



STATE OF NEW JERSEY

In the Matter of Ronald Stuiso  
 Bergen County, Department of Public  
 Works

CSC DKT. NO. 2019-2591  
 OAL DKT. NO. CSV 05333-20

DECISION OF THE  
 CIVIL SERVICE COMMISSION

ISSUED: JUNE 4, 2021 BW

The appeal of Ronald Stuiso, Maintenance Repairer, Bergen County, Department of Public Works, removal effective April 30, 2020, on charges, was heard by Administrative Law Judge Susana E. Guerrero, who rendered her initial decision on April 21, 2020. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on June 2, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision as well as her recommendation to modify the removal to a 20 working day suspension.

~~As the removal has been modified, the appellant is entitled to back pay, benefits and seniority as provided for in N.J.A.C. 4A:2-2.10 from the period following the 20 working day suspension until his actual reinstatement.~~

N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained and major discipline was imposed. Consequently, as appellant has failed

to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. However, under no circumstances should the appellant's reinstatement be delayed pending any back pay dispute.

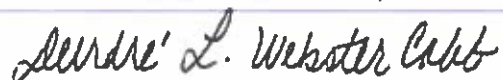
#### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modified the removal to a 20 working day suspension. The appellant is entitled to back pay, benefits and seniority for the period following the 20 working day suspension until his actual reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF JUNE, 2021



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

attachment

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

**INITIAL DECISION**

OAL DKT. NO. CSV 05333-20

AGENCY DKT. NO. 2019-2591

**IN THE MATTER OF RONALD STUIISO,  
COUNTY OF BERGEN DEPARTMENT  
OF PUBLIC WORKS.**

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**Richard G. Potter, Esq.,** for appellant Ronald Stuiso (Galantucci & Patuto,  
attorneys)

**Brian Hak, Esq.,** for respondent County of Bergen (Eric M. Bernstein &  
Associates, attorneys)

Record Closed: March 10, 2021

Decided: April 21, 2021

**BEFORE SUSANA E. GUERRERO, ALJ:**

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**STATEMENT OF THE CASE**

Appellant, Ronald Stuiso (Stuiso or appellant), appeals his removal as a maintenance repairer with the County of Bergen's Department of Public Works (the County or respondent) due to an altercation with a co-worker/supervisor.

## **PROCEDURAL HISTORY**

In or around February 7, 2020, the County served Stuiso with a Preliminary Notice of Disciplinary Action (PNDA) which informed him of the charges made against him. He was served with a Final Notice of Disciplinary Action (FNDA) dated May 5, 2020, which sustained the charges set forth in the PNDA.

The New Jersey Civil Service Commission (the Commission) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on May 27, 2020, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. At the July 2020 prehearing conference, September hearing dates were offered, but respondent's counsel requested a later date. A hearing was initially scheduled for November 2 and 25, 2020 but adjourned at the request of the appellant's counsel, who also requested an in-person hearing. The hearing was rescheduled for January 7 and 12, 2021, but adjourned due to the appellant counsel's unavailability. The hearing ultimately took place on March 9, 2021, via Zoom, and the record closed at the conclusion of the hearing.

## **FACTUAL DISCUSSION**

I **FIND** as **FACT** the following uncontroverted facts:

At all relevant times, Stuiso was a Maintenance Repairer in the County's Department of Public Works. He was removed from his position effective April 30, 2020 when the charges identified in the May 5, 2020 FNDA regarding an altercation that took place on January 10, 2020 were sustained.

### **Charges**

The FNDA removing Stuiso lists the following sustained charges:

1. Violation of N.J.A.C. 4A:2-2.5(a)(1) (Immediate suspension without pay).

2. Violations of N.J.A.C. 4A:2-2.3(a):
  - (2) Insubordination;
  - (6) Conduct unbecoming a public employee; and,
  - (12) Other sufficient cause.

The Incident(s) giving rise to the charges read as follows:

On January 10, 2020, you instigated an investigation regarding an altercation that you had with Vincent Rothenburger, Director of Automotive Services for the County. Specifically, you claimed that, on January 10, 2020, Mr. Rothenburger assaulted you after you allegedly intervened on behalf of a co-worker, Frank Azzollini, who you claimed was being yelled at by Mr. Rothenburger regarding damage to a vehicle. You further claimed that Mr. Rothenburger "bumped" you with his belly in your chest and yelled at you after you allegedly intervened on Mr. Azzollini's behalf. The incident was purportedly terminated after another co-worker, Corey Eustice Williams, stepped in between you and Mr. Rothenburger and separated the both of you.

An investigation was conducted regarding the incident. The statements of the other witnesses and video surveillance contradict your version of the events and show, in fact, that you were the aggressor and precipitator of the incident. In fact, contrary to your statements, Mr. Rothenburger never even yelled at Mr. Azzollini and Mr. Rothenburger never touched you nor did he make any threatening motions toward you. Indeed, the evidence shows that you were clearly the instigator of the incident and that you were looking for an altercation with Mr. Rothenburger. You cursed at Mr. Rothenburger and got in Mr. Rothenburger's face in an attempt to intimidate him.

In addition, even though you were the one who wrote up the vehicle for damage, you sent Mr. Azzollini to submit the write up instead of submitting it yourself. You did this purposely so that you could create a confrontation by inserting yourself into the conversation between Mr. Rothenburger and Mr. Azzollini once Mr. Rothenburger began questioning Mr. Azzollini about the damage. In addition, you falsely claimed that one of the items that needed repair on the vehicle, the emergency clip to the "hot box," was broken for weeks and not repaired by the mechanics. However, the investigation revealed that you only noticed that the clip was broken the day before the incident. Moreover, even though you claimed that the broken clip was a significant safety issue, it was not a significant safety issue,

as evidenced by you still taking the vehicle out on the road after you had noticed it was broken the day before. You also claimed that the side panel pull down gate on the vehicle was not working properly and that that was also a significant safety issue when it was not, as evidenced by the same usage of the vehicle.

### Testimony

#### For Respondent

##### Ernest R. Yenco

Ernest Yenco (Yenco) was the Chief Investigator for the County of Bergen who conducted the investigation of this matter and prepared a report with his findings. (R-2.)<sup>1</sup> He is now retired. Yenco was first informed of the January 10, 2020 incident when Stuiso reported to him that he had been involved in an incident with Vincent Rothenburger (Rothenburger) that morning. He testified that Stuiso reported that Rothenburger yelled and cursed at him, and pushed him with his belly.

Yenco investigated the incident by reviewing documents, conducting interviews of witnesses and taking written statements. (R-3.)<sup>2</sup> He spoke with at least nine individuals with at least some knowledge of the incident. He also reviewed a video that documents, without audio, at least a portion of the exchange between Stuiso and Rothenburger. (R-11.) Yenco also examined the County vehicle at issue.

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Following his investigation on January 10, 2020, Yenco concluded that Stuiso's version of the events (that Rothenburger yelled and cursed at him and pushed him with

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<sup>1</sup> Yenco concluded in his report that the witness interviews and surveillance video confirm that Stuiso was the aggressor and precipitator of the incident with Rothenburger, and that Rothenburger never touched Stuiso nor made threatening motions towards him. Based at least in part on his interview with Azzollini, Yenco concluded that Rothenburger did not yell at Azzollini, which was Stuiso's justification for interjecting himself into the conversation. Yenco also questioned Stuiso's statement that the safety clip was broken "for a few weeks," and that the bungee cord was on the truck for about a year, and pointed to evidence showing that it had not been broken that long. Yenco also questioned Stuiso's assertion that these broken items were a safety hazard.

<sup>2</sup> Written statements were provided by Francesco Azzollini, Vincent Rothenburger, Edward Grieco, Corey Eustance-Williams, and Gary Riccio.

his belly) did not occur because it was inconsistent with the video. He also testified that everyone who provided information pointed the finger at Stuiso, stating that he was in fact the aggressor and that his actions were uncalled-for. He also testified that Stuiso used abusive language towards Rothenburger, and that while he had no knowledge of a motive on the part of Stuiso, there was animosity towards Rothenburger and Yenco felt that Stuiso set up that scenario to confront Rothenburger.

Yenco testified that Stuiso reported safety concerns with the truck at issue. Yenco questioned whether Stuiso's concerns with the truck constituted significant safety issues. Specifically, Stuiso pointed out two issues with the truck: that the break-away clip was broken; and that the safety spring was broken and temporarily replaced with a bungee cord as back-up to the lever, which Stuiso asserted was unsafe. On cross-examination, Yenco agreed that the break-away clip was an important safety feature to the vehicle, but he then questioned why it had not been reported sooner. With respect to the safety spring being broken, he also agreed on cross-examination to potential dangers if the bungee cord and lever were to break while the vehicle was moving. Yenco testified that Azzollini utilized this vehicle and he did not know why these problems had not been reported earlier.

#### Thomas Connolly

Thomas Connolly (Connolly) is the Road Supervisor with Bergen County. He was not a witness to the January 10, 2020 incident but became aware of it when both Stuiso and Rothenburger went into his office to report it. He testified concerning Stuiso's prior discipline, which included one incident in 2019 for which Stuiso was suspended for eight days for defacing a County vehicle and reimbursed the County.

Connolly testified that while he considers Stuiso to be a talented employee, he often butted heads with a lot of people, including supervisors, and he had a "terrible attitude." He testified that there was "always an issue with him," and he believed that Stuiso no longer wanted to work for Operations.



Vincent Rothenburger

Vincent Rothenburger (Rothenburger) is the Director of Mechanical Services for the County of Bergen. He is in charge of the County's equipment, including the vehicle at issue here. He is a supervisor for the Department, but was not Stuiso's direct supervisor.

Rothenburger testified concerning the January 2020 incident. He was informed that day that the safety chain broke on a new trailer. He called Azzollini to look at the unit and to ask him what happened. Rothenburger, Azzollini and Edward Grieco (Grieco), the shop steward, were looking at the vehicle and talking about the issues reported with the vehicle when Stuiso approached them and injected himself into the conversation. Rothenburger denied yelling at Azzollini. He testified that Stuiso got in his face and started yelling at him, and that he used profane language towards him, including the "f-word." Rothenburger asked Stuiso to back up. Grieco also asked Stuiso to back up and get out of Rothenburger's face, and another employee, Williams also stepped in between them. Rothenburger did not know why Stuiso was so upset and agitated. Rothenburger described Stuiso's demeanor as being very angry and loud, and testified that Stuiso showed him no respect. He denied having physical contact with Stuiso, and testified that Stuiso did not try to get physical with him. Following the incident, Rothenburger went to Stuiso's supervisor to report the incident.

Rothenburger recalled a 2019 incident in which Stuiso defaced a County snow truck. At the time, Stuiso admitted to using a marker to black out a part of the lighted control in the truck because he said it was too bright.

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On cross-examination, Rothenburger testified that the vehicle at issue had been written up previously and that what was reported with the vehicle was ultimately repaired. Rothenburger also conceded that he might have raised his voice when Stuiso got in his face, but denied cursing at Stuiso.

Edward Grieco

Grieco is a Supervising Mechanic with the County of Bergen. Grieco testified that on January 10, 2020, Stuiso wrote up a ticket on a vehicle and then Grieco reported it to Rothenburger. Grieco testified that he does not remember much about that day. He remembered Azzollini was there and that they were wondering what had happened to the piece that was missing from the vehicle because it was a new truck. Grieco recalls talking to Rothenburger and Azzollini about this next to the vehicle and testified that there was no yelling prior to Stuiso arriving at the scene. When Stuiso arrived, he and Rothenburger "got into it." He recalls Stuiso telling Rothenburger "you don't talk to me like that," even though Rothenburger was composed and just wanted to know what happened to that missing piece of equipment on the vehicle. Grieco testified that Stuiso was very agitated and got very close to Rothenburger. Stuiso was asked to back away from Rothenburger but that since he did not, Rothenburger backed away. Co-worker Williams also stepped between them and pushed Stuiso away to stop matters from escalating, and they all then walked away. Grieco does not remember profanity being used, and he testified that there was no physical contact between Stuiso and Rothenburger.

Following the January 10, 2020 incident, Grieco and Rothenburger spoke with Connolly and Connolly informed Rothenburger that he would have to file a report against Stuiso for yelling at him.

Francesco Azzollini

Francesco Azzollini (Azzollini) is a Laborer II with the County of Bergen. Azzollini testified that on January 10, 2020, he was speaking with Rothenburger and Grieco about an issue with a truck. They asked him about the issues reported with the truck and how those items had broken. He testified that Stuiso saw them talking and went over to them because Stuiso thought that they were yelling at him. Azzollini testified that he did not feel that they were screaming at him, but they were "talking loudly," and not how they usually talk. He believes Rothenburger and Grieco were "a little upset" because the machine had problems.

Azzollini testified that when Stuiso came over, he first talked to Rothenburger about the issues with the truck but matters then escalated. Azzollini testified that they were yelling at each other and getting in each other's face. He does not recall them using profanity, and he did not see any pushing or physical contact. Azzollini agreed that Stuiso was "somewhat aggressive and disrespectful" towards Rothenburger at the time.

Azzollini was the operator of this vehicle, and had taken the truck out the day before. He was asked about the nature of the discussion concerning the truck on January 10, 2020. He testified that the issue with the side door started at least six months prior, and that he had written up that issue previously. He described this as "somewhat" of a safety issue, but that the bungee cord made him feel a little safer. The day before Stuiso reported it, Azzollini noticed the issue with the broken "S" hook but did not prepare the repair invoices for that, which he did not seem concerned about. When talking with Rothenburger and Grieco, Azzollini pointed out the issues with "S" hook and side door.

### For Appellant

#### Ronald Stuiso

At all relevant times, Ronald Stuiso (Stuiso) worked as a Maintenance Repairer in the Operations division of the County's Department of Public Works. Stuiso testified that he noted safety issues with the vehicle, and it was suggested to him by Gary Riccio (Riccio) that he write it up. Stuiso testified that he did not want to write it up because whenever anything was written up concerning a vehicle, they (Rothenburger and his team) get upset. Stuiso wrote up the vehicle because of the two problems he saw with the vehicle—the problem with the side door on the dump body and the safety clip on the emergency break-away cable (that activates the breaks when all else fails). Stuiso testified that he told Azzollini in the yard that he was writing it up and he asked him to take the paperwork to the mechanics for their inspection.

Stuiso testified that when he was outside, he heard the mechanics ask Azzollini "how do you keep breaking this stuff?" Stuiso testified that he became upset because he had written up the vehicle and Azzollini is a nervous person, and he went over to them to

address the issues with the truck since he had up the Tickets. He testified that Rothenburger screamed at him over the broken clip, and Stuiso responded by telling him "don't f'ing scream at me." Stuiso testified that they had a heated discussion and they were both in each other's face. He testified that Rothenburger stuck his belly out to intimidate him. He had had problems with Rothenburger in the past. Stuiso had flagged mechanical issues in the past that he considered to be serious, and he criticized how the mechanics failed to address these issues in a timely fashion.

### Gary Riccio

Gary Riccio (Riccio) is a Road Inspector with the Department of Public Works. He was not present during the exchange between Stuiso and Rothenburger, but was in the office at the time. Riccio testified that the crew comes into the office for their daily work orders. Stuiso commented about problems with a vehicle, and Riccio told him that he should write it up. Riccio testified about issues with getting trucks repaired, and that some take a long time to get repaired. Azzollini was the operator of the vehicle at issue, and he went to the mechanics about fixing the issues. Riccio recalls someone coming into the office on January 10, 2020 and saying that Azzollini was being berated about breaking the truck, and that Stuiso then said that he was going to see what was going on so he went out to the yard. Riccio agreed that it was not uncommon for the workers there to curse and to talk to each other the way they did here. He described Stuiso as conscientious and someone who gets the job done.

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A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Overall, I found Stuiso to be a credible and forthcoming witness. He admitted to yelling at Rothenburger and getting in his face, and was credible concerning his reasons for approaching Rothenburger, Grieco and Azzollini when they were discussing the issues with the vehicle. Stuiso stepped in to further explain the issues that he himself had reported with the vehicle, and also to support and defend Azzollini from being challenged

or yelled at by Rothenburger and/or Grieco. Azzollini was also credible in testifying that while Rothenburger was not screaming at him, he was "talking loudly," not how he usually talks, and seemed a little upset. He was also credible concerning the issues, and his reporting of issues, with the vehicle.

Rothenburger and Grieco's testimony was not entirely inconsistent with Stuiso's, and I found their testimony concerning Stuiso's actions on January 10, 2020 to be credible. However, I afford limited weight to Yenco's testimony and report, particularly with respect to some conclusions that he reached following his investigation. For example, there is no support in the record that Stuiso somehow orchestrated this encounter with Rothenburger, was "looking for an altercation," or intentionally sent Azzollini to submit the write-up in order to create a confrontation. I also afford no weight to his conclusion in his report that the issues with the vehicle as reported by Stuiso were not "significant safety issues" as they were solely based on his own observation (he is not a mechanic nor did he himself operate these vehicles), and the fact that the truck continued to be in use despite these issues. On cross-examination, he essentially acknowledged that the safety clip that was broken was an important safety feature, and that potential dangers could arise if the bungee cord used on the side door was to break while the vehicle was moving.

Based upon my review of the evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following additional **FACTS**:

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On January 10, 2020, Stuiso filled out two Vehicle Repair Tickets reporting two issues with a vehicle, a small flatbed truck, that he considered to be safety concerns. There was a broken safety clip ("S" clip) on the chain pulling the patch trailer, and a "side door" on the dump body was broken and temporarily held closed by a bungee cord. He was advised by co-worker Riccio to fill out the Tickets after Stuiso verbally reported the issues. It was Azzollini, not Stuiso, who operated the vehicle, and Azzollini had written up the issue with the side door months earlier. It is undisputed that these two issues did exist on January 10, 2020, when Stuiso reported them.

Azzollini met with Rothenburger and mechanic Grieco outside to examine the units in response to the issues reported by Stuiso. I **FIND** that there is no credible evidence to support the assertion in the FNDA that Stuiso purposely had Azzollini submit the Repair Tickets so that Stuiso could create a confrontation by inserting himself into the conversation between Rothenburger and Azzollini; or that Stuiso planned out the encounter with Rothenburger.

Azzollini, Rothenburger and Grieco were talking about the issues with the vehicle outside and Rothenburger ask Azzollini how these issues keep happening to the units. Rothenburger was talking loudly to Azzollini, and seemed upset about the problems reported with the vehicle. Stuiso approached them to address the issues with the vehicle that he had reported, and because Rothenburger raised his voice with Azzollini. Stuiso became angry, got close to Rothenburger's face, and started yelling at him. He also cursed at Rothenburger. Rothenburger also yelled at Stuiso in his face, and the two only separated and walked away after a co-worker intervened. I **FIND** that there was no physical altercation between the two, even though they both stood within inches of each other, and that the evidence is inconclusive that Rothenburger "bumped" Stuiso with his belly or made threatening motions towards him (which is what Stuiso had reported). I **FIND**, however, that Stuiso initiated the altercation with Rothenburger when Stuiso attempted to defend Azzollini, who was being questioned about the broken parts of the truck he drove, and when he attempted to explain the issues he had reported with the vehicle.

As a Director at the Department of Public Works, Rothenburger is a supervisor but did not directly supervise Stuiso at the time.

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Later that day, Stuiso reported the incident to Yenco, Chief Investigator at the time, after he was unable to reach his supervisor. Stuiso reported that he intervened in the matter between Azzollini, Rothenburger and Grieco because Azzollini was being yelled at by Rothenburger. He admitted to also yelling at Rothenburger. Stuiso explained to Yenco that this exchange stemmed from written repair requests that he had prepared earlier that day on two broken features on the small flatbed truck. Stuiso reported to Yenco that the broken safety clip on the chain pulling the patch trailer was a safety hazard.

He also reported that a "door" was being held closed by a bungee cord, and was a safety threat. Despite Yenco's questioning about when these issues first arose, why they had not been reported sooner, and whether it was a safety concern at all, the evidence shows that these two issues with the units existed at the time. Moreover, the issue with the side door had been reported months earlier by Azzollini. The issue with the safety clip had been identified the day before it was reported. Based on the testimony offered concerning these two issues, I FIND that the two issues reported by Stuiso could potentially pose a safety hazard, and that his complaints about the safety of the vehicle were valid.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The County maintains that Stuiso inappropriately inserted himself into the conversation on January 10, 2020, and that he acted in a disrespectful and aggressive manner towards a supervisor to the point that someone had to intervene. The County also maintains that Stuiso's removal is consistent with progressive discipline, as he had a one-day suspension in 2017, a three-day suspension in 2018, and an eight-day suspension in 2019.

The appellant maintains that he made valid complaints about the safety of the truck. One of these safety issues had been raised six months earlier and had not been resolved, and those working in maintenance complained whenever issues with the vehicles were reported. Stuiso also asserts that it is commonplace to have employees at the Department of Public Works raise their voices and curse. He maintains that the penalty of removal is unduly harsh and inconsistent with progressive discipline. Stuiso also asserts that in considering progressive discipline, the one-day suspension in 2017 and the eight-day suspension in 2019 should not be considered because Stuiso was never provided an opportunity to challenge or appeal the one-day suspension, and he never agreed to the terms of the Settlement Agreement imposing the eight-day suspension in 2019. He did, however, serve those suspensions.

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be

disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). 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).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the appellant's actions on January 10, 2020 constitute a violation of the charges set forth in the May 5, 2020 FNDA. If so, the second issue is whether the violation warrants removal from employment or a lesser penalty, if any.

Stuiso is charged with violating the provisions of N.J.A.C. 4A:2-2.3 relating to insubordination, conduct unbecoming a public employee, and other sufficient cause.

"Insubordination" is not defined in N.J.A.C. 4A:2-2.3. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Therefore the term "insubordination" incorporates not only acts of disobedience, but also acts of non-compliance and non-cooperation, and it can occur even where no specific order or direction has been given to the allegedly insubordinate person.

Here, when Stuiso approached Rothenburger, a Director, stood close to his face and yelled at him, using profanity, he acted in an insubordinate manner. He was clearly not "submissive to authority" in how he conducted himself with Rothenburger, a



supervisor. Accordingly, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that Stuiso's conduct on January 10, 2020 constituted insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2), and that such charge must be **SUSTAINED**.

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit Sys. Bd. (June 26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services." Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), the court stated that a finding of misconduct need not "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior, which devolves upon one who stands in the public eye as an upholder of that, which is morally and legally correct."

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Here, Stuiso initiated an altercation with a Director. While his intentions may have been to support and defend a co-worker who Stuiso perceived as being unfairly yelled at by Rothenburger, his conduct towards Rothenburger was clearly inappropriate when he stood close to his face and yelled at him in the presence of other co-workers. While there was no physical altercation, the two were yelling in each other's face until they were separated by a co-worker. On January 10, 2020, Stuiso's conduct was such that it could adversely affect morale or efficiency, destroy public respect for governmental employees and confidence in the operation of public services. I **CONCLUDE**, therefore, that respondent has demonstrated, by a preponderance of the credible evidence, that Stuiso's

conduct on January 10, 2020 constituted conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and that such charge must be **SUSTAINED**.

With respect to the charge of "other sufficient cause," N.J.A.C. 4A:2-2.3(a)(12), no "other sufficient cause" can be found as no other charge, other than those already dealt with in this case, was specified or described by conduct other than that which formed the bases for the conduct unbecoming and insubordination charges. I **CONCLUDE** that respondent has not met its burden of proof on the charge of "other sufficient cause," and that this charge should be **REVERSED**.

Finally, N.J.A.C. 4A:2-2.5 addresses opportunities for a hearing before the appointing authority.<sup>3</sup> N.J.A.C. 4A:2-2.5(a)(1) is not an appropriate charge to be included in an FNDA as it is not a cause or charge that a public employee may be subject to for discipline. I **CONCLUDE** therefore that the charge of a violation of N.J.A.C. 4A:2-2.5(a)(1) should be **REVERSED**.

### **PENALTY**

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending

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<sup>3</sup> N.J.A.C. 4A:2-2.5(a) and (a)(1), in part, states: An employee must be served with a [PNDA] setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except: 1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services . . . ."

upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522–24.

Progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention. Rotundi v. Dep't of Health and Human Services, OAL Dkt. No. CSV 385-88 (Sept. 29, 1988)

Here, respondent maintains that removal is the appropriate penalty and consistent with the concept of progressive discipline given Stuiso's disciplinary history. Stuiso's prior disciplinary history consists of a one-day suspension in 2017, a three-day suspension in 2018, and an eight-day suspension in 2019.<sup>4</sup> I disagree with the appellant that I should not consider the one-day suspension and the eight-day suspension due to the alleged procedural irregularities with the handling of those charges. It is undisputed that Stuiso was charged with this prior discipline, and he served those suspensions at the time, despite any alleged procedural shortfalls. However, I do agree with the appellant that the penalty of removal is unduly harsh given the facts and charges here, and that it is inconsistent with the concept of progressive discipline.

Termination of employment is the penalty of last resort and reserved for the most severe infractions. While Stuiso's conduct on January 10, 2020 was inappropriate, disrespectful and unbecoming, it did not rise to the level of warranting termination given the context in which it occurred, and the absence of more significant prior discipline. Moreover, there is no evidence that this type of behavior towards a supervisor was habitual, or that Stuiso had previously conducted himself in that manner. While the reasons for Stuiso approaching Rothenburger to discuss the issues with the truck--the issues he himself reported-- may have been justified, the way he handled himself was

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<sup>4</sup> The eight-day suspension in 2019 was in response to Stuiso using a permanent black marker to black out a spreader control panel in the cab of a new County truck; and for his failure to report to an alleged emergency.

unwarranted and excessive. He could have approached Rothenburger and made his case without having to get in his face, yell and curse at him. Stuiso should be suspended, not terminated, for his conduct.

In determining the appropriate period of suspension, I take into account Stuiso's prior discipline, including the most recent eight-day suspension in 2019, and the nature of that suspension. I also take into account Stuiso's conduct towards Rothenburger on January 10, 2020, and the circumstances surrounding that confrontation. A more appropriate penalty that is consistent with the concept of progressive discipline is a twenty-day suspension.

I **CONCLUDE** that appellant's conduct warrants discipline, but that the penalty of removal is excessive. Consistent with the concept of progressive discipline, and taking into account Stuiso's prior disciplinary history, I **CONCLUDE** that a more appropriate penalty for his conduct on January 10, 2020 is a twenty-day suspension.

### **ORDER**

It is **ORDERED** that the charges of other sufficient cause and N.J.A.C. 4A:2-2.5(a)(1) are **REVERSED**. It is further **ORDERED** that the charges of conduct unbecoming a public employee and insubordination be and hereby are **SUSTAINED**.

It is **ORDERED** that the determination of the County of Bergen removing Ronald K. Stuiso from his employment is **REVERSED**.

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It is **ORDERED** that Ronald K. Stuiso be suspended for twenty days and receive the return of appropriate benefits.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

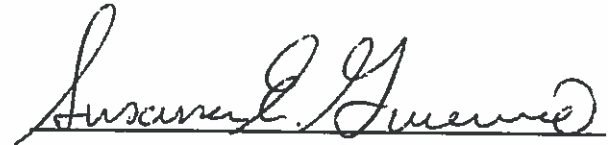
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this

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, PO 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.

April 21, 2021

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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jb

**APPENDIX**

**WITNESSES**

**For Appellant:**

Ronald Stuiso  
Gary Riccio

**For Respondent:**

Ernest Yenco  
Thomas Connolly  
Vincent Rothenburger  
Francesco Azzollini

**EXHIBITS**

**For Appellant:**

- A-1 Amendment to the Collective Bargaining Agreement
- A-2 Notice of Minor Disciplinary Action dated January 13, 2017
- A-3 Letter from James Bush to Ray Dressler dated January 27, 2017
- A-4 Grievance dated February 1, 2017
- A-5 Unfair Practice Charge and letter dated February 2, 2017
- A-6 Letter from Gary Rothman to PERC dated April 24, 2017 and Request for  
Panel of Arbitrators
- A-7 2019 unsigned Settlement

**For Respondent:**

- R-1 FNDA dated May 5, 2020
- R-2 Memorandum from Ernest R. Yenco to Julien X. Neils, Esq., County  
Counsel and Acting County Administrator, dated January 14, 2020
- R-3 Witness Statements, dated January 10, 2020
- R-4 Four Administrative Garage Vehicle Repair Tickets

- R-5 Court Case report following September 6, 2018 inspection
- R-6 Notice of Minor Disciplinary Action, dated January 13, 2017
- R-7 Notice of Minor Disciplinary Action, dated May 13, 2018
- R-8 Not admitted into evidence
- R-8a Not admitted into evidence
- R-9 Preliminary Notice of Disciplinary Action, dated March 1, 2019
- R-10 2019 suspension days
- R-11 Video clip-Northwest Side of Main Building, dated January 10, 2020