



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>TH</sup> DAY OF APRIL, 2020

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT NO. CSR 14879-18

AGENCY REF. NO. 2019-924

**IN THE MATTER OF MICHAEL INGRASSELINO,  
BOROUGH OF ELMWOOD PARK**

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**Lauren Sandy, Esq., attorney for appellant**

**Arthur R. Thilbault Jr. Esq. (Apruzzese, McDermott, Mastro & Murphy, PC) for  
respondent**

Record Closed: February 7, 2020

Decided: March 16, 2020

**BEFORE ERNEST M. BONGIOVANNI, ALJ:**

**STATEMENT OF THE CASE**

Michael Ingrasselino, appellant (Ingrasselino/appellant) challenges the Final Notice of Disciplinary Action (FNDA) dated September 24, 2018, and his removal from his position as Police Officer from the Elmwood Park Police Department for Incompetency, Conduct Unbecoming, Neglect of Duty and Other Sufficient Cause in violation N.J.A.C. 4A:2-2.3(a)(1)(6)(7) and (12) and violations of specific departmental rules and regulations

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, where it was filed on October 10, 2018. The appellant waived his right to a hearing within 180 days of the date of his termination.

Hearings were held on January 24, 2019 and February 20, 2019. A motion to allow new expert testimony to be admitted was formally made on filed on May 8, 2019 and was denied by Order dated July 16, 2019. Hearings continued on November 6, 2019 and concluded on November 7, 2019. The record was left open to allow submissions of post hearing briefs. Respondent filed its post hearing brief on January 24, 2020 and appellant filed his post hearing brief on January 30, 2020. Appellant filed a reply brief to respondent's brief on February 6, 2020 and respondent filed a reply brief to appellant's brief on February 7, 2020 at which time the record closed.

### **ISSUES**

The issue in this case is whether there is sufficient credible evidence to sustain one or more of the charges in the Final Notice of Disciplinary Action (FNDA) based on the specifications that Appellant, falsified on numerous occasions his Daily Vehicle and Inspection and Attendance Reports, (DVIAR or "car sheets") including the number of miles he drove his patrol car during his tour, and/or the number of summonses he issued, and/or the amount of fuel he dispensed into his vehicle.

### **FACTUAL BACKGROUND**

#### **Respondent's Case**

Ingrasselino has been employed as a police officer by the Borough of Elmwood Park as a police officer since May 2006. During an unrelated Internal Affairs (IA) investigation, the police department determined that Ingrasselino was reporting on his car sheets that he patrolled his patrol car on his shift for a substantially greater distance or amount than recorded by the Global Positioning System ("GPS".) This investigation ultimately led to a finding that Ingrasselino knowingly falsified these reports, as well as

made other falsifications of other records, which concluded with his termination as an officer in September 2018.

Elmwood Park Police Officers are required to complete a car sheet form every day which summarizes facts about his duty for that day and the operation and condition of his vehicle. Among other things, the form records the vehicle's starting and ending mileage, fuel dispensed at the end of the day's patrol and the number of summonses issued. This form, or a variant of it, has been used for decades within the police department.

The officers have 12-hour tours (working four days and having four days off.) They are trained to fill out the car sheets during initial training. Supervisors review the car sheets of a squad to determine the output of work of the squad on a given day. The supervisors also take information from the car sheets and summarize them in an Attendance and Inspection Report (AIR) for review of other officers up the chain of command. Eventually the car sheets and AIRS are submitted to the Chief of Police. The data is used in his monthly and yearly reports to the Borough governing body. In 2017, for example, the Chief reported that the Department patrolled 185,341 miles during the year, based on the data provided by the officers' car sheets.

As admitted by the appellant, there is an expectation, and an unwritten rule within the department, that an officer is supposed to patrol at least forty miles per 12-hour tour. Of course, police work on any given day might include an unusual amount of service calls or any number of reasons that might affect the total number of miles driven. Overall, however, it was undisputed, and appellant admitted, that it is anticipated an officer will patrol forty miles in his or her average tour. (Transcript of Proceedings, November 6, 2019, page 118).

The IA Officer for the Borough, Captain D'Amore reviewed Ingrasselino's car sheets from January 2015 through January 2017. He found, by comparing the mileage reported on car sheets prepared by Ingrasselino, to the mileage recorded on the Department's GPS for its patrol cars, that on eighty four (84) occasions, Ingrasselino overstated the amount of miles he patrolled his vehicle either by misrepresenting the

mileage on the reported odometer reading at the start of the shift or on the reported odometer reading at the end of the shift. On each of these occasions, Ingrasselino substantially overstated the miles he patrolled in the vehicle. In no case did Ingrasselino understate the miles he patrolled. (Transcript of Proceedings, January 24, 2019, pages 182 and 188). That also meant that on many, if not all, of those occasions, Ingrasselino did not meet the 40-mile patrolling expectation. Moreover, the investigation did not consider any report where the mileage difference between that reported by Ingrasselino and what was revealed on the GPS was less than five miles.

For example, on January 4, 2016, Ingrasselino filled out his car sheet stating that the starting odometer reading was 29,030 miles and that the ending odometer reading was 29,091. He also wrote the total number of miles driven as 61. However according to the Borough's GPS system which generates a daily "AVL Vehicle Activity" (AVL) report which monitors the vehicle's speed, location, stops, time in motion and time while stopped, the vehicle was only driven 32 miles (R-7). Similarly, on January 27, 2016, Ingrasselino reported that the vehicle driven that day had a starting odometer reading of 37,780 miles and an ending odometer reading of 37,838 miles. He wrote he patrolled 58 miles. However, the AVL shows the vehicle was only driven 22 miles that day. (R-8). On those two days Ingrasselino overstated the mileage he patrolled by 29 miles one day and 36 miles the other. Although different excuses or explanations were attempted by the appellant, this overreporting occurred frequently, as there were 82 additional instances of such substantially overreporting of miles patrolled.<sup>1</sup> The number of instances of overreporting and the number of miles overstated appear to have been much greater in 2016 than in 2015. (R-3, pages 3 to 41). It's significant that the patrolman's schedule is a 12-hours shift, and as noted in the testimony of the officers, their schedule is four days off for every four days worked, or approximately 180 working days a year.

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<sup>1</sup> As also noted in page 11, appellant's post hearing brief, dated January 29, 2020. The investigation concerned a two-year period, or 360 days worked by the appellant, of which on 84 days there was a substantial overreporting of miles patrolled. Thus, the substantial overreporting of miles patrolled occurred nearly 25% of the time (84 times out of 360 workdays).

Further by comparing only the ending mileage as reported by the officer who used the vehicle for his shift immediately prior to Ingrasselino's shift to Ingrasselino's report of the mileage of the vehicle at the beginning of his shift, there was evidence of deliberate alteration of the odometer readings. (R-3, pages 58-69) For example, on March 6, 2016, the officer who had the same vehicle on the shift preceding Ingrasselino's, reported an ending odometer reading of 40,738 miles. However, Ingrasselino reported the odometer of the same vehicle at the beginning of his shift as 40,717 miles, a difference of 21 miles. On that day, Ingrasselino also recorded his mileage at the end of his shift was also stated the reading at the conclusion was 40,757 miles for a total of 40 miles. The AVL that day recorded 19 miles driven that day. Thus, the sum of the understated mileage at the start of the shift (21 miles) plus the AVL recorded mileage (19 miles) matched exactly the number of miles Ingrasselino reported he drove (40). There were twenty one additional such instances where the mileage reported in the preceding shift was understated in such a manner so that the sum of the mileage Ingrasselino understated at the beginning of his shift when added to the AVL reported mileage equaled or was within one mile of the total mileage reported by Ingrasselino that day. This is significant because, when first confronted with the evidence of mileage falsification, and since then, Ingrasselino maintained that any errors he might have made were unintentional, and caused by simply neglecting to write down the starting mileage before he began driving the vehicle, then having to estimate it later. If they were truly estimates, there would not be such a significant number of instances where the sum of the understated starting mileage plus the AVL (GPS) record of mileage exactly totaled or totaled within one mile the false total number of miles reported by Ingrasselino.

As noted in the preceding paragraph, when first interviewed by IA, Ingrasselino maintained that even if his mileage reports contained false data, he did not intentionally falsify his miles driven on his DVIARS. He was also asked there was any other false information contained besides miles driven on his car and Ingrasselino stated he did not believe so. Because he did not state an unequivocal "no" the IA continued its investigation into other elements such as the numbers of summonses issued also contained in the DVIARS. They compared the data on the DVIARS to the numbers of summonses reported to the Borough's municipal court. The IA determined that on forty

occasions, Ingrasselino reported numbers of summonses issued which did not match the number of tickets actually sent to and recorded by the court. On one occasion his DVIAR stated he issued eight summonses while on his shift, while the court records reflect none issued that day. On another day, his DVIAR stated he issued five summonses when the court reflected zero summonses. However, out of the forty days when the DVIARs did not match the court records, there were seventeen days where Ingrasselino issued more summonses than reflected on his DVIARs.

The officer is also supposed to fuel up his vehicle at the end of a tour and to document, again on the DVIAR, the amount of fuel dispensed. Although unclear how comprehensive this part of the investigation was, the IA investigation did find five instances where it determined that Ingrasselino reported he dispensed fuel in his car but did not do so. The investigation used the GPS system to create a graphic depiction of Ingrasselino's route when superimposed over a map overlay of the Borough. By tracking the route, it was determined that, on the stated occasions, Ingrasselino's car was not ever near the Borough's Department of Public Works (DPW) fueling yard.

While this discrepancy occurred five times, the respondent focused on one instance that occurred on October 29, 2016, as that was the only incident that Ingrasselino was questioned about in his sworn IA interview. On that day, he reported dispensing three gallons of gas to his patrol car. However, the GPS records reflect again that his vehicle was never near the DPW yard that day. It was, however, established, that on rare occasions, such as when the DPW pumps had mechanical issues officers can fuel up at certain private stations. However, the GPS showed Ingrasselino was not in the vicinity if any of those stations either. Yet, in his IA interview, Ingrasselino swore that he put three gallons of gas on that day.

Regarding the penalty of removal, Chief Foligno testified that he believed removal was necessary and appropriate because Ingrasselino falsified information on his DVIARs, which are official police reports. He stated that known falsifications by a police officer have to be reported whenever that police officer testifies in court. Further, if the officer could not be trusted with simply stating simple information such as the



number of miles he traveled, he can't be trusted to accurately report more important information.

### **Appellant's Case**

Until 2012, Ingrasselino's police chief was Retired Chief Donald Ingrasselino, the petitioner's father. There is a history of a poor relationship between petitioner's family and the current Chief Michael Foligno, stemming primarily from the retired Chief having once disciplined then Captain Foligno. Both Retired Chief Ingrasselino and Retired Sergeant Joe Friedman, a former coworker to the appellant and his friend since the age of 12, and also the appellant attempted to establish that the case against the Ingrasselino was driven by bias and personal animus of Chief Foligno. The appellant had previously complained of workplace harassment by Chief Foligno (R-38). Notwithstanding, I found the allegation that the investigation concerning Ingrasselino was motivated or tainted by personal bias to be not credible.

Officer Freidman was called in part to establish this allegation of bias. He testified that years earlier, when Retired Chief Ingrasselino was still in charge, an IA review of his own car sheets showed at least 60 of them to contain "errors" and he was simply told to be more careful. This implied that the investigation against Ingrasselino was itself motivated by bias. However, nearly all Friedman's testimony was inaccurate, and not credible, and worked against himself and Ingrasselino.

Freidman testified he knew the DVIARs were supposed to be 100% accurate all of the time, that they are reviewed by superior officers, and that were sometimes "kicked back" to the patrol officer for corrections. Moreover, if the DVIAR had low mileage on it, the officer was expected to state an explanation for it on the DVIAR (such as having to stay at an accident scene for a very long time that day which inhibited the officer's ability to patrol.) Freidman nevertheless contradicted himself (on this and other points) and maintained that the DVIARs were not taken seriously by the department during Retired Chief Ingrasselino's tenure. This testimony and Freidman's credibility were severely undermined by Freidman finally admitting under cross examination that Retired Chief

Ingrasselino suspended Friedman for 45 days as a result of an established charge of “idling” where Freidman engaged in by similar falsifying of his mileage records. In fact, Freidman conceded that his falsifying mileage records on just three documents was regarded by Retired Chief Ingrasselino as so serious that he referred the matter against Freidman to the Bergen County Prosecutor’s office.

There were many other problems with Freidman’s credibility and potential for biased testimony. Freidman himself resigned after attaining just the minimum ten years of service for pension benefits while he was suspended pending the outcome of another IA investigation against him. The resignation was in return for dropping further disciplinary action. Further, Freidman was also denied a disability pension by the Borough. Friedman was very often evasive and uncooperative on the witness stand. His bias in favor of his good friend Ingrasselino and against the Borough that apparently forced him to resign was obvious. Further, Freidman was also denied a disability pension by the Borough.

Former Chief Ingrasselino, another witness for the appellant, admitted that Freidman was disciplined<sup>2</sup> for reporting that he was patrolling when he was in fact idling. This fact was established in part by using the same GPS system that proved that the appellant was also misrepresenting the number of miles he was patrolling. (Transcript of Proceedings November 6, 2019, pages 138-140) The matter was so serious, he referred to the Bergen County Prosecutor’s office for review. Thus, Friedman and former Chief Ingrasselino in fact provided credible evidence that the investigation against the Appellant Ingrasselino was not a product of special bias against him.

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<sup>2</sup> According to retired Chief Ingrasselino, Freidman received a 45-day suspension (Transcript of Proceedings 11/6/19 page 142).

Although the details of the full investigation were not brought out to an extent that would be more useful, it was not contested that other officers in the department were investigated for allegedly the same conduct as the appellant, and also faced similar major disciplinary actions as did the appellant. (Transcript of Proceedings November 7, 2019 pages 73 and 74). The fact that, as stated by the Borough's CFO called by appellant, the appellant was the only officer who, when suspended without pay, also had his health benefits suspended, could underscore that appellant's offenses were more egregious than other officers facing the same or similar charges. Police Departments would appear to have broad discretion in pursuing investigations and meting out appropriate discipline. It was not established by any means that there was a pervasive case of bias. Rather, this case was a byproduct of a broader investigation concerning about a dozen patrol officer, the miles that they patrol, and a review of their car sheets. As noted, that investigation began as a result of an unrelated IA complaint that officers were being ordered to always use the number "40 miles" on their car sheets. In the course of reviewing officers' car sheets. This led Captain D Amore, in charge of Internal Affairs, to review Ingrasselino's car sheets, and he found that Ingrasselino was reporting on a regular basis inaccurate numbers of miles driven on patrol -almost always overstating them- when compared to the numbers of miles reported for his car on the GPS system.

Beyond that, the defense's allegations of selective enforcement against Ingrasselino, evidenced by alleged harassment, such as Chief Foligno's seating himself and his desk at police headquarters and supposedly staring at him, or that, while a Lieutenant, Foligno set new regulations against wearing casual clothes-which applied to all officers who weren't undercover, but aimed against Ingrasselino because he liked to wear t-shirts while on duty- were fanciful, unsubstantial, and unworthy of further discussion. Retired Chief Ingrasselino could not help but be a biased witness in the understandable position of being called to defend his son. However, his testimony, including the gratuitous details that were rehashed concerning of Chief Foligno's own disciplinary history when Retired Chief Ingrasselino was his superior lacked substance and relevance and is also not worthy of further detailing here.

## FINDINGS OF FACTS

When witnesses present conflicting testimony, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value that a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2D 718 (9<sup>TH</sup> Cir. 1963); see In Re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 847, 93 S.Ct. 2357, 37 L.Ed.2d 380 (1973). Here, I find that the respondent's witnesses were far more credible than appellant and his witnesses, and further any credible evidence of appellant's witnesses pertained to matters lacking substance or relevance to the charges.

After reviewing the exhibits, and after having the opportunity to listen to testimony and observe the demeanor of the witnesses, Based upon the evidence presented, both testimonial and documentary, and having assessed the demeanor and credibility of the witnesses, I **FIND** the following to be the relevant and credible facts of the case.

1. The appellant was employed as a police officer with the Borough of Elmwood Park Police Department from May 2006 until his removal in September 2018. Previously, he had only a minor disciplinary record, one resulting in a written reprimand and another resulting in forfeiting one 12-hour vacation day in lieu of suspension
2. An essential duty during his tenure was to patrol the Borough in a marked police car.
3. Officers were expected to usually patrol at least 40 miles during their 12-hour shifts.

4. An essential component of accountability to ensure the effective deployment of patrolmen was to record on their DVIARs or car sheets the number of miles they patrolled on any given sheet. Officers were also expected to record the number of summonses they issued and the amount of gasoline they dispensed in their car at the conclusion of their shift.
5. An Internal Affairs Investigation into whether officers were being ordered to always write the number of forty miles on their DVIARS regardless of how many miles they actually patrolled was undertaken. This led to a review of Ingrasselino's DVIARs. In a two-year period between January 2015 and January 2017, on eighty-four occasions, the appellant substantially overstated the number of miles he patrolled.
6. In order to overstate the number of miles he patrolled, the appellant frequently would understate the miles that the initial odometer reading recorded (at the beginning of his shift) when compared to the final odometer reading (at the end of the shift) by the officer who used the vehicle on the shift immediately preceding the appellant's. The frequency of instances where the sum of the understated starting mileage at the start of the shift when added to the actual mileage as recorded in the AVL (GPS) record of mileage exactly matched or totaled within one mile the incorrect total number of miles reported by Ingrasselino indicates that the appellant was not merely mistaken because he negligently failed to record the initial odometer reading, but rather than many of the instances of mistaken recordings on DVIARs on mileage were intentional. Moreover, the number of occasions of false information on his mileage (84 times in the two years of service that was investigated) indicates intentional conduct.
7. I find Appellant's testimony that all his errors were unintentional, and the result of his hurriedly getting in his car without noting and writing down the odometer reading at the beginning of his shift and being forced to "estimate" that reading and therefore the total number of miles to be not credible. As shown by his own IA sworn statement, he also could have simply pressed a

button on the separate trip odometer so that was reset to zero. (R-24, page 4). Further, before submitting his DVIAR to his superior officer, or even after, he could have simply asked to see the report of the patrol officer who had the shift in the car immediately preceding his, to ask for the final odometer reading. Even though Ingrasselino knew he was merely guessing how many miles he drove, he never once in two years asked for such assistance to correct his alleged "mistakes." (R-3, pages 47-48).

8. The appellant also frequently (40 times) incorrectly recorded the number of summonses he recorded during his shift. Nearly half the times, however, Ingrasselino underreported the number of summonses he issued. This indicates that the inaccurate recordings on the numbers of summonses issued was a product of negligent or possibly reckless disregard of this duty, rather than intentionally false or deceptive. Similarly, I find that appellant's recording on five occasions that he added fuel to his vehicle at the conclusion of his shift where the GPS proved appellant had not visited the DPW fueling station on those days. was a product of negligence.

### LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 governs a civil service employee's rights and duties. The act is an important inducement to attract qualified personnel to public service. It is to be liberally constructed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1 N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972) Mastrobattista v. Essex County Park Comm'n., 46 N.J. 138, 147 (1965).

Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). The Act also recognizes that the public policy of New Jersey is to provide appropriate appointment,

supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A1-2 (b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

“There is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the Borough of Elmwood Park bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Therefore, I must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” Jackson v. Del., Lackawanna and W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to “generate belief that the tendered hypothesis is in all human likelihood the fact.” Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

The respondent proved, as detailed above, and without real factual opposition, that the respondent recorded data on a significant daily activity form, the DVIAR, at least 130 times over a randomly selected review of a two-year period. This falsified information, some deliberately inserted into his car sheets, had the effect of keeping Ingrasselino, as discussed by the witnesses, “under the radar.” Based on one of his

defense theories, Ingrasselino was "targeted" by his father's successor as Chief of Police. If this was true, or if he believed it to be true, he was highly motivated to "keep under the radar." Thus, the appellant's contention that he had no reason to intentionally falsify his mileage reports is not likely and not credible. Rather the respondent's contention that Ingrasselino wanted to "avoid scrutiny from his supervisors" is well grounded and realistic. Beyond that, the respondent did not need to prove a specific motive for Ingrasselino's conduct. An officer who does not wish to complete his daily tour of miles covering the Borough has other things to do with his time. While an officer does with his time when he should be patrolling is not the point, as wanting to do something other than one's ordinary duties on patrol need not have a nefarious purpose; it could even be for police purposes. Regardless of the specific motive, here, it strains credulity to believe as Ingrasselino's testimony would have it, that during a more or less randomly selected two year period of investigation, an officer could record about 130 mistakes in his mileage, summonses and fuel records contained using just one form daily, his DVIAR or car sheet by mere "mistake." His sworn statement during his IA investigation that he didn't know while he was doing it that it was "wrong to guess or put false numbers on" his reports, but that after being investigated, he now knows it was wrong, was naïve and not credible. (R-26, page 3). Neither were any of his attempted excuses during his testimony.

The GPS has been used in other cases besides Ingrasselino's, including the charges against Officer Freidman, who received a 45-day suspension, in showing an officer was not patrolling in conformance with his duties. There was no competent evidence that the system is not generally valid or not in good working order. GPS technology, its reliability and accuracy is widely acknowledged. Even without the GPS, Ingrasselino admitted he was not recording, as required, the actual miles he believed he was patrolling. If anything, the IA investigation, which in part used the GPS, proved that at least 75% of the time, Ingrasselino provided the substantially correct mileage he patrolled. Without it, and with his sworn testimony that he guessed and estimated these figures, one could assume he provided inaccurate and false information on his car sheets 100% of the time.



The frequency of instances where the sum of the understated starting mileage at the start of the shift when added to the actual mileage as recorded in the AVL (GPS) record of mileage exactly matched or totaled within one mile the incorrect total number of miles reported by Ingrasselino indicates that the appellant was not merely mistaken because he negligently failed to record the initial odometer reading, but rather that many of the instances of mistaken recordings on DVIARs on mileage were intentional. Moreover, the sheer number of occasions of false information on his mileage (84 times in the two years of service, or about 25% of the time that was investigated) indicates intentional conduct.

There were also forty occasions where Ingrasselino entered inaccurate, sometimes wildly inaccurate data concerning summonses he issued while on patrol. However, nearly half the time he actually issued more summonses than he reported. Further, unlike the overreporting of the mileage during his patrols, there seems to be no motive to deliberately report these inaccurate data. This indicates that the inaccurate recordings on the numbers of summonses issued was a product of negligent or reckless disregard for the truth, rather than intentionally false or deceptive. Similarly, I find that appellant's recording on five occasions that he added fuel to his vehicle at the conclusion of his shift where the GPS proved appellant had not visited the DPW fueling station on those days was a product of negligence.

Appellant argues that even if the substance of the charges (e.g. putting the wrong mileage on his DVIARs 84 times in a two year period) are accurate, the conduct does not constitute a) Incompetency, inefficiency, and failure to perform duties b) Insubordination c) Conduct unbecoming a Police Officer d) Neglect of duty e) Department Rule and Regulations violations.

As to the Incompetency and related conduct charge, N.J.A.C. 4a:2-2.3a (1), when confronted with the evidence at his IA interview, the appellant admitted he frequently entered the wrong information in terms of the mileage he patrolled, and has not since disputed that the investigation was wrong in showing 84 occasions when he overstated the number of miles he patrolled by five or more miles. He maintains that all his errors were unintentional, and the result of his hurriedly getting in his car without

noting and writing down the odometer reading at the beginning of his shift and being forced to "estimate" that reading and therefore the total number of miles. But, as shown by his own testimony, he also could have simply pressed a button on the separate trip odometer so that was reset to zero. (R-24, page 4). Further, before submitting his DVIAR to his superior officer, or even after, he could have simply asked to see the report of the patrol officer who had the shift in the car immediately preceding his, to ask for the final odometer reading. Even though Ingrasselino knew he was merely guessing how many miles he drove, he never once in two years asked for such assistance to correct his alleged "mistakes." (R-3, pages 47-48). Further, as noted by the evidence, the DVIAR is an important component of the daily activities of an Elmwood Park police officer. Such reports and the process of review have been in use throughout and well before Ingrasselino's tenure. He was trained in how to fill out such reports. He knew he was filing inaccurate information, by his own testimony in frequently "guessing" how many miles he patrolled. He made no effort to correct such a failure. Such conduct certainly constitutes a failure to perform his duties, or the incompetent exercise of same.

As to the charge of Insubordination, I agree with the appellant that the conduct, however egregious, did not constitute Insubordination. N.J.A.C. 4A:2-2.3a (2).

Regarding the charge of Conduct Unbecoming a police officer, it was established that all officers were expected to ordinarily patrol 40 miles a shift, or at least that much. It was further established that the officer would often be confronted with a lower recorded number of miles patrolled and questioned about it. As to Ingrasselino's conduct, it was established that there was a pattern to deceive by the frequent intentional underreporting of the starting odometer reading. He also sought to establish he was a "target" of a vindictive and/or overzealous Police Chief, and that he was aware of this as soon as the Police Chief replaced Ingrasselino's father in that role within the Department. If Ingrasselino was, as he and his witnesses sought to prove, a victim of being targeted, he could have, made great effort to ensure his DVAIRS were accurate and truthful. However, as admitted, Ingrasselino frequently overstated the miles he drove, and as shown, frequently failed to patrol as much as he was supposed to during his shift; instead chose to deliberately, or with reckless disregard for the truth, falsify his

mileage records. Such conduct is certainly unbecoming a police officer. N.J.A.C. 4A:1-2.3a (6).

As to the charge of Neglect of Duty, the term is difficult to distinguish from failure to perform his duty, already addressed. In the context of what occurred here, whether characterized as failure to perform ones duties or the neglect of duty, this officer both failed to record accurately his daily activities including recording the miles he patrolled, the number of summonses he issued, and fuel he dispensed in his car, and also neglected frequently to patrol, without any stated reason, the normally anticipated 40 miles on his shift. In either event, the false reporting or the failure to patrol, the officer was guilty of neglecting his duties. N.J.A.C. 4A:2-2.3a (7)

As to Violations of Departmental Rules and Regulations, Ingrasselino was charged in his FNDA of the charge of violations of Rule 1:5-2 and 2:13 (1). Regarding same, Ingrasselino's conduct was far from exemplary, however, his conduct did not rise to the level of an Ethics violation as defined by Rule 1:5-2. However, in the exercise of his authority, such as the use of his patrol car and his record keeping duties, he failed to conform "with the policies of the department" in violation of 2:13.(1).

Although not charged specifically with the above cited violations in his FNDA, Ingrasselino was duly noticed that his conduct was charged under a number of other violations of the Department's Rules and Regulations. (R-4). As noted, appellant did receive notice of these charges, though not through the FDNA. Regarding those Rules violations, contrary to arguments of the appellant, Ingrasselino's conduct violated General Rules and Regulations Rule 2:1.3(8), Police Officers. That rule requires the officer to perform duties promptly faithfully and diligently. As noted, one of those duties is to provide a daily record of his patrol activities. The appellant falsified much of these reports frequently sometimes intentionally, sometimes recklessly, or with negligent disregard for the truth. Not only did he not perform those duties "promptly, faithfully and diligently", but rather, his performance of said duties seem to have been carried out occasionally, coincidentally, and carelessly. Likewise, his conduct constituted a violation of Rule 3:1.5, Performance of Duty. I also disagree with Appellant's contention that he performed his duties to the best of his abilities at all times. As demonstrated by

the evidence, writing down the correct mileage traveled, the number of summonses issued and the amount of fuel dispensed to his patrol vehicle was not a difficult task. Ingrasselino easily could have complied with this requirement of his job. He chose not to. Therefore, his conduct violated Rule 3.75 Work Expectation. Finally, even if there was any procedural defect, as argued by the appellant, in some or all of the specified Rules and Regulations, in that the FNDA did not specifically cite the above Rules, such violations still constitute "Other Sufficient Cause," in violation N.J.A.C. 4A:2-2.3a 12, as charged.

The appellant advances several other arguments and theories, each of which he claims negates the charges, notwithstanding his admission that he frequently entered false information on various points of his DVIARs or car sheets which record his daily patrolling duties. I do not agree with any but discuss just three. First, he argues that the purpose of the Borough of Elmwood Park's Police department's Policy and Procedure on GPS is being subverted in its use against him. He argues the purpose for using the GPS system-which tracks the movements of its patrol cars- is to enhance efficiency and safety of its officers rather than as a tool of punishment. Because the GPS is being used here in a disciplinary action against him, in contravention of its stated purpose, the charges against him must be dismissed.

A literal reading of the policy is ambiguous. While it states that "the integrity of the system dictates that the tracking system is an integral part of the patrol function, and has been established, not as a picurinary [sic]<sup>3</sup> tool, but as an aid to the patrol function," it also states GPS tracking records "may be utilized as part of an established internal investigation, an whereby the records have been specifically run and properly documented in furtherance of said official investigation." Thus, while the primary purpose of the policy may not be to punish police officers, a legitimate use of the policy

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<sup>3</sup> The word is spelled wrong but is possibly also the wrong word. In the context of the rest of the sentence and overall provision, the word "punitive" was probably intended.

is, as part of an internal investigation, to determine "the records have been specifically run and properly documented." It appears from the record that the investigation here was to determine if the record of miles patrolled was "properly documented." Further, as occurred here, if an officer chooses to ignore the requirement of accurately recording his patrol records which includes the number of miles he patrols, the GPS is even more essential in being "an aide the patrol function", as, unlike the officer, it can, without motive or bias, track the officer's movements, including the number of miles patrolled. Further, even if in bringing the charges against the officer, and in proving them, in part by using the records established with the GPS, the department is using the system for a purpose not originally intended, it would not justify or excuse the officer who is caught by it falsifying his records. Nor would it be proper for an Administrative Law Judge to ignore evidence because the policy is being employed against the officer.

Second, he argues that all of the charges must be dismissed because in October 2016, the Borough employed a "civilian," Robert Verry, a licensed Detective, as independent counsel and, in October 2017, as a "Lead Investigator" for "an Internal Affairs Investigation within the Police Department." Appellant argues these appointments were illegal in that Mr. Verry was allowed access to highly confidential material from which "civilians" are barred. It was made clear from his billing that Mr. Verry probably provided advice on the Ingrasselino investigation. Appellant cites to O'Rourke v. City of Lambertville, 405 N.J. Super 8 (App. Div. 2008) as further authority. However there, as phrased by the appellant, "the responsibility of the investigation" was left with an outside civilian consultant.

Although not clear from the evidence, even assuming Mr. Verry gave essential advice to the police department concerning all of the investigations, and in particular Ingrasselino's, the Attorney General Guidelines do not specifically or even implicitly bar the ancillary employment of outside civilians -they simply provide that the IA unit will consist of members of the Department. Besides, and notwithstanding the wording of the resolution appointing Verry, the "responsibility of the investigation" was from beginning to the end left to and conducted by Captain D'Amore,

Third, Ingrasselino argues that the charges which allege violations of the Department's Rules and Regulations violate the 45-day rule of N.J.S.A. 40A:14-147 and must therefore be dismissed. He argues the Borough "knew" of the allegations against him no later than June 12, 2017. I find this to be factually unfounded. For just one thing, Ingrasselino was first interviewed in January 2018. (R-25) The Borough gave the officer time to explain himself and he was interviewed again on April 17, 2018. (R-26). Further, the IA investigation was completed April 20, 2018. The Preliminary Notice of Disciplinary Action was issued exactly 45 days later on June 4, 2018. As the officer was charged with violations of Departmental rules and Regulations within 45 days of the completion of the IA investigation, there was no violation of the 45-day rule.

I **CONCLUDE** by the preponderance of the credible evidence that the Appellant was guilty of intentionally overreporting, on frequent occasions, the number of miles he patrolled during his patrol time. He also negligently or with reckless disregard of the truth falsely stated on frequent occasions the numbers of summons he issued and on a number of occasions the fuel he dispensed in his patrol car. In so doing, his conduct violated the administrative charges of Incompetency, Inefficiency or Failure to Perform Duties, N.J.A.C. 4A:2-2.3a (1), Conduct Unbecoming a Police Officer, N.J.A.C. 4A:2-2.3 a (6, )Neglect of Duty N.J.A.C. 4A:2-2.3a(7) and Other Sufficient Cause ,N.J.A.C. 4A:2-2.3 a(12), as well as violated Rules and Regulations of his Department, R 2:1.3 (1), 2:1.3 (8), 3:1.5 and 3.7.5. Therefore, the Final Notice of Disciplinary Action should be upheld.

Regarding the severe penalty of removal, the Appellant had previously only had minor disciplinary actions. As it is often cited, police officers are held to a higher standard than other public employees. Police officers must uphold the law and "present an image of personal integrity and dependability in order to have the respect of the public." In Re Carter, 191 N.J. 474, 486 (2007). I agree with respondent that the conduct under investigation was sufficiently egregious. Moreover, I agree that the Police Department may properly infer that an officer who can't be trusted to complete and to honestly perform simple but important daily tasks such as involved here, cannot or should not be trusted with even more complex tasks as required of a police officer. I

**CONCLUDE** that the penalty of a removal for this egregious neglect of duty and other conduct unbecoming of a police officer, and other violations is appropriate.

**ORDER**

It is hereby **ORDERED** that the appellant's Appeal is **DENIED**.

It is further **ORDERED** that the appellant's removal 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**, who 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.

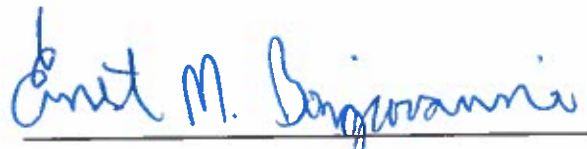
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**,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

March 16, 2020

\_\_\_\_\_  
DATE

Date Received at Agency:

Date Mailed to Parties:  
id



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**ERNEST M. BONGIOVANNI, ALJ**

3/16/20  
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**APPENDIX**

**LIST OF WITNESSES**

**For Appellant**

Chief Financial Officer Roy Riggitano  
Retired Sergeant Joe Friedman  
Retired Chief Donald Ingrasselino  
Michael Ingrasselino  
Retired Captain Brian DiPasquale

**For Respondent**

Captain Marc D'Amore  
Chief Michael Foligno

**LIST OF EXHIBITS IN EVIDENCE**

**For Appellant**

P-1 Elmwood Park Resolution R373-16  
P-2 Elmwood Park Resolution R317-17  
P-3 Chief Robert Verry Invoice  
P-4 GPS Policy and Procedure 2009  
P-5 Vehicle Operations and Response Guidelines  
P-6 Car sheet, dated 9/3/15  
P-7 Car Sheet, dated 7/1/15  
P-8 Car Sheet, dated 10/22/16  
P-9 Car Sheet, dated 1/5/15  
P-10 Letter, Chief to Friedman



For Respondent

- R-1 Preliminary Notice of Disciplinary Action, dated 6/4/18
- R-2 Final Notice of Disciplinary Action, dated 9/24/18
- R-3 Internal Affairs (IA) Report, dated 4/20/18
- R-4 IA Complaint Notification, dated 11/14/17
- R-5 Administrative Advisement forms dated 1/30/18, 4/17/18 and 5/15/18
- R-6 Departmental Rules, Regulations & Acknowledgements, dated 10/1/15
- R-7 Elmwood Police Attendance and Inspection Report, (EPAIR) dated 1/4/16
- R-8 EPAIR, dated 1/27/16
- R-9 EPAIR, dated 2/27/16
- R-10 EPAIR, dated 5/27/16
- R-11 EPAIR, dated 7/19/15
- R-12 EPAIR, dated 3/5/16 through 3/6/16
- R-13 EPAIR, dated 3/12/16 through 3/13/16
- R-14 EPAIR, dated 4/24/16 through 4/25/16
- R-15 EPAIR, dated 5/17/16 through 5/18/16
- R-16 Daily Vehicle Inspection Attendance report (DVIAR) with Municipal Automated Complaint System dated 5/8/16
- R-17 DVIAR dated 1/28/16
- R-18 DVIAR dated 4/16/16
- R-19 DVIAR and GPS Records, dated 2/29/16
- R-20 DVIAR and GPS Records, dated 8/4/16
- R-21 DVIAR and GPS Records, dated 10/21/16
- R-22 DVIAR and GPS Records, dated 10/28/16
- R-23 DVIAR and GPS Records, dated 10/29/16
- R-24 Elmwood Park Police Dept. Annual Report for 2017
- R-25 not admitted
- R-26 Transcript of Michael Ingrasselino Interview (MI Interview) dated 1/30/18
- R-27 MI Interview, dated 4/17/18
- R-28 MI Interview, dated 5/15/18
- R-29 Not admitted
- R-30 Friedman Employment Separation Agreement, dated 6/4/16
- R-31 Not admitted

- R-32 IA Investigation Report 2016-12
- R-33 Incident report, dated 9/15/16
- R-34 Incident report, dated 10/5/17
- R-35 Incident report dated 10/23/17
- R-36 DVIAR incident summary and GPS dated 6/17/15
- R-37 Michael Ingrasselino Training Certifications
- R-38 Michael Ingrasselino Harassment Complaint, dated 1/19/14