEA for more than ten years. Accordingly, any testimony about his lack of training and work conditions is unavailing. Further, even if the testimony about the lack of training and the Center being extremely complicated and unsafe was credible, it has little bearing upon the incident that occurred on June 2, 2014. In short, two Center employees entered the security office. Contrary to his testimony, Fedynich’s report made no mention that he was intently watching a possible breach or that he was startled. Additionally, Fedynich was at times not responsive to questions, instead providing his own testimony and answers.

Fedynich’s testimony and demeanor, including his repeated use of “authorized” and “unauthorized,” repeated mention that the women had not knocked, and his testimony that he would decide on a case-by-case basis whether to grant permission to view the security cameras, all painted a picture of someone who felt that his power and authority to grant access to the security office had been ignored because the women had not asked for his permission, which then caused Fedynich to become enraged. His testimony that his contact with Consoli was only “incidental” because she had leaned in too close and he was unaware of her presence, was not credible and was overborne by Consoli’s credible testimony that he had forcibly pushed her. However, it was not clear whether Fedynich also pushed Scott, or whether Fedynich pushed Consoli into Scott.

Having had an opportunity to consider the evidence and to observe the

witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following additional **FACTS** in this case:

Consoli and Scott entered the security office without knocking or requesting permission to enter. Fedynich was seated at the desk. When Consoli leaned over to view the security cameras, Fedynich became enraged, abruptly jumped up, pushed Consoli's arm and shoved her toward the wall. Fedynich also either pushed Scott, or he pushed Consoli into Scott. Fedynich loudly yelled at Consoli and Scott, including expletives such as "get the f*** out of here" several times.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline includes removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Fedynich is charged with conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(6). The burden of proof is on the Bergen County Department of Public Safety to prove the charges by a preponderance of the credible evidence.

N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is “any conduct . . . which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). In Emmons, which involved a police officer charged with conduct unbecoming, the Appellate Division also held that conduct unbecoming is “any conduct which adversely affects the morale or efficiency of the bureau.” Ibid. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. 532, 553 (1998).

As the title suggests, as a security guard, Fedynich is responsible for the security of the employees, residents, and guests of the Center. Yet, he initiated a verbal and physical assault on two female Center employees because they did not ask his permission to view the security cameras. Even if there was a policy prohibiting staff employees from entering the security office, or from viewing the security cameras, Fedynich failed to exercise good judgment and his behavior was unprofessional and inappropriate, which is especially troubling in view of his position. Rather than speak civilly to the women, or notify supervisors of what he considered a violation of security office policy, he became enraged and yelled expletives, physically assaulted Consoli, and either physically assaulted Scott or caused Consoli to bump into Scott. Certainly, such behavior by one of its security guards would tend to destroy the public’s respect and confidence in the operations of the Bergen County Department of Public Safety. Accordingly, I **CONCLUDE** that Fedynich engaged in conduct unbecoming a public employee.

The penalty imposed by the Bergen County Department of Public Safety was removal. The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must

utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. However, in an instance where an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Hermann, 192 N.J. 19 (2007). According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

[Hermann, supra, 192 N.J. at 33-34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). The Supreme Court has noted that "the question for the courts is 'whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Ibid. (quoting In re Polk, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise

acknowledged and adhered to this principle, where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. Carter, supra, 191 N.J. at 485.

Although Fedynich argues that his behavior on June 2, 2014, was an aberration, his employment with the Bergen County Department of Public Safety commenced in or around September 2013. Accordingly, there is no history of conduct that might mitigate in his favor. Fedynich's conduct was unprofessional, unreasonable, and unwarranted under the circumstances, and I share Captain Mullin's concerns and opinion that Fedynich's presence as a security guard would not only cause the employees to feel unsafe, but would be a liability. In view of the totality of the facts and circumstances of this case, most troubling the physical assault, I **CONCLUDE** that Fedynich's conduct rendered him unsuitable for continuation in his position as a security guard and was sufficiently egregious to warrant removal in the absence of any major disciplinary history.

ORDER

I **ORDER** that the charge of conduct unbecoming a public employee is **SUSTAINED** and that respondent's removal of Fedynich from his employment as a security guard is hereby **AFFIRMED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

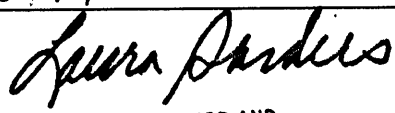
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

6.1.15
DATE


KELLY J. KIRK, ALJ

Date Received at Agency:

6/1/15

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:
sej

JUN - 3 2015

APPENDIX

WITNESSES

For Appellant:

Michael Fedynich

For Respondent:

Theresa Consoli

Gwendolyn Scott

James Mullin

EXHIBITS IN EVIDENCE

For Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action
- R-2A Preliminary Notice of Disciplinary Action, dated July 17, 2014
- R-2B Preliminary Notice of Disciplinary Action, dated July 28, 2014
- R-3 Internal Incident Report of Consoli
- R-4 Email from Consoli to Chief Higgins and Captain Mullin
- R-5 Internal Incident Report of Scott
- R-6 (Not in Evidence)
- R-7 Internal Report, dated April 5, 2014
- R-8 Memorandum, dated July 3, 2014
- R-9 Internal Incident Report of Fedynich