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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02381-19

AGENCY DKT. NO. 2019-1903

**IN THE MATTER OF GAMAL MOHIELDIN,
BURLINGTON CITY DEPARTMENT OF
PUBLIC WORKS**

Gamal Mohieldin, appellant, pro se

**Amy R. Guerin, Esq., for respondent, Burlington City, Department of Public
Works (Parker McCay, P.A., attorneys)**

Record closed: June 10, 2020

Decided: December 6, 2021

BEFORE ELAINE B. FRICK, ALJ:

STATEMENT OF THE CASE

Appellant, Gamal Mohieldin, (Mohieldin) was employed by respondent, City of Burlington (the City) in the Department of Public Works (DPW). The City removed Mohieldin from his employment, for having violated the charges of conduct unbecoming an employee; discrimination that affects equal employment opportunity; and other sufficient cause. Mohieldin allegedly engaged in numerous acts of improper conduct and created a hostile work environment by making repeated inappropriate comments to and about co-workers regarding sex, sexual orientation, religion, and race, and by repeatedly grabbing his

genitals. Mohieldin contends that he was terminated in retaliation for having complained to the police about co-workers, and that he was a victim of workplace harassment and discrimination and should not have been disciplined with removal.

PROCEDURAL HISTORY

The City issued a Final Notice of Disciplinary Action (FNDA) on December 17, 2018, removing appellant from his employment, effective August 28, 2018. Mohieldin appealed, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 15, 2019, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

Prehearing telephonic conferences were conducted with Mohieldin and counsel for the City. A discovery schedule was established, and hearing dates set down. During the pendency of the OAL proceeding, Jeffery L. Krain, Esquire, entered his appearance as counsel on behalf of Mohieldin. The hearing dates were adjourned.

On October 29, 2019, a motion was filed by Mr. Krain, seeking to be relieved as counsel for Mohieldin. The motion was withdrawn as resolved when an executed substitution of counsel was submitted to the OAL on November 12, 2019, with Mr. Krain withdrawing as counsel and Mohieldin substituting in as pro se.

Telephonic conferences were conducted with the parties thereafter, during which time the rescheduled hearing dates were confirmed. A prehearing order was entered on January 29, 2020.

The hearing was conducted on February 7, 2020. At the conclusion of testimony, the parties were directed to submit written summations by March 30, 2020. Requests to extend the time for the submissions were granted. The City's summation was received on June 10, 2020. Petitioner did not submit a summation. The record closed on June 10, 2020.

As of March of 2020, the Governor of the State of New Jersey issued an executive order declaring a public health emergency due to the COVID-19 pandemic. Other executive orders were entered which effected the usual operations of the OAL, including the provision of the extension of time to complete administrative decisions. Subsequent extensions were granted for the issuance of this decision.

FACTUAL DISCUSSION AND FINDINGS

The following undisputed facts were gleaned from the testimony and documentary evidence entered in this matter. I thus **FIND** as **FACTS** the following:

Appellant, Gamal Mohieldin (Mohieldin) was employed as a Laborer 1 in the DPW for the City, starting in 2015. A Preliminary Notice of Disciplinary Action (PNDA) was issued to Mohieldin by the City's Business Administrator (BA), David Ballard (Ballard) on August 28, 2018. (R-13.) The PNDA alleged Mohieldin violated charges of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(9), discrimination that affects equal employment opportunity; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

Mohieldin's alleged conduct which gave rise to the charges, was outlined in the PNDA as follows:

An investigation revealed numerous counts of inappropriate comments and conduct targeting Shawn King, Anthony Lim and Andrew Janeczko over the past several months.

In addition, you create a hostile working environment with repeated inappropriate comments on the basis of sex, sexual orientation, religion and race, and you repeatedly grab your genitals.

(R-13.)

An attachment to the PNDA listed alleged incidents giving rise to the charges as follows:

On multiple dates during 2018, you attempted to provoke a confrontation with Shawn King by sharing stories regarding his personal life in front of all the co-workers.

On multiple dates during 2018, you attempted to provoke a confrontation with Anthony Lim by sharing stories regarding his personal life in front of all the co-workers.

You have been heard on multiple occasions calling Shawn King a bitch and a faggot and telling him that his wife is with another man while he is at work. You also tell Shawn King that he doesn't get any sex when he goes home.

On May 14, 2018, you told Shawn King that his wife is home alone while he (King) is at work, and that his wife is "sucking someone else's dick," and "someone is fucking your wife while you're at work."

On June 18, 2018, you stared at Shawn King's wife when she came to pick him up from work and grabbed your genitals. You then licked your finger and pointed at her.

On June 21, 2018, you called a white employee a "honkey" at the time clock.

On July 20, 2018, you interrupted a conversation between Shawn King, Aaron Smitherman, Dave Everham and others. When Shawn King told you to mind your business, you said "I will have you fired."

On July 20, 2018, you were observed telling Shawn King "you're next" and "I'll have your job too."

On July 21, 2017 [sic], you were observed following Shawn King around while he was performing his work duties. You invaded his personal space and attempted to intimidate him by standing close to and behind him on several occasions.

On multiple occasions, you invaded the personal space and attempted to intimidate Anthony Lim by walking up and standing close to and behind him for no reason.

You repeatedly grab your genitals while staring at Shawn King, Anthony Lim, Andrew Janeczko and others.

You interrupted a conversation between Shawn King, Aaron Smitherman and Mark Staravoj by telling King and Smitherman that they are "not really black," that they don't "stick together" and that you are black because you are from Africa.

You told Andrew Janeczko that he needed to "pick a side" and be with either the white employees or the black employees.

Within two weeks of Andrew Janeczko beginning work as a seasonal employee, you began to repeatedly harass him by: (1) telling him he is gay; (2) telling him his father is gay; (3) telling him his father sucks dick; (4) telling him his father sucks children's dicks; (5) talking about dick soup and telling Janeczko he likes dick soup; and (6) telling him his father is going to get shot because he goes to Thailand a lot.

When Andrew Janeczko became a full-time employee, you continued to harass him by making comments such as: (1) telling him he likes dick soup; (2) telling him he is gay; (3) telling him his teeth are bad because he sucks dick; (4) telling him his dad is gay and sucks dick; (5) telling him he is "out" after he reported your conduct to supervisors; (6) telling him that you are going to tell Dave Ballard on him; and (7) telling him he is gay because he doesn't like pussy.

You have been heard calling Andrew Janeczko sasquatch.

You repeatedly tell Andrew Janeczko that he is in a gang and gives the Black Panther salute when Janeczko and others imitate the Captain Morgan television commercial.

You have been observed on numerous occasions telling gay jokes to co-workers.

You have been heard making comments about Chinese people in front of Shawn King, who is part Chinese.

You have been heard asking other employees if they "get pussy" every day.

You have been heard saying "Fuck Jesus Christ" nearly every workday over the past six months. You say this purposefully in front of Christian workers, including but not limited to Shawn King and Anthony Lim.

On Fridays over the past six months, you make lewd comments such as "it's beer and pussy day."

(R-13.)

Mohieldin was suspended effective August 28, 2018, without pay, pending a Loudermill hearing. That hearing was conducted on October 11, 2018.

An FNDA issued to Mohieldin as of December 17, 2018, with the sustained charges of conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6); discrimination that affects equal employment opportunity, N.J.A.C. 4A:2-2.3(a)(9); and other sufficient cause, N.J.A.C. 3A:2-2.3(a)(12), for the incidents as alleged in the PNDA. (R-13.) The discipline imposed was removal of Mohieldin from his employment, effective August 28, 2018.

Testimony

Chad Haney (Haney) testified on behalf of the City. He is currently employed as a police officer in another municipality, where he has worked for approximately three to four years. He previously was employed by the City in the DPW as a Laborer 1, for approximately two years. He knows appellant, Mohieldin, from working together in the DPW.

Haney heard Mohieldin make gay jokes and comments in the DPW workplace. Mohieldin made comments a couple of times about co-worker, Janeczko's father going overseas and that he molests little boys. Mohieldin made comments about "dick soup" quite often. Haney heard him comment about "monkey in the hole" several times but did not know what that meant. Mohieldin also used the word "pussy" quite often. Such comments were made by Mohieldin usually by the time clock towards the end of the workday.

Haney heard Mohieldin use the phrase "tick, tick, boom" a lot. Haney did not know where the phrase came from. He thought it was from something that happened to Mohieldin before Haney worked in the DPW, and Mohieldin was joking about the situation. Haney acknowledged there were times in the workplace he changed his voice, speaking in accent, and joking with Mohieldin.

Haney observed Mohieldin at least one time grabbing his genitals while clothed. However, Haney could not recall the context whether Mohieldin did so to adjust himself or was doing it as a gesture directed towards someone else.

Anderw¹ Janeczko testified on behalf of the City. He initially worked as a seasonal employee and then was hired as a full time Laborer for the City in the DPW, where he has been so employed for approximately three years. He knows Mohieldin from working together at the DPW.

When Janeczko began his seasonal employment with the DPW, he was harassed by Mohieldin. Janeczko was always nagged by Mohieldin, asking him about what he was doing, telling him he was not supposed to be doing something, and was always sneaking around the corner looking if Janeczko was getting a tool. Mohieldin would accuse Janeczko of stealing and that he was going to call Janeczko's supervisor. Janeczko acknowledged that he had taken home a weed whacker to use, with the permission of his supervisor.

¹ The spelling of "Anderw" is how the witness spelled his name. It is recognized that the conventional spelling of Andrew is used in evidential documentation and is referring to this witness.

Mohieldin would call Janeczko "gay" at least twice per week in the workplace and was told that he did not like pussy. Janeczko is missing his front teeth, and Mohieldin would say that Janeczko had bad teeth because he was gay and "you suck dick." He would tell Janeczko that he liked "dick soup." (R-1.) Even after Janeczko complained about Mohieldin to the supervisors, Mohieldin continued calling Janeczko gay and that he liked dick soup, sometimes continuously throughout the day. Mohieldin would say he was going to get Janeczko fired for having complained about him to the supervisors.

Mohieldin would tell Janeczko that his stepfather was gay since Janeczko's stepfather liked to travel. Mohieldin would say that the stepfather was traveling overseas because he was gay and that he sucks little boys' dicks. Janeczko did not like being harassed by Mohieldin and it was upsetting to him.

Shawn King testified on behalf of the City. He is currently employed as a forklift operator at another company, where he has worked for approximately four months. Prior to that, he was employed by the City in the DPW, as a Laborer, for approximately four years. He knows Mohieldin from working together in the DPW.

When King started his employment with DPW, he could have conversations with Mohieldin. He then began to make some comments such as King not being black, because his grandmother is Italian. Mohieldin's comments and behavior escalated as time progressed and he was "out of control." By approximately King's third year on the job, he had to cut all ties of talking with Mohieldin.

King filed an employee complaint about Mohieldin with the City as of July 25, 2018, alleging that for the prior six months Mohieldin made harassing comments and gestures to King and about King in the workplace. (R-2.) King tried to ignore Mohieldin's actions. He filed the complaint after Mohieldin started to threaten King that he was going to have him terminated.

King complained that Mohieldin would grab his privates and stare at him. (R-2.) King witnessed Mohieldin grabbing his own genitals, nearly every day on the job. This

would occur quite frequently in the DPW garage or outside, sometimes more than once a day. King felt the gesture was targeted at him, as if someone were sticking their finger up at you. He acknowledged that on some occasions, King was not certain if Mohieldin was grabbing his genitals specifically being directed at anyone else.

Mohieldin was heard saying "fuck Jesus Christ" in front of King and other workers who were Christians. This occurred a couple of times per week. It was stated by Mohieldin in the area of the DPW time clock and in other areas of the workplace while there was a conversation between co-workers and Mohieldin would intrude and make that comment. (R-2.) King would shake his head and not respond to Mohieldin, while other co-workers would tell Mohieldin it was not right for him to make such a comment.

Mohieldin used lewd phrases in the workplace. Every Friday he would state "It's beer and pussy day." (Trans 58:10-12; R-2.) This comment was made in the area of the time clock. Throughout the workday he would make comments such as "fuck this" and "fuck that." King explained that the co-workers all have shop talk but know when to stop and not get carried away and use lewd phrases, such as "beer and pussy day" or use of the word pussy.

On May 14, 2018, Mohieldin told King that "your wife is at home alone" while King was at work, and that "she's sucking somebody else's dick." (Trans 60:14-17; R-2.) King ignored the comment. Mohieldin would frequently comment to King while at work that "someone is fucking your wife while you're at work." (Trans 60:21-24; R-2.)

On June 18, 2018, King's wife came to pick him up at work. As King was getting into the car, his wife told him that Mohieldin had been standing outside, looked at King's wife, grabbed his genitals and then licked his finger and pointed at her. (Trans 61:18-25 through 62:1-22; R-2.)

On June 21, 2018, King heard Mohieldin call co-worker Haney a "honkey" as a racial slur, while at the timeclock. Mohieldin would ask a young co-worker while in the breakroom "do you get pussy every day?" (Trans 68:17-25; R-2.)

King felt harassed by Mohieldin in the workplace. On occasions when they happened to be working together, King would be standing in a spot when Mohieldin would come up and stand behind him. When King would move, Mohieldin would move and stay next to him. Specifically, on July 21, 2018, when DPW workers were working overtime on a Saturday, Mohieldin came up very closely to King at a work site, almost touching him, and was invading King's personal space, trying to intimidate him. Mohieldin followed King as he moved, and again stood closely to him, trying to antagonize King to react or do something so that King would get in trouble.

On July 28, 2018, while at the timeclock, King was having a conversation with co-workers about work when Mohieldin interrupted and told a supervisor to write up King and Janeczko. King told Mohieldin to mind his own business and Mohieldin stated "I will have you fired, you will be fired next week too." (Trans 64:1-3; R-2.)

On another occasion, King's son came to pick him up at work. King got into the car and heard his son exchanging words with Mohieldin, with his son saying: "what are you looking at" and to "go ahead call the damn cops." (Trans 70:17-25.) Later that evening, the police called King to come down to the station. Mohieldin had filed "false" charges against King, that were apparently heard in municipal court, but all charges were dropped.

King heard Mohieldin make comments about Janeczko's father being gay. Mohieldin would call Janeczko "slow" as in having special needs. It was not perceived as a joke by Janeczko.

When Mohieldin left the workplace, the work environment was "lovely." There were no problems, and everyone was getting along together. It was peaceful.

Anthony Lim testified on behalf of the City. He has been employed by the City as a Laborer for DPW for approximately four years. He knows appellant, Mohieldin, from working together in the DPW.

Throughout the workday, he would hear Mohieldin make inappropriate comments such as "dick soup" and "fuck Jesus Christ." (Trans 105:23-25 through 106:1-5.) He heard Mohieldin call King a bitch and a "faggot." (R-3.) He would refer to King's wife being at home with another man, and that King was not getting sex when he would get home, and was not getting pussy, and that King was not a man in the house. Mohieldin would do this saying stupid stuff, day in and day out, using the same words, comments, and actions.

Mohieldin was perceived by Lim as stalking and intimidating to him and King. Mohieldin would come up closely behind him while going to clock out and Mohieldin would reach over his shoulder to get his timecard. He would comment that he was superior to Lim and King, and they were "not black" and were not African. Mohieldin claimed to be a superior black man, and that the other co-workers were not black because they were not from "the motherland."

Lim heard Mohieldin refer to "dick soup," saying that to Haney and sometimes to King. Mohieldin would call Janeczko sasquatch and say that his father flies to other countries to have sex with little kids. (Trans 108:24-25 through 109:1-9.)

Most of the comments made by Mohieldin were in the breakroom at work. This was almost every day, like a constant torment. Lim would try to avoid talking to him, and disassociated himself from Mohieldin after he had directed a "fuck Jesus Christ" comment towards Lim. Mohieldin was aware that Lim is a Christian and that such a remark would be offensive to him.

On one occasion when Lim was assigned to work with Mohieldin, he went to get into a work truck with him. There was trash on the seat and Lim asked him what it was and Mohieldin threw the trash off the seat and knocked the trash onto Lim. He complained to a supervisor that he did not want to work with Mohieldin that day. Mohieldin got upset and stated that Lim was saying too much and that Mohieldin was going to shut him up.

On another occasion when Lim was at the timeclock getting ready to clock out, Mohieldin rode straight up towards him on a bicycle as if he was going to hit Lim, then

veered off and went around. It was intimidating to Lim. He went to a supervisor and complained about Mohieldin's behavior when it began to get physical.

Lim would see Mohieldin grab his groin coming through the door of the workplace. He would do it every time he entered the door, especially after being told in a training meeting about sexual offenses that such action was inappropriate.

Aaron Smitherman (Smitherman) testified on behalf of the City. He has been employed by the City in the DPW for approximately eight years. He was a laborer and most recently employed as Road Repair 1, since approximately 2015. He knows Mohieldin through working together in the DPW.

He heard Mohieldin make inappropriate comments in the workplace. Smitherman heard him saying comments to others about sucking a dick or tell others they were not getting pussy. He heard a comment from Mohieldin such as "fuck Jesus Christ." The comments began after King and Lim came into the workplace.

Mohieldin would make inappropriate comments about King's family, trying to agitate King. He heard Mohieldin say to King references such as "your wife is out like sucking another guy's dick." (Trans 127:20-24.) Mohieldin's comments were made to King to bait him, trying to irritate King. They would be eating in the breakroom and Mohieldin would comment about King eating dick soup.

Smitherman could not recall specific comments, but recalled Mohieldin antagonizing Lim, making smart comments, always saying stuff. Mohieldin would come at Lim with his bike, acting like he was going to run him over.

He observed Mohieldin grabbing his genitals directed towards King and Lim. He would see Mohieldin do so approximately two to three times per week. He was working overtime with King and Mohieldin and saw Mohieldin trying to antagonize King, standing really close to King and saying smart stuff to him the whole time. King would try to move and Mohieldin would follow him again and stand really close behind him. Smitherman

heard Mohieldin making comments about getting King fired and that King would be "out of there."

On one occasion Mohieldin came up to Smitherman and King, who are both African American, and Mohieldin told them that they were not black because they were not African. He recalled Mohieldin made bad comments about Lim's background and culture, about Lim being Chinese.

Smitherman acknowledged knowing that Mohieldin had complained to a supervisor, alleging King told Mohieldin to go back to Africa. Smitherman did not personally witness it, so he could not confirm if it did happen. He recalled there being a joke about the phrase "tick, tick, boom" but did not recall how it started, and opined it may have been Mohieldin since he heard Mohieldin say it.

David Everham (Everham) testified on behalf of the City. He has been employed by the City for approximately fifteen years. He started working for the City in the DPW as a laborer, then as Road Repairman 1, and then as Road Repairman 3. He was recently promoted to supervisor of the DPW. He knows Mohieldin through work.

Everham has heard inappropriate comments made by Mohieldin in the workplace. He has referred to Janeczko's father going overseas and that he "sucks little boy dicks." (Trans 155:7-9.) He heard Mohieldin say "fuck Jesus Christ" once.

When in a training seminar, there were comments and instructions given about what you should not be doing, and he saw Mohieldin grab his genitals. Mohieldin was walking to the front of the class, turned around and grabbed his privates.

Everham was present near the timeclock when Mohieldin told King that he was going to be next, referring to getting King terminated. (R-4.) The following day, while the DPW employees were working an overtime shift. Mohieldin was walking up on King and King would walk away. They were having words. He heard Mohieldin make the statement "two down and two to go" referring to getting King terminated. He heard Mohieldin

comment that he was going to the city administrator. Whenever Mohieldin was having a confrontation with a co-worker he would say he was going to complain to the city administrator. A few days thereafter, Mohieldin remarked to Everham that King "was done, he won't be back. I took care of that." (R-4.)

Everham acknowledged that he did not have any personal confrontation with Mohieldin. As Mohieldin's supervisor, he did not have any issue with Mohieldin failing to follow any directions or orders. Everham removed himself from going to the breakroom and was not part of the everyday stuff being said. He took himself out of the breakroom to be away from all the turmoil.

David Carlin (Carlin) testified on behalf of the City. He has been employed in the maintenance department for the DPW for almost ten years. He worked with Mohieldin for approximately three years. He has a friendly relationship with Mohieldin. He will provide rides to Mohieldin outside of work, to go shopping or to purchase beer, and give him rides after work.

He heard Mohieldin refer to Janeczko as "sasquatch" and heard him refer to Janeczko's stepfather as being gay. Carlin pulled Mohieldin aside and told him not to make statements like that about anyone. (R-5.)

Carlin usually worked with Mohieldin but was not around him the entire workday. Carlin did not use the same break room as Mohieldin. He did not gather around the timeclock at the end of the day. He usually was cleaning things up in the maintenance shop and would be one of the last men to clock out.

Andrew Edwardson (Edwardson) testified for the City. He worked in the DPW for approximately two years as a laborer, then transferred to the water department. He has worked in the water department for approximately a year and a half. Every so often he interacts with DPW employees now, only for major work-related issues such as a water main break.

He knows Mohieldin from working together. Mohieldin was in a different position than Edwardson for the DPW, so they only saw each other during the workday during break or towards the end of the day.

He often heard Mohieldin make the comment about dick soup but did not understand the meaning of it. Mohieldin also would comment about people being "underneath the table," or "underneath the desk," meaning giving oral pleasure to someone.

Mohieldin would complain to Edwardson about Janeczko, Lim, and King, saying they were not good workers. He called Janeczko sasquatch. He called King lazy. Edwardson did not have any problem with King or Lim. He indicated he had a "little head butt" relationship with Lim, about work-related issues, preferring to do work tasks one way and Lim doing it his way.

Mohieldin made other lewd comments in the workplace, saying that certain individuals will not get any pussy from their wives. He would direct those comments to anyone who was right there, along with the gay jokes, once or twice per week. Edwardson acknowledged he heard gay jokes made by a good majority of the workers in the garage. He also acknowledged having gone to Mohieldin to complain about others, but it was work related, about someone not picking up their load of the workday.

Edwardson heard Mohieldin threaten others with getting fired. Lim had gotten suspended and Mohieldin would say that he was going to get the rest of the DPW workers fired.

Mark Staravoj (Staravoj) testified for the City. He has worked for the City for forty years. He is superintendent of the Department of Sewer and Drainage. He served as acting director of DPW for four and a half years, from approximately 2014 through 2018. He had supervisory authority to recommend discipline of a DPW employee but could not impose the discipline. He could give counseling or verbal warnings to DPW employees.

He knows Mohieldin through his employment at DPW. His contact with Mohieldin during the workday was very limited.

Janeczko complained to Staravoj about Mohieldin. Janeczko told him that Mohieldin was making fun of his teeth, criticizing him about his teeth, and it hurt him very badly. Janeczko wanted Staravoj to get Mohieldin to quit mocking him. Staravoj called Mohieldin into his office on May 18, 2018. He asked Mohieldin if he was mocking Janeczko's teeth and Mohieldin denied it a couple of times. The conversation turned to a different topic and when Staravoj returned to the issue of Janeczko's complaint, Mohieldin admitting having made fun of Janeczko's teeth. Staravoj told him to quit it. Staravoj prepared a Summary of Counseling or Warning about the incident, apparently in August of 2018. (R-6.) He noted that Janeczko's feelings were hurt. (Id.)

Staravoj heard Mohieldin make racial comments. Staravoj went to see Mohieldin to talk to him in the DPW mechanics garage area. When Staravoj was there, Smitherman and King came over to him and were discussing work issues. Mohieldin came over, sat down within about two feet of Staravoj and was not part of the conversation, yet looked at Smitherman and King and commented that they were "not black" about three or four times. (Trans 207:1-7.) Mohieldin further commented that "black people don't work good." (Id.) Staravoj acknowledged that Smitherman and King are black. Staravoj told Mohieldin to get away from them, it was not proper to talk that way, and that Staravoj would speak to Mohieldin later. Mohieldin got up and left. Within approximately five minutes later, Staravoj spoke to Mohieldin and told him not to do it again. Staravoj acknowledged he took no further action as to Mohieldin's behavior.

Staravoj indicated it was possible Mohieldin made other inappropriate comments. He could not recall them, stating that his memory is not too good. Staravoj recalled talking to Mohieldin in his office approximately once or twice, about complaints against Mohieldin. The first he could recall was when he told Mohieldin to stop mocking Janeczko's teeth. The second time he recalled talking to Mohieldin in his office, Staravoj told him to "stop with the blacks [sic] folks that you were talking about." (Trans 213:5-8.)

He asserted that by calling Mohieldin into his office, he was giving him a verbal warning. He acknowledged that he gave verbal warnings but did not think he ever wrote down verbal warnings.

David Ballard testified on behalf of the City. He is the Business Administrator (BA). He was hired approximately ten years ago by the City to serve as Director of Housing and Community Development. He was appointed to the position of BA effective March 31, 2011. As BA, he is responsible for the day-to-day operations of the City. He is director of administration, which includes being supervisor of all City department directors, including the DPW.

He knew of Mohieldin before Mohieldin became a City employee for the DPW. Mohieldin is friends with the City's mayor. When Ballard would be in the downtown area, he would see Mohieldin and exchange pleasantries with him. He most recently ran into Mohieldin while touring the Amazon warehouse building and saw that Mohieldin was working there and said "hello."

Mohieldin first worked in buildings and grounds for DPW, then worked in the public works garage. He estimated there are approximately nine or ten employees in DPW.

Ballard indicated that an investigation of Mohieldin was started after the incident when the DPW workers were engaged in the overtime work on a Saturday in the summer of 2018. Everham, who was the acting supervisor at the time, advised Ballard there was an exchange between Mohieldin and King at the time clock near the exit door to the DPW garage. Mohieldin called the police because he was threatened by King's son and the police were doing a full investigation. That incident was handled through Burlington Township municipal court. Ballard was waiting for the outcome of the municipal court matter to determine whether there would be other disciplinary matters for either King or Mohieldin. Ballard had placed Mohieldin on paid leave, concerned for his safety because there was a threat made against Mohieldin by someone alleging that they knew Mohieldin rode his bike to work. Ballard had no reason to suspect Mohieldin was anything but a model employee at

that point. He knew Mohieldin to be very respectful towards Ballard and the people in City Hall.

Ballard acknowledged that Mohieldin had stopped in his office many times and they had conversations. Mohieldin did share with him a great deal that the men in DPW did not appreciate their jobs, and they did not know how good they had it. Mohieldin told Ballard that if those men had seen what Mohieldin had seen during his life, they would really appreciate the wonderful opportunity they had to work in DPW. Ballard would encourage Mohieldin to continue to provide a great work example.

There was no discussion about animosity between anyone in DPW, other than Mohieldin expressing that his co-workers did not appreciate the jobs they had. Ballard profusely denied ever having heard a complaint from Mohieldin about harassment or discrimination. He never heard Mohieldin use the phrase "tick, tick, boom" and had Mohieldin done so, the circumstances would have been thoroughly investigated. Mohieldin had many opportunities to report any complaint of being harassed, and he never reported that to Ballard.

Ballard learned of insulting nicknames the employees used in the DPW and harassing behavior. The City conducted a workshop regarding the comments, hoping that would calm down everything, but then everything "really hit the fan." (Trans 230:15-24.)

He did recall that Lim had some type of minor incident in the garage and was disciplined for it with a suspension for a couple of days. Lim had no objection to the discipline and Ballard recalled that Lim was very candid in dealing with the matter. Ballard could not recall the nature of the incident and was unaware of any police report having been filed.

Ballard was initially concerned about the incident at the garage because there were allegations that King's son had trespassed in the DPW garage, which Ballard now understands did not occur. He is aware there was some type of heated exchange, but no

physical contact or any follow up on threats. The charges issued against King and his son were ultimately dismissed.

As part of his investigation into the circumstances of the situation, Ballard heard of complaints made by Janeczko about Mohieldin harassing him, making inappropriate comments to him, making fun of his teeth, and calling Janeczko sasquatch. Ballard spoke to Staravoj, who confirmed that Janeczko had approached him complaining about Mohieldin during the six months prior to the incident in July 2018. Staravoj confirmed he gave a verbal warning to Mohieldin but had not recorded it. Ballard instructed Staravoj to record verbal warnings in the future.

Ballard was dumbfounded when he read the text of the municipal court proceedings. He was appalled at what he heard. He was so fooled because he found the evidence overwhelming as to what was going on. The comments and behavior attributed to Mohieldin were not the type of person he had gotten to know during his communications and talks with Mohieldin. He learned of Mohieldin's comments about Janeczko's stepfather going to Thailand and being with little boys; the sasquatch comments about Janeczko; the use of "dick soup" and the sense of tremendous homophobia, which was puzzling because at some point Mohieldin said he was a homosexual.

Ballard believed Mohieldin should have been terminated for his conduct but acknowledged that he had only seen him as a model employee and there was no written record of discipline. The City followed progressive discipline. It offered a last chance agreement to Mohieldin. Ballard had mixed emotions about offering a last chance agreement. Ballard personally met with Mohieldin and his union representative and reviewed the last chance agreement with Mohieldin, who refused to sign it, asserting he was going to get fired once he signed it.

When Ballard later ran into Mohieldin in town, Mohieldin asserted that everyone was lying, and they were all conspiring against him. This was the first time Mohieldin made any complaint about harassment or discrimination directed against him. Mohieldin complained that there was a fake arrest by the police and comments about "tick, tick, boom." Ballard

denied that Mohieldin had ever complained to him prior to then, about being harassed in the workplace. Ballard had an investigation conducted into Mohieldin's complaints, which were unfounded. The police department did an internal investigation as well and Mohieldin's allegations were unsubstantiated. Ballard believed that Mohieldin was attempting to manipulate Ballard by alleging that the 1960's black panther salute was being used by other workers in the DPW, when that was unfounded. He questioned Mohieldin's timing in making complaints of harassment and discrimination, coming only after the last chance agreement had been presented to him.

Ballard issued the PNDA to Mohieldin as of August 28, 2018, suspending him effective August 28, 2018, pending a Loudermill hearing on August 30, 2018. (R-13.) The recommended discipline was removal, effective August 28, 2018. Mohieldin was notified effective August 28, 2018, that he continued to be suspended, but would now be suspended without pay. (R-12.)

A hearing was conducted, and the hearing officer recommended termination. Ballard agreed with that discipline. He signed the FNDA terminating Mohieldin. Had it been one single incident by Mohieldin, Ballard would agree that a verbal warning would have been appropriate. Ballard believes that Mohieldin's conduct rose to the level of the need for termination.

Nicholas Mainello was summoned to testify on behalf of appellant. He has been employed by the DPW for approximately sixteen years and is a mechanic.

He heard arguments occur in the break room, but always left when they started because he did not want to hear such stuff. He never heard an argument between Mohieldin and King, Janeczko, or Lim, at the time clock when they were clocking out.

Robert Cooper (Cooper) was called to testify on behalf of appellant. He has been employed by the City as a mechanic since approximately 2006. He knows appellant through the workplace.

He acknowledged there were multiple times DPW employees took breaks together in the break room. He did not personally hear Mohieldin insult King or Lim during break. He did not hear Mohieldin insult King or Lim at the time clock when they were clocking out.

Cooper explained that the nickname "tick, tick, boom" was given to Mohieldin by others, originating prior to Mohieldin's employment with DPW. Mohieldin previously worked at another place of employment and would respond to that nickname. Cooper acknowledged that the nickname "tick, tick, boom" could be used as the name for a terrorist and could be insulting to Mohieldin. It was not a nickname started by any of the DPW employees. He did not recall Mohieldin referring to himself by that nickname in the DPW workplace.

Gamal Mohieldin testified on his own behalf. He asserted it was not easy for him to work in the DPW garage, having come from Africa and having an accent. He denied having any prior discipline and that he never received a verbal warning.

He began working for the City on March 2, 2015. The first time he complained about the workplace was to his direct supervisor, Craig Leshner, (Leshner) while in the garage, sometime in late 2015. He complained about people making fun of his accent, telling him to go back to Africa, and referring to him as "tick, tick, boom" like a terrorist, or ISIS. Leshner apparently went to BA Ballard, but nothing was done. Mohieldin continued to complain to Leshner about harassment and discrimination in the garage towards him.

Sometime in 2016 he went to Ballard's office and complained to Ballard. He told Ballard that the harassment and discrimination never stopped in the garage with the "tick, tick, boom" terrorist references and being told to go back to Africa. Mohieldin contends that Ballard did not take any action against the co-workers because they were a protected class. Ballard told him that he would look into the situation. Nothing happened after that complaint. The discrimination and harassment continued every day.

The harassment then became physical threats. In June of 2018 Mohieldin went to supervisor Leshner and complained that Lim threatened to kill him. Supervisor Leshner

apparently reported the matter to the police department and Mohieldin was called in to the police department and explained what happened. Lim was suspended from work.

The second time Mohieldin was threatened was approximately two to three weeks later when King and his son came to the garage and threatened him. When Mohieldin reported for work the next Monday, Ballard called him into his office and told Mohieldin that he had to go out for his own safety.

He contends he was terminated in retaliation for calling the police after two physical threats were made to him. The City is a small city, and everyone is related with the mayor, and it is all political.

Credibility analysis

A fact finder is obligated to weigh the credibility of witnesses. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. 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).

The employees from DPW testified in a direct and candid manner. No bias or ill will towards Mohieldin was detected. The comments and behavior alleged to have been done by Mohieldin was overwhelmingly repeated and consistent across the witnesses' testimony.

As to Janeczko, his testimony was heartfelt and sincerely expressed sorrow and sadness during his testimony as to the effect Mohieldin's comments had upon him. He was visibly emotionally moved during his testimony, which was genuine and trustworthy.

King's testimony was straightforward and candidly acknowledged when he could not recall specific dates and times of events. He did not exaggerate or embellish the circumstances regarding the comments and behavior of Mohieldin directed towards him, which was supported by the numerous other witnesses who testified. It is appreciated that King acknowledged that there would be "shop talk" at work, but never to the extent of pushing boundaries with personal attacks and racially charged or lewd comments. Likewise, Edwardson's candid acknowledgment that he heard gay jokes made by a "good majority" of the workers in the garage is appreciated.

Ballard testified in a relatable, professional manner. His expression of being conflicted and surprised about the allegations concerning Mohieldin, as opposed to the worker he believed Mohieldin to be, was genuine. He candidly acknowledged his personal feelings and internal conflict when considering progressive discipline and reviewing the circumstances of comments and behavior of Mohieldin, yet he had no prior discipline. I deem Ballard's testimony credible.

Mohieldin's testimony was scattered and accusatory. His behavior during cross examination of the witnesses was argumentative and pressingly intimidating, particularly with his initial reminder to every witness that they were under oath. He argued with the witnesses when he did not get the answer that he wanted. He impressed upon Ballard that he was under oath, as if to intimidate Ballard to change his answer. Mohieldin badgered Ballard when he continually denied that Mohieldin had complained to him in his office about harassment or discrimination and when Ballard denied ever using the term "protected class" in conversations with Leshner or Mohieldin.

Most telling about Mohieldin's credibility is he never denied making the comments he was accused of saying, nor did he deny his alleged behavior. His testimony was broad and vague concerning him being a victim of daily harassment and discrimination in the

workplace and that he had complained of same repeatedly. His only specific references about harassment and discrimination were that he was told to go back to African, he was teased for his accent, and was referred to as “tick, tick, boom.” Although such statements had apparently been made and heard in the workplace, his supposed nickname of “tick, tick, boom” originated in a prior workplace, and is something he shared with his co-workers, yet never complained about the use of such a phrase. The timing of when he attempted to raise such complaints is suspect, only coming after the PNDA had issued and he was offered a last chance opportunity to return to his job. Taking into consideration his motivation for a favorable outcome in this matter, Mohieldin’s testimony about being a daily victim of harassment and discrimination rings hollow. Such claims are overborn by the overwhelming and consistent testimony as to Mohieldin’s inappropriate statements and behavior in the workplace.

Based upon a review of the documentary evidence, and having heard the testimony of the witnesses, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACTS** the following:

Mohieldin received the City’s employee handbook, having acknowledged receipt of same on May 3, 2016, October 5, 2016, May 2, 2017, and April 7, 2018. (R-8.) Mohieldin completed the City’s harassment policy questionnaire, acknowledging having read and understood the policy against harassment, as of November 20, 2015, May 3, 2016, November 5, 2016, May 2, 2017, and May 29, 2018. (R-9.) Mohieldin attended employee training sessions, during which the harassment policy was discussed. He signed in for the trainings that occurred on April 18, 2018, and June 15, 2018. (R-10; R-11.)

On multiple dates in 2018, Mohieldin made derogatory and sexually explicit comments to King regarding King’s wife, calling King a pussy, and asserting that King was not getting pussy. On May 14, 2018, Mohieldin told King that his wife was at home and “she’s sucking somebody else’s dick.” Mohieldin frequently commented to King that “someone is fucking your wife while you’re at work.” Mohieldin frequently commented in King’s presence, who was known to be Christian, “fuck Jesus Christ.”

On multiple dates in 2018, Mohieldin engaged in inappropriate conduct as to Lim, pushing trash onto Lim that was on the seat of a work truck, and commented to and in the presence of Lim, who was known to be a Christian, "fuck Jesus Christ." Mohieldin would invade Lim's personal space, getting extremely close or reaching over him in a manner to provoke a reaction from Lim. On one occasion, Mohieldin rode his bicycle directly at Lim as if to hit him, then veered away right before he would have hit him.

On multiple occasions in 2018, Mohieldin would grab his genitals in an offensive manner towards King and Lim. He repeatedly was seen grabbing his genitals in the workplace, directed towards others or as he entered work. During one of the training sessions, after such behavior was discussed as being inappropriate, he walked toward the front of the room, turned back around, and grabbed his genitals.

On multiple occasions in 2018, Mohieldin commented to King and Smitherman, who are African American, that they were "not black" because they were not from Africa, and that they were not good workers. He told them he was superior to them.

On multiple occasions in 2018, Mohieldin harassed, mocked, and bullied Janeczko, mocking the physical appearance of Janeczko's teeth, telling him he was gay and that he had no teeth because he "sucked dick" and he did not like "pussy" and ate "dick soup." He referred to Janeczko as sasquatch. He repeatedly harassed Janeczko by asserting his stepfather was gay and traveled overseas to "suck little boys' dicks." Janeczko was affected by the harassment and mocking language, feeling badly, and feeling hurt. Co-worker, Carlin, pulled Mohieldin aside at work and told him not to make such statements to any one at work.

On multiple occasions during his employment with DPW, Mohieldin nagged Janeczko by following him at work, inquiring as to what he was doing, telling him he was not supposed to be doing something, and would be found sneaking around to watch Janeczko and accuse Janeczko of stealing. Mohieldin would threaten Janeczko that he was going to call Janeczko's supervisor. Mohieldin referred to Janeczko as being "slow."

On May 18, 2018, Mohieldin was advised verbally by Staravoj to stop mocking Janeczko. Mohieldin initially denied having made such comments, then admitted to same. He was made aware that his comments about Janeczko's teeth, gay references, comments about Janeczko's family members, and calling him sasquatch, were inappropriate and hurt Janeczko's feelings.

On June 21, 2018, Mohieldin referred to a white employee as a "honkey."

On July 20, 2018, Mohieldin interrupted a conversation between King, Smitherman, and Everham. When King advised Mohieldin to mind his own business, he threatened to have King fired. He told King that he was "next" and that he would "have your job too."

On July 21, 2018, when DPW employees were working overtime at a job site, Mohieldin came up closely to King as King was working. Mohieldin purposely followed King as he moved away from Mohieldin, multiple times during the workday.

On July 28, 2018, while at the timeclock, Mohieldin approached King and others who were having a conversation and interrupted the conversation. Mohieldin told a supervisor to write up King and Janeczko. When told by King to mind his own business, Mohieldin stated "I will have you fired, you will be fired next week too."

Mohieldin interrupted a conversation with King, Smitherman, and Staravoj, commenting about King and Smitherman being "not black." Staravoj told him to stop. Shortly thereafter, Staravoj verbally warned Mohieldin to stop making such comments. Staravoj had also advised Mohieldin to "stop with the blacks [sic] folks that you were talking about."

On multiple occasions in 2018, Mohieldin was heard using the terms pussy, dick soup, "fuck Jesus Christ" and referring to others as gay in a derogatory manner or used derogatory racial remarks about co-workers' ethnicities. He used the terms as personal attacks upon co-workers. He called King a bitch and a "faggot." On Fridays he would

lewdly remark that it was “beer and pussy day.” He would ask a young co-worker in the breakroom “do you get pussy every day?”

Mohieldin attempted to fabricate that DPW co-workers were harassing him by using “tick, tick, boom” as a derogatory term the co-workers had created about him.

LEGAL ANALYSIS AND CONCLUSION

A civil service employee’s rights and duties are governed by the Civil Service Act and regulations promulgated thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev’d on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; 11A:2-6; 11A:2-20; N.J.A.C. 4A:2-2.2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or if the employee engages in misconduct related to their duties. N.J.S.A. 11A:1-2(a); 11A:2-20. Thus, a public entity employer may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth in a major disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); and see, Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate “if it establishes the reasonable probability of the fact.” Jaeger v. Elizabethtown

Consolidated 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 a given conclusion." Bornstein v. Metro Bottling Company, 26 N.J. 263, 275 (1958).

Here, Mohieldin is alleged to have violated three regulations, which the City contends warrants his removal from employment. Each charge is addressed below.

1. N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming

Mohieldin is alleged to have violated "conduct unbecoming a public employee" as codified at N.J.A.C. 4A:2-2.3(a)(6). The term "unbecoming conduct" has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of government services. Karins v City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

On multiple occasions in 2018, Mohieldin engaged in numerous acts of improper conduct and created hostility in the DPW workplace, by making repeated inappropriate comments to and about co-workers regarding sex, sexual orientation, religion, and race. He physically engaged in lewd and intimidating behaviors grabbing his genitals, interjecting himself into others' conversations, and invading the personal space of co-workers.

I **CONCLUDE** Mohieldin's behavior was intentional, seeking to provoke a reaction from his co-workers, and to intimidate and demean others with lewd and offensive comments, regarding sex, sexual preference, physical appearance, race, personal circumstances, or religion. Mohieldin invoked personal demoralization of co-workers and effected the efficiency of the DPW's operations by harassing, bullying, and engaging in intimidating behavior of co-workers by grabbing his genitals and focusing on following co-workers or invading their personal space, creating upset and disruption of the workplace. I **CONCLUDE** the morale of the DPW workforce was adversely affected by Mohieldin's conduct and the efficiency of the DPW operations were

impacted on multiple occasions by Mohieldin's inappropriate behavior and comments. Thus, I **CONCLUDE** that such behavior violated "conduct unbecoming a public employee" and **AFFIRM** that this charge has been sustained.

2. N.J.A.C. 4A:2-2.3(a)(9) discrimination that affects equal employment opportunity.

Mohieldin is alleged to have acted in a discriminatory manner, which affected equal opportunity employment, including sexual harassment. N.J.A.C. 4A:2-2.3(a)(9). Equal opportunity employment is generally defined as providing the ability for anyone, regardless of race, religion, sexual orientation, marital status, or disability, to apply for and be hired for positions of employment. N.J.A.C. 4A:7-1.1. The regulations prohibit "all forms of discriminatory conduct against any State employee by any other State employee[.]" N.J.A.C. 4A:7-1.1(f). Sexual harassment is a form of gender discrimination, that is not tolerated. N.J.A.C. 4A:7-1.1(e).

Mohieldin's comments were lewd, sexually explicit, challenged the masculinity of male co-workers, utilized gay slurs, and tormented colleagues regarding their personal lives and gender identification. I **CONCLUDE** Mohieldin's conduct was harassing to the gender identity of male co-workers and discriminatory in his use of racially and religiously charged comments and threats to have co-workers fired. I thus **CONCLUDE** Mohieldin's harassing and discriminatory conduct violated N.J.A.C. 4A:2-2.3(a)(9) and **AFFIRM** that this charge has been sustained.

3. N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause

Mohieldin was charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, which has been described as other conduct, not delineated within that regulation, which would "violate 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 Boyd, Cumberland County Dept of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final

decision, 2019 N.J. CSC Lexis 621. "Other sufficient cause" is essentially the catchall provision for conduct, otherwise not listed within the eleven causes cited in N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline.

Mohieldin's behavior and comments were lewd, offensive, and demoralizing to the co-workers in the City's DPW. During a training session where the topic of harassment and inappropriate behavior was discussed, he engaged in grabbing his genitals yet again. He preyed upon younger associates and intentionally stated inflammatory and sexually explicit statements, intending to cause harm, shame, or provoke an explosive reaction from other co-workers. He used his words and actions as weapons against his co-workers. His deeply personal attacks regarding co-workers' physical appearance, race, religion, and gender, went beyond the bounds of so called "shop talk." Even when instructed to stop engaging in such behavior, he continued to do so in a relentless manner, devoid of any moral or legal boundaries. I **CONCLUDE** Mohieldin's actions were egregious and demonstrated other sufficient cause for the City to have sustained this charge. I **CONCLUDE** and **AFFIRM** that the charge of "other sufficient cause" has been sustained as to Mohieldin.

Penalty

Progressive discipline is to be considered, once a determination has been made that an employee has violated a statute, regulation, or rule regarding their employment. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding what disciplinary action is appropriate, the fact finder shall consider the nature of the charges sustained and the appellant's past record. West New York, 38 N.J. at 523-524.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007.) "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of

fairness. Id. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. Hence, an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

The City seeks affirmation of its removal of Mohieldin from employment. Mohieldin had no prior disciplinary action imposed upon him, but for the verbal warning by Staravoj, related to Mohieldin's behaviors encompassed in this disciplinary matter. Mohieldin's claims that the City seeks removal as retaliation for him having complained to the police about co-workers, and that he was the subject of harassment and discrimination, have been unfounded. His behavior was consistently affirmed through the testimony of multiple witnesses. His repetitive lewd and offensive comments and intimidating and harassing behavior was egregious. There are no mitigating factors, beyond the lack of prior written discipline, to overcome the egregiousness of his behavior in the workplace. I **CONCLUDE** that the City's disciplinary action of removal of Mohieldin from his employment does not shock the conscious and was appropriate given his egregious conduct, and thus, shall be **AFFIRMED**.

ORDER

It is **ORDERED** that Mohieldin's appeal of his termination is **DENIED**. It is further **ORDERED** that the City's imposition of the discipline of removal of Mohieldin from his employment, effective August 28, 2018, shall be **AFFIRMED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this

recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, 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.



December 6, 2021 _____

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/tat

APPENDIX OF PROCEEDING

WITNESSES

For Appellant:

Nicholas Mainello

Robert Cooper

Gamal Mohieldin

For Respondent:

Chad Haney

Anderw Janeczko

Shawn King

Anthony Lim

Aaron Smitherman

David Everham

David Carlin

Andrew Edwardson

Mark Staravoj

David Ballard

EXHIBITS

For Appellant:

None

For Respondent:

R-1 Andrew Janeczko statement

- R-2 Shawn King employee complaint
- R-3 Anthony Lim statement
- R-4 David Everham statement
- R-5 David Carlin statement
- R-6 Staravoj's completed summary of counseling or warning form
- R-7 City of Burlington's employee handbook
- R-8 Acknowledgement of receipt of employee handbook
- R-9 Harassment policy questionnaire
- R-10 Employee handbook training attendance form June 15, 2018
- R-11 Employee conduct and violence prevention in the workplace class roster
- R-12 Memo notice of Loudermill hearing to petitioner, August 28, 2018
- R-13 PNDA, August 28, 2018