



imposed. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12(a), 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 However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App.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.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 60 working day suspension to a 45 working day suspension. The Commission further orders that appellant be granted 15 days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as set forth in *N.J.A.C.* 4A:2-2.10. Proof of income earned 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 30<sup>TH</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  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 10109-20  
Agency No. 2021-341

**IN THE MATTER OF DANIEL CARROLL,  
TOWNSHIP OF WEST ORANGE POLICE  
DEPARTMENT,**

---

**Frank C. Cioffi, Esq.,** for appellant (Sciarra and Catrambone, LLC)

**Nicole D. Espin, Esq.,** for respondent (Fox, Rothschild, LLP)

Record Closed: May 11, 2021

Decided: May 21, 2021

**BEFORE: JOANN LASALA CANDIDO, ALAJ:**

**STATEMENT OF THE CASE**

Appellant, Daniel Carroll, a Police Officer, appealed the disciplinary action of a sixty-day suspension by the West Orange Police Department (West Orange) for non-compliance of policy and procedure and conduct unbecoming while addressing a civilian in an inappropriate tone of voice, initiating a verbal argument, and threatening to issue a summons in retaliation for being parked in a handicap zone.

## PROCEDURAL HISTORY

On October 21, 2020, the Civil Service Commission transmitted the matter to the Office of Administrative Law (OAL), for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was held on February 16, 2021, via Zoom. The parties submitted their post-hearing briefs on May 11, 2021, on which date the matter closed. The appointing authority sustained the following:

## CHARGES

**CHARGE(S):** N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a public employee and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause; Violation of Departmental Rules and Regulations 1:6-5 Conduct and Behavior and Police Discretion 1:7-2 Policy.

**SPECIFICATION(S):** The suspension is based upon the following allegations: A demeanor complaint was received and investigated. The complainant stated that Officer Carroll's demeanor towards her was inappropriate and involved him screaming at her. The complainant described Officer Carroll's actions as *"just hollering and screaming talking about he don't care and get out of here."* And *"so belligerent, so nasty and mean"*. She also expressed concern regarding Officer Carroll stating he would be issuing a summons to the vehicle he occupied for a Handicapped Parking Violation. A review of all available information including Officer Carroll's BWC recording of the incident confirmed that he did display inappropriate behavior towards the complainant, initiating a verbal argument with same. While the complainant and officer Carroll shouted back and forth at each other Officer Carroll stated that he would be issuing (by mail) a summons for the handicapped parking violation. This was declared in the midst of the argument and had no connection to the original incident that prompted the call for police service by the complainant/reporting person thus appearing retaliatory in nature. It was confirmed that Officer Carroll did issue said summons after the incident that day.

## TESTIMONY

A summary of the evidence offered in support of, and in opposition to, the charges against appellant follow. The testimony outlined is not intended to be a verbatim report of the testimony of all the witnesses. Rather, it is intended to summarize the testimony and evidence found by the undersigned to be relevant to the issues presented. In short, appellant significantly disputes the facts that give rise to the charges against him.

### Sgt. William Sayers

Sergeant William Sayers testified on behalf of West Orange. He is assigned to Internal affairs with the West Orange Police Department. On April 18, 2020, a civilian, Ms. Cheryl Smalls, left a message for Internal Affairs and Sayers was assigned the matter on April 22, 2020. Sayers telephoned Smalls on that date and she advised him that when she was at Valley Fresh Restaurant she was upset because no employee in the restaurant was wearing a mask. She paid for the food and went back to the car her aide was driving and proceeded to call the police. Officer Carroll came first, and three other officers then came to the scene. Smalls stated that Carroll was mean and belligerent and did not have a mask or gloves on. He hollered at her saying he did not care and to get out.

Sayers testified that after his conversation with Ms. Smalls she did not sign a formal complaint. Sayers reviewed Carroll's bodycam. He observes the officer arriving at the scene and listening to Ms. Smalls complaints about the restaurant employees not wearing masks. Carroll refers her to the court clerk if she wants to file a complaint and he provides her with his business card. Smalls comments to Carroll that he does not care and used provoking language as an argument ensues with both. Carroll tells her there is nothing he can do and that she has to file a complaint with the clerk. Carroll then points out Smalls is parked in a handicap spot and he was going to issue her a summons even though she was the passenger. He tells her to have a nice day.

Sayers checked the Automated Traffic System to determine if Carroll issued a handicap parking violation and determined the officer put a void request for the ticket since the registered owner came back as a male. The call had come into headquarters at 1:43 p.m. and the ticket was issued at 1:52 p.m.

Sayer stated that although the civilian may have provoked Carroll, he cannot be harsh and must maintain levelheadedness. He did not curse or use profane language but because of Carroll's raising his voice, not keeping an even disposition, and provoking the civilian rather than calming the situation, he includes the directive 1:6-5, General Conduct and Behavior in the Uniform Standards of Conduct that says employees shall address their subordinates, associates, supervisors and members of the general public courteously and shall not use abusive, insulting or provoking language.

Sayer further testified that Carroll issued the handicap ticket in retaliation for her arguing with him in violation of section 1:7-2 (u).

#### Captain William Varanelli

West Orange Police Captain William Varanelli testified on behalf of West Orange. He oversees the Office of Professional Responsibilities. Varanelli reviewed the bodycam of the incident as well as Sergeant Sayers report. Varanelli requested changes be made to the report pertaining to the handicap ticket that needed to be dismissed since the vehicle was registered to a male. He testified as to Carroll's demeanor. He stated that Carroll had a prior incident about a year prior when he was insubordinate to his sergeant by refusing to go on a call, and these emotional responses are red flags. Carroll entered into an agreement on May 28, 2019, for the prior incident for a thirty-day suspension with twenty-five days being held in abeyance for one year if no other disciplinary charges were issued.

Varanelli stated that Carroll issued the handicap parking summons in retaliation for her talking back to him. He found Carroll to be discourteous to Ms. Smalls as well as

using provoking language. His actions are what destroys the public trust. Varanelli found that although Carroll had two incidences that were red flags pertaining to his demeanor, he is still a decent officer and was awarded a performance notice for meritorious service during the pandemic, on June 30, 2020.

Chief James E. Abbott

West Orange Police Chief James E. Abbott testified on behalf of respondent. He stated that when deciding discipline, he considers the officer's past disciplinary history. Chief Abbott reviewed Carroll's bodycam, listened to a telephone message from Ms. Smalls to Sayer and reviewed reports. He did not agree with Varanelli and Deputy Chief Feula when they suggested this be handled as solely a demeanor complaint.

Chief Abbott signed off on Carroll's commendation for meritorious service because he considers Carroll to be an asset to the department.

Detective Daniel Valle

West Orange Police Detective Daniel Valle testified on behalf of appellant. Valle arrived at the scene on April 17, 2020, almost to the end of the conversation between Carroll and Smalls but did observe Carroll slightly raise his voice to Smalls. Valle stated that it appeared to him that Smalls was not happy with the restaurant she had just gone into and she was heading to her vehicle when he arrived. He felt Carroll was being antagonized by Smalls.

Lt. Michael Mastras

West Orange retired Lieutenant Michael Mastras testified on behalf of appellant. He was assigned as a supervisor in Internal Affairs when he retired in March 2020. Mastras was involved in a discipline of Carroll in 2019 as well as Varanelli and Detective O'Donnell. It was recommended by the chief that Carroll receive a written reprimand. Varanelli insisted on being involved in the investigation despite Mastras suggested he



not be after an argument had occurred between Varanelli and Carroll during contract negotiations with the PBA. Heated words were also exchanged with the two at a Christmas party.

Mastras further testified that while in IA, Varanelli called his integrity into question many times on such things as how he filled out paperwork.

### Daniel Carroll

Daniel Carroll testified on his own behalf. Carroll has been a police officer with West Orange for the past twenty years. He stated that he and Varanelli were acquaintances during that time up until September 2017 when he voiced his opposition to the town counsel to adding a fifth captain to the department, changing the Table of Organizations. Carroll felt it would be more beneficial to the town to add more resource officers to schools. Varanelli called Carroll "berating" him for complaining to someone on the town counsel. Carroll testified that he later learned that a discipline imposed in 2019 was to be a reprimand but Varanelli changed it to a thirty-day suspension with twenty-five days being held in abeyance for one year. He thought that to be unfair for a nineteen-year veteran.

Carroll described his actions on April 17, 2020, as arriving at the Valley Plaza and encountering Ms. Smalls who complained of employees at the Valley Fresh not wearing masks or gloves. He stated that he had to raise his voice to talk over Ms. Smalls who was screaming at him. Carroll testified that he explained to Ms. Smalls that there was nothing he could do, but she could sign a complaint with the municipal court clerk. He took offense to her calling him a 'white devil' and that is when he raised his voice but was not screaming.

When Carroll approached the passenger side of the vehicle where Ms. Smalls was, he noticed the car was in a handicap parking space without a handicap card. He told her he would be issuing a ticket. After Carroll wrote the summons since it was already called in, he decided to void it on May 13, 2020, and not have it mailed because

the owner of the vehicle was a male. Varanelli called him into the office and told Carroll he thought the summons was retaliatory. Carroll disagreed. He also testified that had he known the process of disciplining an officer, he would have vehemently fought his prior discipline instead of entering into the agreement.

### **FACTUAL FINDINGS**

On April 17, 2020, at around 1:43 p.m. Police Officer Carroll responded to a request by Ms. Smalls for law enforcement assistance at a store in West Orange, which led to the incident at issue. Following a complaint by Ms. Smalls, an internal investigation began on April 22, 2020, and resulted in a recommendation that the complaint of Improper Demeanor against Carroll be sustained.

According to Carroll's body worn camera that was played at the hearing and relied upon here as **FACT**,<sup>1</sup> he arrived at the scene (a parking lot near the Valley Fresh restaurant) and approached Ms. Smalls as she was seated in the passenger side of a vehicle that was parked in a handicap spot.<sup>2</sup> Ms. Smalls revealed that she contacted 911 because the employees at Valley Fresh were not wearing masks or gloves, and that this led to a verbal altercation between her and the employees. Carroll informed Ms. Smalls that he would not be able to do anything and that she would need to file a complaint with the court clerk and confirmed that she had received her money back. Ms. Smalls was not satisfied and asked for Carroll's name and badge number which Carroll provided by handing over a copy of his business card. Carroll again confirmed that Ms. Smalls had gotten her money back and that she should file a complaint with the clerk before turning to leave. Throughout this portion of the interaction Carroll was speaking slightly louder than normal, but this appears to be due to him remaining

---

<sup>1</sup> See generally, R-12.

<sup>2</sup> The vehicle was driven by a woman later determined to be Ms. Small's aide.

around six to three feet from the car door and speaking to Ms. Smalls through a closed to partially closed car window.<sup>3</sup>

As Carroll was starting to turn away Ms. Smalls made a comment to the effect that Carroll did not care about her or her concerns. To which Carroll responded by taking a few steps closer to the passenger side of the car, and raised his voice saying in an agitated manner, "Listen ma'am, don't start with that stuff okay! Have a nice day."<sup>4</sup> Ms. Smalls responded to Carroll by making several heated remarks towards him,<sup>5</sup> and Carroll retorts that she should file a complaint if she was unhappy with his behavior. Ms. Smalls makes a comment that Carroll was going to spit on her (since he was not wearing a mask) as Carroll was walking away again, to which Carroll again turned back shouting, "Ma'am . . . everything is on camera ma'am, thank you." The two continued to make heated comments as Carroll walked back towards the front of the vehicle, with Carroll's being variations of "yeah okay," "thank you," and "have a nice day" in an increasingly agitated tone.

Carroll turned back a final time and called out, "Do you, do you have a handicap placard?" He then walked back to the passenger side of the vehicle in response to Ms. Small's question, saying twice more, "Do you have a handicap placard?" Carroll pointed toward the handicap sign marking the spot where the vehicle was parked saying, "cause this is a handicap spot." Carroll then pointed at Ms. Smalls through the car's closed window saying, "I'll mail you a ticket" before walking away for a final time to speak with the other officer (Detective Daniel Valle) who had been standing further back from the scene. As the driver of the vehicle pulled away from the lot Ms. Smalls continues to shout through the window at Carroll, with Carroll responding in turn. R-3, at 3. At no time did Carroll use profane language. Around thirty minutes after the initial call, Carroll issued a summons against the vehicle for a handicap parking violation at

---

<sup>3</sup> Ms. Smalls would raise the window whenever Carroll approached her side of the vehicle and would lower it again as he moved away.

<sup>4</sup> Carroll testified that he became agitated because he believed Ms. Smalls was implying that he was not assisting her due to his race. I, 188:9-22.

<sup>5</sup> See R-3, at 3.

1:52 p.m. The summons was dismissed on June 9, 2020, after Carroll filed a Dismissal/Void request on May 13, 2020. R-6.

### DISCUSSION

Under N.J.A.C. 4A:2-2.3(a)(6), a public employee can be disciplined for conduct unbecoming. The appointing authority must establish that the employee engaged in conduct unbecoming of a public employee by a preponderance of the credible evidence. Washington v. City of Trenton, CSV 4211-03, Initial Decision (November 3, 2005), adopted, Merit Sys. Bd. (December 13, 2005) <<http://njlaw.rutgers.edu/collections/oal/final/csv4211-03.pdf>>. <sup>6</sup>

Whether an employee's behavior "constitutes conduct unbecoming a public employee is primarily a question of law." Karins v. Atlantic City, 152 N.J. 532, 553 (1998). Conduct unbecoming describes any conduct that undermines public confidence in municipal employees or services. Id. at 554. See also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the conduct would "offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Which includes violating the implicit standards of good behavior imposed upon those who "stand[] in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). "Police officers represent law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In this vein, police officers are held to higher standards of conduct than other public employees. In re Phillips, 117 N.J. 567, 576-77 (1990).

To maintain the level of decorum expected of an officer of the law, police officers are to remain calm and courteous when interacting with members of the general public, even if provoked or criticized. Using profane language while on duty, failing to follow departmental policies, or acting in a rude and unprofessional manner to members of the

---

<sup>6</sup> Also available at Washington v. City of Trenton, 2005 N.J. AGEN LEXIS 652 (Dec. 13, 2005).

general public or other officers are all examples of conduct unbecoming of a police officer. See e.g., Nance v. City of Newark Police Dep't, 92 N.J.A.R.2d (CSV) 577, 581-82, Initial Decision (May 27, 1992), adopted, Comm'r (July 6, 1992)<sup>7</sup> (police officer suspended for using profane and uncivil language in public toward a fellow officer who was issuing him a parking ticket); Fabian v. North Bergen Police Dep't, 95 N.J.A.R.2d (CSV) 216, Initial Decision (April 18, 1994), adopted, Comm'r (Dec. 20, 1994)<sup>8</sup> (off-duty police officer disrespected a NYC Port Authority officer, walked away when she attempted to question him, lied about why he was present, and lied about a change in the law allowing him to carry a gun in NYC); Villane v. Aberdeen Twp. Police Dep't, 93 N.J.A.R.2d (CSV) 255, Initial Decision (Jan. 7, 1993), adopted, Comm'r (Feb. 9, 1993)<sup>9</sup> (interfered with medical services providing emergency assistance lessening respect for, and confidence in, public services and used loud and profane language while in public); In re Vivian Delgado, City of Passaic Police Dep't, 2014 N.J. CSC LEXIS 299, 33-34 Initial Decision (Feb. 18, 2014), adopted Comm'r (April 9, 2014) (failed to follow the department's emergency medical dispatch guide requiring dispatcher's to be calm and provide accurate timely instructions on performing CPR); In re Czezre Adams, City of Newark Police Dep't, 2021 N.J. CSC LEXIS 142, 20 (March 4, 2021), penalty rejected Comm'r (Feb. 25, 2021) (spoke in a rude manner and used unprofessional language and profanity with callers while working at the department's 911/communication division).

In this matter Carroll's body camera and testimony in the record shows that Carroll failed to exhibit the level of professionalism and decorum expected of a police officer. While Carroll did not use profane language and began the encounter in a professional manner, when Ms. Smalls began to criticize him, Carroll quickly lost his composure and responded to her comment in a belligerent manner. Carroll and Ms. Smalls (who was still sitting in the passenger seat of the vehicle) continued a short, heated exchange with Carroll continuing to speak to Ms. Smalls in a raised voice. This behavior continued through Carroll threatening to issue a summons against Ms. Smalls for a handicap parking violation and ended with the driver of the vehicle finally pulling

---

<sup>7</sup> Also available at 1992 N.J. AGEN LEXIS 4658.

<sup>8</sup> Also available at 1994 N.J. AGEN LEXIS 954.

<sup>9</sup> Also available at 1993 N.J. AGEN LEXIS 183.

out of the parking lot. Some of the testimony and Carroll's body worn camera support a finding that Ms. Smalls was not composed herself and may have made some provoking comments towards Carroll. However, Ms. Smalls is not a law enforcement officer, and has no duty to the public and profession to maintain an even demeanor and to deescalate situations when they become heated. On the other hand, Carroll does have such a duty to Ms. Smalls and the community. Therefore, Carroll's conduct was unbecoming of a police officer. He failed to maintain his composure and to address a member of the public in a calm and civil fashion, a requirement for all officers even (or especially) when they are responding to upset and confrontational members of the public.

Additionally, Ms. Smalls presence in the handicap parking spot had nothing to do with the reason Carroll and other officer were originally called to the scene, and Ms. Smalls was the passenger in the car (not the driver). Therefore, the act of issuing Ms. Smalls a parking ticket has the distinct connotations of being retaliatory in nature and an abuse of Carroll's law enforcement powers. Retaliating against a member of the public for criticizing an officer and thereby abusing the powers of a police officer would not, under any circumstances, be considered appropriate behavior for a police officer.

Therefore, I **CONCLUDE** that the respondent has satisfied its burden of proving by a preponderance of the credible evidence the two charges of conduct unbecoming a public employee.

The FNDA cited two different Department directives regarding the conduct and policy for police officers and supported a finding that the appellant had violated these directives due to his actions during the incident. The charges were two counts of violating N.J.A.C. 4A:2-2.3(a)(12), (i.e., other sufficient cause). There is no definition in the New Jersey Administrative Code for other sufficient cause, however, it is generally defined in the charges against the appellant. The charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>>. The offense of other

sufficient cause is for conduct which "violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Keith Harkcom, Dep't of Corrections, CSR 14703-19 (April 13, 2020) adopted Comm'r (May 22, 2020).<sup>10</sup>

The FNDA states that the two charges for other sufficient cause were sustained for violating WOPD Directives 1:6 (Uniform Standards of Conduct); and 1:7 (Police Discretion). R-2. The Department directives cited in the FNDA state in part:

Directive 1:6-5

(a) The following conduct and behavior are specifically prohibited:

. . . Use of harsh, profane, or obscene language to any member of the public or the department while on duty or acting in an official capacity.

(e) Employees shall address their subordinates, associates, supervisors, and members of the general public courteously and shall not use abusive, insulting, or provoking language.

(f) Employees shall be civil and courteous at all times. They shall maintain an even disposition and remain calm, regardless of provocation, in executing their duties.

(u) No employee shall take any official action or initiate or engage in any legal conduct with the intent to retaliate against any person for criticizing or complaining about any police officer or police employee.

[R-7 (WOPD, Directive 1:6-5, General Conduct and Behavior)]

Directive 1:7-2

Discretion is defined as the power to decide or act upon one's own judgment. The practical use of discretion in law enforcement requires that personnel understand the limitations of their discretion due to the immense power granted to police by society.

The application of discretion must be free from personal bias, dishonesty, and injustice. The exercise of discretion must always be in the best interests of justice. Personnel must be faithful to their oath of office, the principles of the policing profession and the objectives of this department when exercising discretion. In the discharge of their duties, officers must not allow personal motives to govern their decisions or exercise of discretion.

[R-8 (WOPD, Directive 1:7-2, Policy)]

---

<sup>10</sup> Also available at 2020 N.J. AGEN LEXIS 195, \*38-39.

The FNDA has identified and sustained the charges for other sufficient cause. The Department's cited internal policies clearly state that police officers are expected to remain calm and level-headed when performing their duties, and to address others in a civil manner even when provoked. That police officers, being granted immense power over others in society, have a duty to exercise discretion when performing their duties. They are not to allow their personal motives to govern their actions, including prohibiting taking retaliatory action against another who criticizes or complains about the officer. The record supports the Department's charges that Carroll violated the provisions in WOPD Directives 1:6 and 1:7.

Therefore, I **CONCLUDE** that the respondent has satisfied its burden of proving by a preponderance of the credible evidence the two charges of other sufficient cause for violation of WOPD Directive 1:6 and 1:7.

The final issue to be decided in this matter is whether the penalty imposed by the appointing authority was justified. A public employee that commits a wrongful act related to their duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). To determine the appropriate level of discipline requires a de novo review of the disciplinary action to determine if the punishment is "so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted).

New Jersey has an established system of progressive discipline to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is related to an employee's past record, and looks at the nature, number, and proximity of prior disciplinary infractions to determine the reasonableness of the penalty imposed. See In re Phillips, 117 N.J. at 581 (citing West New York v. Bock, 38 N.J. at 523). An employee's past record may not be used to prove the present charges, but it is to be considered when determining the appropriate penalty for the current offense. Ibid. An employee's past record may also include reasonably recent promotions and commendations as well as both formal and informal disciplinary actions. Id. at 524.



In the present matter, a sixty-day suspension is imposed for the sustained charges, which was set to begin on September 19, 2020. R-2. Sixty days were ordered due to Carroll's actions in this incident, and twenty-five days were added from a prior case of misconduct in May 2019 which were held in abeyance per a settlement agreement. R-2; R-10; R-14. The prior days of suspension were to be imposed only if there was another disciplinary charge within a year's time. Ibid. The sixty-day penalty was imposed because it was believed that Carroll's behavior indicated an "indifference to standards of conduct for police officers [that was] exhibited in May 2019 [and] continued to infect the demeanor of [Carroll] in April 2020." R-2, at 4.

Carroll's disciplinary record is relatively clean for nineteen years of service. He was disciplined on May 7, 2019, for insubordination resulting in a five-day suspension without pay, and another twenty-five days held in abeyance. R-10; R-14. The next was a minor driving related rule infraction on May 8, 2019. R-9. And the third is the present matter, occurring on April 20, 2020.

In applying progressive discipline, I weigh heavily, Carroll's nineteen-year tenure with respondent. A sixty-day suspension is excessive for two minor rule infractions when considering his disciplinary history. However, a major discipline is warranted in this matter considering: (1) the allegations of Carroll exhibiting improper demeanor and conduct while on duty; and (2) that Carroll was granted leniency for the serious charge of insubordination under the condition that there were no further disciplinary charges for at least a year. On the other hand, Carroll was commended in June 2020 for his meritorious service during the COVID-19 pandemic, and two of the witnesses noted that Carroll is a good officer and an asset to the Department. See P-3; Abbott Testimony; Varanelli Testimony. However, looking at the circumstances of this particular incident and the recent disciplinary history, it appears that Carroll's demeanor cannot be overlooked.

Case law regarding law enforcement officers has consistently viewed them as a "special" public employee and that the standards governing their behavior and informing their discipline is strict applied. In re Keith Harkcom, Dep't of Corrections, 2020 N.J. AGEN LEXIS 195 at \*40 (citing Twp. of Moorestown v. Armstrong, 89 N.J. Super. at

566; In re Phillips, 117 N.J. at 577). See also In re Appeal of Emmons, 63 N.J. Super. at 141-42 (“An officer cannot complain that he is being held up as a model of proper conduct; it is one of the obligations he undertakes upon voluntary entry into the public service. His obligations are greater if he desires to maintain his position as police officer.”). Considering the role of police officers in the community and the inherent power afforded those in the profession, a member of the police must be able to maintain their composure and keep control of a scene when interacting with others in the course of performing their duties. Even when confronted by antagonistic and upset members of the public.

While Carroll’s behavior was not the most egregious, it was still unprofessional for a police officer. Since public officials, and to a greater extent law enforcement officers, are held to a higher moral and professional standard than the average person, Carroll’s interactions with Ms. Small and his handling of the scene constituted conduct unbecoming. Additionally, Carroll’s conduct was a clear violation of the cited WOPD Directives regarding officer’s conduct and behaviors, both in his failure to maintain the proper demeanor and in issuing a retaliatory parking ticket against Ms. Smalls. Finally, considering Carroll’s disciplinary history which indicates a trend towards unprofessional and unbecoming conduct when confronted by others, and the prior leniency afforded to him in 2019 for a more severe infraction of the rules, a forty-five-day suspension is warranted and is in keeping with the system of progressive discipline. It should be noted that there is absolutely no evidence adduced in this case to show discrimination, motive or bad faith for this discipline imposed as a retaliation for objecting to appointing another captain.

Based upon all the foregoing, including the evidence and certifications submitted, I **CONCLUDE** that respondent has met its burden of proving, by a preponderance of the credible evidence, the charges against appellant.

### **ORDER**

It is hereby **ORDERED** that the sixty-day suspension of appellant is hereby **MODIFIED** to forty-five days and that all back pay, other than the forty-five (45) days of

unpaid suspension, shall be reinstated to Officer Daniel Carroll, along with any other accompanying employment 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.

May 21, 2021



\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

May 21, 2021

Date Mailed to Parties:

May 21, 2021

ljb

**Witnesses:**

**For Appellant:**

Officer Daniel Carroll  
Detective Daniel Valle  
Retired Lieutenant Michael Mastras

**For respondent:**

Sergeant William Sayers  
Captain William Varanelli  
Chief James Abbott

**Exhibits**

**For Appellant:**

P-1 Appellant's business card.  
P-2 Performance Notice dated June 30, 2020.  
P-3 Commendation-Covid 19 dated July 22, 2020.  
P-4 Email from appellant to Sue McCartney dated September 3, 2017.  
P-5 Pages 47 and 48 of transcript of departmental hearing dated August 17, 2020.  
P-18 Performance evaluations

**For respondent:**

R-1 Preliminary Notice of Disciplinary Action dated July 13, 2020  
R-2 Final Notice of Disciplinary Action dated September 10, 2020  
R-3 Internal Affairs Report dated June 17, 2020  
R-4 Internal Affairs Target Notification  
R-5 CAD Incident Report  
R-6 Ticket #001596  
R-7 Standards of Conduct Directive 1:6  
R-8 Police Discretion Directive 1:7  
R-9 Appellant's internal affairs history

R-10 Final Notice of Disciplinary Action dated May 23, 2019

R-11 Cheryl Smalls audio Statement dated April 22, 2020

R-12 Appellant's body worn camera footage of April 17, 2020

R-13 Internal Affairs mailbox routings

R-14 Abeyance agreement